

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Bacanora Lithium Limited, Sonora Lithium Ltd., and Ganfeng International
Trading (Shanghai) Co. Ltd.**

v.

United Mexican States

(ICSID Case No. ARB/24/21)

REVISED PROCEDURAL ORDER NO. 3

Revised Decision on Bifurcation

Members of the Tribunal

Mr. Eduardo Zuleta Jaramillo, President of the Tribunal

Mr. Donald Francis Donovan, Arbitrator

Prof. Pierre Mayer, Arbitrator

Secretary of the Tribunal

Ms. Gabriela González Giráldez

Assistant to the Tribunal

Ms. Sofía Klot

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I. THE PARTIES

1. The Claimants in this arbitration are Bacanora Lithium Limited (“**Bacanora Lithium**”), Sonora Lithium Ltd. (“**Sonora Lithium**”), two companies incorporated in the United Kingdom (“**UK**”), and Ganfeng International Trading (Shanghai) Co. Ltd. (“**Ganfeng International**”), a company constituted in the People’s Republic of China (jointly, the “**Claimants**”).
2. The Claimants bring claims on their own behalf and of behalf of Minera Sonora Borax, S.A. de C.V. (“**Borax**”) and Bacanora Chemco S.A. de C.V. (“**Chemco**”) under two agreements: the Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United Mexican States for the Promotion and Reciprocal Protection of Investments (“**Mexico-UK BIT**”) and the Agreement Between the Government of the United Mexican States and the Government of the People’s Republic of China on the Promotion and Reciprocal Protection of Investments (“**Mexico-China BIT**”) (jointly, the “**Treaties**”). Their claims are related to seven mining concessions in the Sonora Lithium Project, a lithium extraction project based in the northern state of Sonora (the “**Project**”).
3. The Respondent in these proceedings is the United Mexican States (“**Mexico**” or the “**Respondent**”, indistinctly).
4. The Claimants and the Respondent are jointly referred to as the “**Parties**”.

II. RELEVANT PROCEDURAL BACKGROUND

5. On 11 March 2025, the first session was held through videoconference.
6. Following the first session, on 28 March 2025, the Tribunal issued Procedural Order No. 1 recording the Parties’ agreements and the Tribunal’s decisions on procedural matters. Procedural Order No. 1 confirmed, *inter alia*, that the applicable ICSID Arbitration Rules are those in force as of 1 July 2022 (the “**Rules**”). Procedural Order No. 1 also set out a procedural timetable for the arbitration attached as Annex B (the “**Procedural Timetable**”), including two scenarios in case a request for bifurcation was filed.
7. On 26 April 2025, the Claimants submitted their Memorial.
8. On 2 May 2025, the Claimants submitted an amended version of their Memorial reflecting a correction to the expert report of Prof. Graham A. Davis and Dr. Florin A. Dorobantu and fixing minor non-substantive and formatting issues.
9. On 10 June 2025, the Respondent filed a Request for Bifurcation (the “**Request**”).
10. On 24 July 2025, the Claimants submitted their Response to the Request for Bifurcation (the “**Response**”).

III. SCOPE OF THIS PROCEDURAL ORDER

11. This Procedural Order No. 3 focuses on the specific question of whether the Respondent’s preliminary objections advanced in its Request should be bifurcated. Accordingly, nothing in this Procedural Order should be construed as a pre-judgment of any other issues in dispute. The Tribunal expresses no opinion on the sufficiency of the Respondent’s objections as a matter of jurisdiction or admissibility, or on the substantive arguments raised by the Parties to date, all of which will be

addressed by the Tribunal in due course.

12. The Tribunal has fully considered the Parties' arguments and evidence presented in the Request and the Response, although not all of them will be reproduced in detail in the following Section, but only those which the Tribunal considers most relevant for the issuance of this Procedural Order and in an abbreviated form. The summaries included in this Procedural Order are therefore not intended to be exhaustive descriptions of the Parties' submissions.
13. Having considered the Parties' submissions, the Tribunal issues its decision on bifurcation as Procedural Order No. 3, in accordance with Article 41 of the ICSID Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "**ICSID Convention**" or "**Convention**", indistinctly) and Rules 42-44. After summarizing the Parties' positions in Section IV, the Tribunal presents its analysis in Section V. The Tribunal's decision is set out in Section VI.

IV. THE PARTIES' POSITIONS

14. In this Section, the Tribunal briefly summarizes the Parties' positions on the applicable legal standard to adjudicate the Request (A), and whether such a standard is met with respect to the objections advanced by the Respondent (B).

A. Criteria for the bifurcation of preliminary objections

1. *The Respondent's position*

15. The Respondent maintains that the applicable legal standard to decide whether the objections raised in its Request should be bifurcated is contained in Rules 42 and 44.¹ Specifically, it relies on Rule 44(2), which considers "all relevant circumstances, including whether: (a) bifurcation would materially reduce the time and cost of the proceeding; (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical."²
16. Citing Prof. Schreuer and *Southern Pacific Properties v. Egypt*, among other authorities, the Respondent explains that the first prong of this test (Rule 44(2)(a)) calls for an analysis of whether bifurcation would significantly reduce the time and cost of the proceedings, leading to efficiency and procedural economy, bearing in mind that there is no presumption of jurisdiction "particularly where a sovereign State is involved."³
17. As for the second prong (Rule 44(2)(b)), the Tribunal should consider whether the preliminary objection has the potential to dismiss all or a substantial part of the dispute. Invoking the decisions in *Suffolk (Mauritius) et al. v. Portuguese Republic*, *Doups Holdings v. Mexico* and *Aris Mining v. Colombia*, issued under the Rules, Mexico argues that the bifurcation test is satisfied when at least some of the claims are dismissed, and that the Tribunal should evaluate not only the duration of the proceedings in bifurcated and non-bifurcated scenarios, but also the possible cost savings resulting from limiting or simplifying the issues to be decided in a merits phase.⁴

¹ Request, ¶¶ 36-39.

² Request, ¶ 40.

³ Request, ¶¶ 41-42 (citing C. Schreuer *et al.*, The ICSID Convention: A Commentary (2009), **RL-0010**, p. 537; ICSID Rules Working Paper 2, **RL-0009**, ¶ 273; *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Decision on Jurisdiction, 14 April 1988, **RL-0011**, ¶ 63).

⁴ Request, ¶¶ 43-44 (citing *Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited and Silver Point Mauritius v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 3, 1 March 2024, **RL-0012**, ¶¶ 94-

18. Further, the Respondent observes that the third prong of the bifurcation test (Rule 44(2)(c)) calls for an assessment of whether its jurisdictional objections are sufficiently linked to the merits of the dispute to avoid the duplication of factual arguments and evidence (including witness testimony). Relying on *TC Energy et al. v. United States*, Respondent highlights that, when applying this prong, the Tribunal should assess not merely whether its objections raise factual issues, but whether those factual issues are indeed duplicative of questions and evidence that would need to be addressed in a merits phase.⁵

2. *The Claimants' position*

19. The Claimants argue, at the outset, that there is no presumption in favor of bifurcation under the ICSID Convention and the Rules. This is a question that falls within the discretionary powers of the Tribunal under Article 41(2) of the Convention and Rules 43(4) and 42(6), and Mexico would bear the burden of proving that the bifurcation of its objections is warranted.⁶ On this note, Claimants add that “absent a strong case for bifurcation, bifurcation ought to be rejected”.⁷ They cite the results of a 2018 ICSID study which would have found that cases that bifurcated preliminary objections but ultimately moved on to the merits ended up being “‘over 550 days longer than the [...] average’ [...] investor-State proceeding”.⁸
20. The Claimants agree with the Respondent that the Tribunal should consider the three factors set forth in Rule 44(2)(a), (b) and (c) as part of the applicable bifurcation test.⁹ Commenting on the first factor (Rule 44(2)(a)), Claimants explain that it calls for a comparison of whether “‘the cost and time of [a bifurcated] proceeding would [...] be justified in terms of the reduction in costs at the subsequent phase of [a] proceeding’” as described in *Glamis Gold v. United States of America*.¹⁰ When conducting this exercise, and following the reasoning of *Suffolk (Mauritius) et al. v. Portuguese Republic*, the Tribunal should consider the complexity of the submissions, documents, witness and expert testimony, as well as the issues to be evaluated.¹¹
21. Claimants invoke several authorities, including *Klesch v. Germany*, to argue that the second factor of

104; *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3, Decision on Bifurcation, 16 October 2024, **RL-0002**, ¶ 53; *Aris Mining Corporation v. Republic of Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 3, Decision on the Respondent’s Request for Bifurcation, 17 January 2020, **RL-0013**, ¶ 25).

⁵ Request, ¶ 45 (citing *TC Energy Corporation and TransCanada Pipelines Limited v. United States of America*, ICSID Case No. ARB/21/63, Procedural Order No. 2, 13 April 2023, **RL-0018**, ¶ 28).

⁶ Response, ¶¶ 9-10 (citing ICSID Convention, Art. 41(2); ICSID Arbitration Rules (2022), Rule 43(4) and Rule 42(6); ICSID, Bifurcation – ICSID Convention Arbitration (2022 Rules), **C-0594**; *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and No. 12/40, Procedural Order No. 15, 12 January 2015, **CL-0167**, ¶ 26; *Klesch Grp. Holdings Ltd. and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Bifurcation, 8 April 2025, **CL-0168**, ¶¶ 42-43; *MetLife, Inc., MetLife Servicios S.A. and MetLife Seguros de Retiro S.A. v. Argentine Republic*, ICSID Case No. ARB/17/17, Procedural Order No. 2, Decision on Bifurcation, 21 December 2018, **CL-0169**, ¶ 23).

⁷ Response, ¶ 10.

⁸ Response, ¶ 10 (citing ICSID Secretariat, Proposals for Amendment of ICSID Rules – Working Paper, Vol. 3, 2 August 2018, **CL-0170**, Schedule 9: Addressing Time and Cost in ICSID Arbitration, ¶¶ 9-11).

⁹ Response, ¶ 11.

¹⁰ Response, ¶ 12(a) (citing *Glamis Gold, Ltd., v. United States of America*, UNCITRAL, Procedural Order No. 2 (Revised), 31 May 2005, **CL-0171**, ¶ 21).

¹¹ Response, ¶ 12(a) (citing *Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited and Silver Point Mauritius v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 3, 1 March 2024, **CL-0220** (also filed by Respondent as **RL-0012**), ¶¶ 91-93).

Rule 44(2)(b) would only be satisfied when an objection can dispose of an essential part of the claim, either by bringing the proceedings to an end or by materially reducing them (or their complexity); otherwise, bifurcation would be wasteful.¹² As for the third factor (Rule 44(2)(c)), the Tribunal should look at whether the facts and circumstances involved in determining an objection would be relevant and material to the determination of the claims on the merits, such that treating them separately would be inefficient.¹³

22. In addition to these three criteria, the Claimants argue that the Tribunal should also consider two additional factors, namely: (i) whether the Respondent's preliminary objections are *prima facie* serious and substantial; and (ii) whether bifurcation would be procedurally fair and efficient.¹⁴ On this point, the Claimants cite decisions such as *Fotowatio v. Mexico* that have applied at least one (or both) of these factors under the opening sentence of Rule 44(2) (and its equivalent in the ICSID Additional Facility Rules), which contains the term "including" and therefore allows for the consideration of additional circumstances not explicitly listed therein.¹⁵
23. For the Claimants, to establish that an objection is *prima facie* serious and substantial, a party must satisfy a higher threshold than merely asserting a "non-frivolous" jurisdictional objection.¹⁶ The Claimants refer to the writings of Prof. Schreuer, Gary Born and decisions such as *BA Desarrollos v. Argentine Republic* to underscore the need to assess bifurcation arguments under the lens of procedural economy and sound administration of justice.¹⁷ As applied to this case, the Claimants allege that the Tribunal should adopt a "reinforced" standard and reject the Request as contrary to procedural fairness and efficiency, because the Respondent's Request contains a reservation of rights that would enable it to raise new objections at a later stage.¹⁸

¹² Response, ¶ 12(b) (citing *Klesch Grp. Holdings Ltd. and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Bifurcation, 8 April 2025, **CL-0168**, ¶¶ 45-47; *Philip Morris Asia Ltd. v. The Commonwealth of Australia*, PCA Case No. 2012-12, Procedural Order No. 8 on Bifurcation of the Procedure, 14 April 2014, **CL-0172**, ¶ 109; *Mesa Power v. Canada*, PCA Case No. 2012-17, Procedural Order No. 2, 18 January 2013, **CL-0173**, ¶¶ 4, 19; *Energía y Renovación Holding, S.A. v. Republic of Guatemala*, ICSID Case No. ARB/21/56, Procedural Order No. 2, Decision on the Request for Bifurcation, 2 December 2022, **CL-0174**, ¶ 82(c)).

¹³ Response, ¶ 12(c) (citing *Mesa Power v. Canada*, PCA Case No. 2012-17, Procedural Order No. 2, 18 January 2013, **CL-0173**, ¶ 20; *Tayeb Benabderrahmane v. State of Qatar*, ICSID Case No. ARB/22/23, Procedural Order No. 6, 1 July 2024, **CL-0175**, ¶ 34; *Glamis Gold, Ltd. v. United States*, UNCITRAL, Procedural Order No. 2 (Revised), 31 May 2005, **CL-0171**, ¶ 12(c)).

¹⁴ Response, ¶ 13.

¹⁵ Response, ¶¶ 13-14 (citing, among others, *Fotowatio Renewable Ventures S.L.U., et al., v. Mexico*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, 14 April 2025, **CL-0176**, ¶ 74; *Klesch Grp. Holdings Ltd. and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Bifurcation, 8 April 2025, **CL-0168**, ¶ 8; *Stratius Investments Ltd. v. Hungary*, ICSID Case No. ARB/24/6, Procedural Order No. 1, 12 February 2025, **CL-0177**, ¶ 33).

¹⁶ Response, ¶ 14 (citing, among others, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, Decision on Bifurcation, 28 June 2018, **CL-0179**, ¶ 51; *Glencore Finance (Bermuda) Ltd. v. Plurinational State of Bolivia*, PCA Case No. 2016-39, Procedural Order No. 2, Decision on Bifurcation, 31 January 2018, **CL-0180**, ¶¶ 42, 50, 51; *Huawei Technologies Co., Ltd. v. Kingdom of Sweden*, ICSID Case No. ARB/22/2, Procedural Order No. 3, 28 April 2023, **CL-0181**, ¶ 33).

¹⁷ Response, ¶ 15 (citing, *inter alia*, C. Schreuer *et al.*, *The ICSID Convention: A Commentary* (2009), **CL-0187**, p. 537; G. Born, *International Commercial Arbitration* (3d Ed.), **CL-0188**, at 2410 (p. 45 bates stamp); *BA Desarrollos v. Argentine Republic*, ICSID Case No. ARB/23/32, Procedural Order No. 7, 9 September 2024, **CL-0183**, ¶ 14; *Gran Colombia Gold Corp. v. Republic of Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 3, Decision on the Respondent's Request for Bifurcation, 17 January 2020, **CL-0184**, ¶ 25).

¹⁸ See, e.g., Response, ¶¶ 16, 18 (citing, among others, *Abertis Infraestructuras, S.A. v. Argentina*, ICSID Case No. ARB/23/39, Procedural Order No. 2, 2 July 2024, **CL-0191**, ¶¶ 20-21; *Fotowatio Renewable Ventures S.L.U., et al., v. Mexico*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, 14 April

24. Finally, the Claimants argue that all the above-mentioned elements of the bifurcation test are cumulative, that they “must be met with respect to each of the objections invoked” and that a partial bifurcation of jurisdictional objections would be procedurally inefficient.¹⁹

B. Whether the Respondent’s objections meet the criteria for bifurcation

1. *The Respondent’s position*

25. In its Request, the Respondent has advanced five jurisdictional objections and one admissibility objection. Below is a summary of the Respondent’s objections and its arguments on how each one would satisfy the three-pronged bifurcation test of Rule 44(2).

(a) First jurisdictional objection

26. The Respondent maintains that the Claimants, through their subsidiaries, agreed to be treated as Mexican nationals with respect to their investments and waived any claims against Mexico – including the right to invoke the investor-State dispute settlement provisions of the Treaties – in compliance with mandatory domestic requirements for investing in mining concessions.²⁰ The Mexican subsidiaries allegedly accepted that their shareholders be considered Mexicans as a precondition to obtaining mining concessions, and that they would waive the protection of their government with respect to the assets or rights acquired, incorporating provisions to that effect in the bylaws of Borax and the La Ventana and La Ventana 1 concessions.²¹
27. The Respondent contends that the conditions necessary to grant bifurcation are fully met with respect to this objection. It argues, *first*, that bifurcation would significantly reduce the time and costs of the proceeding if the case were decided in its favor at a preliminary stage, thereby avoiding “having to subject all parties involved to a fruitless merits stage.”²² *Second*, that if the Tribunal found it lacks jurisdiction *ratione personae* because the Claimants agreed to be considered Mexican nationals, “this arbitration would be terminated in its entirety.”²³ *Third*, in the Respondent’s view, to adjudicate this objection the Tribunal would only have to analyze the Claimants’ purported waiver of their right to resort to investor-State arbitration and their commitment to be considered as Mexican nationals, “aspects that are purely legal, have nothing to do with the merits of the dispute and are present in a smaller number of documents.”²⁴
28. Additionally, the Respondent points to the decisions issued in *Doups Holdings v. Mexico* and *Mario Noriega v. Mexico*, which would have confirmed Mexico’s proposed approach and agreed to bifurcate the consideration of similar objections.²⁵

2025, **CL-0176**, ¶ 84; *BA Desarrollos v. Argentine Republic*, ICSID Case No. ARB/23/32, Procedural Order No. 7, 9 September 2024, **CL-0183**, ¶¶ 17-18)

¹⁹ Response, ¶ 17 (citing, *inter alia*, *Energía y Renovación Holding, S.A. v. Republic of Guatemala*, ICSID Case No. ARB/21/56, Procedural Order No. 2, Decision on the Request for Bifurcation, 2 December 2022, **CL-0174**, ¶ 83; *Carlos Sastre et al., v. United Mexican States*, ICSID Case No. UNCT/20/2, Procedural Order No. 2, Decision on Bifurcation, 13 August 2020, **CL-0178**, ¶ 43; *Amerra Capital Management LLC et al v. Mexico*, ICSID Case No. UNCT/23/1, Procedural Order No. 3, 3 November 2023, **CL-0193**, ¶ 18.)

²⁰ Request, ¶¶ 47-63.

²¹ See, e.g., Request, ¶¶ 54-60; Bylaws, Borax, **R-0004**; Permit SRE Minera Sonora Borax, **R-0005**.

²² Request, ¶ 65.

²³ Request, ¶ 66.

²⁴ Request, ¶¶ 67-68.

²⁵ Request, ¶ 69 (citing *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3, Decision on Bifurcation, 16 October 2024, **RL-0002**, ¶ 67; *Mario Noriega Willars v. United*

(b) Second jurisdictional objection

29. Mexico contends that the Tribunal lacks jurisdiction *ratione personae* because: (i) Sonora Lithium and Bacanora Lithium would not qualify as protected “investors” under the Mexico-UK BIT as they would be mere holding companies that do not have “business operations” in the UK and have not “made” an active investment in the meaning of that treaty (instead, the relevant investment would have been made by Bacanora Minerals, the Claimants’ Canadian subsidiary); and that (ii) Bacanora Lithium and Sonora Lithium cannot submit arbitration claims on behalf of Borax and Chemco because they would not have demonstrated that they own or control these entities.²⁶
30. In Mexico’s view, this second objection would also meet the relevant bifurcation test. Mexico avers that early consideration of this objection in a preliminary phase could “significantly” reduce the time and costs of the proceedings, as the Tribunal could potentially exclude Bacanora Lithium and Sonora Lithium’s claims (both on their own behalf and on behalf of Borax and Chemco), thereby eliminating the need to analyze any arguments under the Mexico-UK BIT.²⁷
31. For the Respondent, in a conservative scenario, the scope of the dispute would be pared down to the adjudication of Ganfeng International’s “rather more limited” claims.²⁸ In a best-case scenario, the objection could dispose of the entire case as, on the one hand, the measures complained of are related to concessions held by Mexican subsidiaries, and, on the other hand, Ganfeng International would not be able to bring autonomous claims for losses suffered by those subsidiaries. Accordingly, if the Tribunal concluded that Bacanora Lithium and Sonora Lithium lacked standing to bring claims, “the real effect [...] would be to eliminate the claim altogether.”²⁹ Further, the Respondent claims that resolving this second objection would “only requir[e] the analysis of certain documents and allegations of the Claimants themselves, which are very specific”, unrelated to the merits, and would concern self-contained issues – such as whether a corporate restructuring can constitute an active investment under the Treaties – that are well suited for preliminary adjudication.³⁰

(c) Third jurisdictional objection

32. Mexico also submits that the Tribunal lacks jurisdiction *ratione materiae* and *ratione voluntatis* with respect to five Project concessions held by Mexilit S.A. de C.V. (“**Mexilit**”), another of the Claimants’ subsidiaries in Mexico, because: (i) the Claimants did not submit a waiver of local proceedings (a condition precedent under the Treaties) for Mexilit; and (ii) while the Claimants have explicitly filed claims on behalf of Borax (which held the two concessions of La Ventana and La Ventana I) and Chemco, they have not brought claims on behalf of Mexilit and therefore cannot indirectly claim any Project losses related to its five concessions.³¹
33. The Respondent acknowledges that this objection “does not impact all the [Project] concessions” but avers that it would nonetheless be able to simplify the claims, reduce the time and cost of the proceedings, and allow for the dismissal of a substantial part of the dispute, mostly as it relates to the quantification of damages.³² It also adds that this objection is not intertwined with the merits of the

Mexican States, ICSID Case No. ARB/23/29, Procedural Order No. 3, Decision on Bifurcation, 24 March 2025, **RL-0004**, ¶ 110).

²⁶ Request, ¶¶ 71-86.

²⁷ Request, ¶ 88.

²⁸ Request, ¶ 90.

²⁹ Request, ¶ 90.

³⁰ Request, ¶¶ 89, 91.

³¹ Request, ¶¶ 93-99.

³² Request, ¶¶ 100-102.

dispute or the measures complained of, and is focused on the analysis of conditions precedent to the arbitration.³³

(d) Fourth jurisdictional objection

34. The Respondent argues that the Tribunal lacks jurisdiction *ratione personae* with respect to Ganfeng International's claims "for the loss or damage" sustained by Borax and Chemco. According to Mexico, Ganfeng International would lack standing to file claims against Mexico on behalf of its subsidiaries under Article 13(1) of the Mexico-China BIT, which (unlike the Mexico-UK BIT) would only allow claims filed by investors on their own behalf and for their own loss or damage.³⁴
35. The Respondent argues that early adjudication of this objection could bring benefits in terms of time and costs by excluding Ganfeng International's claim for loss or damage suffered by Borax and Chemco, "materially narrow[ing] the scope of the dispute" and potentially eliminating the need to engage in submissions or deliberations regarding this claim under the Mexico-China BIT.³⁵ Further, the objection would only call for the analysis "of a limited number of documents already submitted by Claimants in their Memorial, as well as the text of the relevant treaty" without venturing into the merits, and would focus on whether the Mexico-China BIT allows an investor to bring claims on behalf of its investment for damages or losses suffered by it, a "purely legal" question.³⁶

(e) Fifth jurisdictional objection

36. Mexico alleges that the Tribunal lacks jurisdiction *ratione voluntatis* because the Claimants would have failed to comply with the waiver requirements of Articles 13.4 of the Mexico-China BIT and 11.5 of the Mexico-UK BIT by continuing to pursue annulment actions before the Mexican Federal Court of Administrative Justice for the same measures at issue in this arbitration and seeking the same relief (*i.e.*, the restitution of the disputed concessions, plus Project delay damages of [REDACTED]). According to the Respondent, these domestic actions would not fall within the exception recognized in both Treaties that excludes "proceedings for the application of declaratory or other similar precautionary measures, which do not involve the payment of damages".³⁷
37. The Respondent argues, *first*, that resources will be saved by avoiding a merits phase when there are already ongoing, parallel proceedings challenging the same measures and seeking the same remedies.³⁸ *Second*, that this objection could potentially terminate the arbitration at an early stage, as the failure to waive parallel dispute resolution proceedings affects all of the Claimants' claims.³⁹ And *third*, that assessing whether the Claimants complied with the waiver or whether parallel litigation qualifies as an exception would only require the analysis of a limited number of documents (the text of the Treaties, the Claimants' prior pleadings and evidence of trials before Mexican courts), an assessment that is mostly legal and does not require delving into the merits of the dispute.⁴⁰

(f) Admissibility objection

38. The Respondent also advances an admissibility objection based on: (i) purported deficiencies

³³ Request, ¶ 103.

³⁴ Request, ¶¶ 105-110.

³⁵ Request, ¶¶ 112-113.

³⁶ Request, ¶¶ 114-115.

³⁷ Request, ¶¶ 117-125.

³⁸ Request, ¶ 127.

³⁹ Request, ¶ 128.

⁴⁰ Request, ¶¶ 129-130.

affecting Claimants' notice of intent, which includes substantial differences with the claim submitted to arbitration, and the Claimants' failure to hold consultations with the competent Mexican authorities;⁴¹ and (ii) the Claimants' alleged abuse of process, carried out by bringing duplicative claims under two Treaties and using different entities in a vertical corporate chain to gain access to a more favorable Treaty, artificially increasing their chances of success.⁴²

39. In its Request, Mexico asks the Tribunal to consider this admissibility objection preliminarily, together with the rest of its jurisdictional objections, "as a matter of consistency and systemic coherence in investment arbitration".⁴³ The Respondent recognizes that admissibility objections can be "fact-specific", although not in this case.⁴⁴
40. Based on the above, the Respondent asks the Tribunal to:
- (i) Hear the preliminary objections raised in its Request in a separate phase;
 - (ii) Stay the proceedings on the merits;
 - (iii) Adopt the procedural calendar set forth in Scenario 3 of the Procedural Timetable at Annex B of Procedural Order No. 1; and
 - (iv) Rule on the objections as a preliminary matter.⁴⁵

2. The Claimants' position

41. In their Response, the Claimants address each of Mexico's announced objections individually, and contend that they would not meet the Claimants' description of the relevant legal standard, which considers, in addition to the three cumulative bifurcation requirements of Rule 44(2), whether the objections are *prima facie* serious and substantial and whether bifurcation would be procedurally fair and efficient. Summarily, the Claimants' position with respect to Respondent's objections is as follows:

(a) First jurisdictional objection

42. The Claimants allege that the Respondent's *ratione personae* objection based on a waiver to bring claims under the Treaty contained in the bylaws of its Mexican mining concessionaires, as required by Mexican law, is *prima facie* not serious or substantial.⁴⁶
43. For the Claimants, the purported waivers do not include the type of "clear and explicit" language required to effectively waive these rights; they do not mention the ICSID Convention or the Treaties and only waive the right to diplomatic protection (which is already excluded by virtue of Article 27(1) of the ICSID Convention).⁴⁷ The Respondent's objection would rely on an interpretation of domestic laws which predate Mexico's ratification of the Treaties and the ICSID Convention and, as such, they would have been superseded by these two international instruments.⁴⁸
44. In any event, the Claimants point out that the objection would have no relevance with respect to Ganfeng International and Bacanora Lithium, which are not direct shareholders ("*socios*") in any

⁴¹ Request, ¶¶ 133-141.

⁴² Request, ¶¶ 142-158.

⁴³ Request, ¶ 157.

⁴⁴ Request, ¶ 157.

⁴⁵ Request, ¶ 159.

⁴⁶ Response, ¶¶ 21, 28.

⁴⁷ Response, ¶¶ 22, 24-26.

⁴⁸ Response, ¶¶ 21, 27.

Mexican concessionaires and would therefore not be bound by their bylaws.⁴⁹ Further, the Claimants argue, relying on *Orazul v. Argentina*, that the waiver objection would implicate issues that are intertwined with the merits, including, for example, the Claimants’ substantive claim that Mexico would have mistreated the Claimants based on their nationality.⁵⁰

45. Finally, the Claimants distinguish the bifurcation decisions issued in *Mario Noriega v. Mexico* and *Doups Holdings v. Mexico*. They point out that the respective tribunals had already agreed to bifurcate preliminary objections based on other, unrelated grounds (the interpretation of Annex 14-C of the United States-Mexico-Canada Agreement (“USMCA”), in the case of *Doups Holdings*, and a “substantial” objection based on the claimant’s purported lack of ownership and control of the investment, in the case of *Mario Noriega*) and that these cases were filed under the USMCA’s “legacy provisions”, which would require tribunals to address jurisdictional objections as preliminary questions.⁵¹

(b) Second jurisdictional objection

46. Similarly, the Claimants maintain that the bifurcation of the Respondent’s objections with respect to the status of Bacanora Lithium and Sonora Lithium as investors under the Mexico-UK BIT and their ownership and control of Borax and Chemco is *prima facie* meritless and, in any event, not capable of disposing of all or a substantial portion of the dispute.⁵² The Claimants challenge the factual basis of the Respondent’s second objection, citing evidence of both Claimants’ “business operations” in the UK in the meaning of the Mexico-UK BIT, and of Bacanora Lithium and Sonora Lithium’s ownership or control of Borax and Chemco.⁵³
47. The Claimants also dispute the Respondent’s assertion that the “relevant” investment was made by Bacanora Minerals (Claimants’ Canadian subsidiary) and that Bacanora Lithium and Sonora Lithium passively “hold” that investment.⁵⁴ They argue that, in any case, under the Mexico-UK BIT, even such a passive ownership of shares would satisfy the *ratione personae* requirements of that treaty, which does not call for “movement of capital or other values across [the host State’s] borders”.⁵⁵ The Claimants point out that the Respondent’s bifurcation plea claiming that Bacanora Lithium and Sonora Lithium did not “make” an investment is based on scant evidence, would have been disproved by the Claimants’ own evidence, and should be dismissed as unsupported.⁵⁶
48. The Claimants further note that bifurcating this objection would not “significantly” reduce the time and cost of this arbitration, as it would not dispose of Ganfeng International’s claims. The Claimants explain that their claims arise from a common fact pattern and imply substantially identical international treaty protections under the two Treaties. Accordingly, the time and cost required to address the merits of the dispute would remain essentially the same irrespective of whether Bacanora

⁴⁹ Response, ¶¶ 22-23 (citing Ownership Structure of the Investors’ Local Subsidiaries, **C-0001**).

⁵⁰ Response, ¶ 30 (citing *Orazul Int’l España Holdings S.L. v. Argentina*, ICSID Case No. ARB/19/25, Decision on the Respondent’s Request for Bifurcation, 7 January 2021, **CL-0200**, ¶¶ 41-43).

⁵¹ Response, ¶ 29.

⁵² Response, ¶ 32.

⁵³ Response, ¶¶ 34-40, 44-49.

⁵⁴ Response, ¶ 41.

⁵⁵ Response, ¶¶ 41-42 (citing, among others, *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014, **CL-0070**, ¶¶ 256, 261-262).

⁵⁶ Response, ¶ 43 (citing *Red Eagle Exploration Limited v. Republic of Colombia*, ICSID Case No. ARB/18/12, Decision on Bifurcation, 3 August 2020, **CL-0206**, ¶¶ 61-65 and *RTI Rotalin Gas Trading AG and Rotalin Gaz Trading S.R.L. v. Republic of Moldova*, ICSID Case No. ARB(AF)/22/4, Procedural Order No. 2, 11 October 2023, **CL-0207**, ¶ 43).

Lithium and Sonora Lithium's claims were excluded on jurisdictional grounds. For the Claimants, Ganfeng International continues to have standing to bring autonomous claims for treaty breaches affecting its concessions and derivative claims for the loss or damage to Chemco and Borax.⁵⁷ Lastly, the Claimants maintain that an assessment of Bacanora Lithium and Sonora Lithium's degree of control over Chemco and Borax and the substance of their operations in the UK would "require the Tribunal to undertake a heavy factual inquiry that is unsuitable for a bifurcated phase, making bifurcation impractical".⁵⁸

(c) Third jurisdictional objection

49. According to the Claimants, the bifurcation of the Respondent's third objection based on the Claimants' purported inability to bring claims for the Respondent's measures impacting the concessions held by Mexilit would be "meritless".⁵⁹ The Claimants explain that their interests in the Mexilit concessions are a protected investment under the Treaties, regardless of the fact that they did not file claims on behalf of Mexilit nor submit a corresponding waiver of claims, which would not be required.⁶⁰
50. Further, they argue that this objection would not dispose of the Claimants' claims for the impact of the Respondent's measures on the La Ventana and La Ventana 1 concessions held by Borax, which "accounted for approximately 60% of the measured resources of the Project", and of the Claimants' claims related to Chemco.⁶¹ The Claimants point out that the measures that allegedly impacted the five Mexilit concessions are the same as those that would have affected the La Ventana and La Ventana 1 concessions and note that their calculation of damages encompasses the loss of the Project a whole. As a result, the Tribunal would still have to hear the merits of these claims resulting in "a protracted and costlier proceeding", and the analysis would not change substantially even if the Mexilit concessions were excluded.⁶²

(d) Fourth jurisdictional objection

51. The Claimants contend that Respondents' fourth objection – that Ganfeng International would lack standing under the Mexico-China BIT to bring claims on behalf of Borax and Chemco – does not satisfy the applicable bifurcation test.⁶³ *First*, it would lack merit as the Mexico-China BIT contains provisions that would expressly allow Ganfeng International to bring claims for reflective losses suffered by its two indirect subsidiaries.⁶⁴ *Second*, the objection only targets claims that Ganfeng International is bringing for the loss or damage suffered by its subsidiaries, but does not affect Ganfeng International's own claims, such that bifurcation would neither materially reduce the time and cost of the proceeding (rather, the opposite) or result in the disposition of all or a substantial

⁵⁷ Response, ¶¶ 50-55.

⁵⁸ Response, ¶ 56 (relying, *inter alia*, on *Amerra Capital Management LLC et al v. Mexico*, ICSID Case No. UNCT/23/1, Procedural Order No. 3, 3 November 2023, **CL-0193**, ¶ 16; *EMS Shipping & Trading GmbH v. Republic of Albania*, ICSID Case No. ARB/23/9, Procedural Order No. 3, 23 February 2024, **CL-0210**, ¶¶ 47-50; *Tayeb Benabderrahmane v. State of Qatar*, ICSID Case No. ARB/22/23, Procedural Order No. 6, 1 July 2024, **CL-0175**, ¶¶ 32, 36; *BA Desarrollos v. Argentine Republic*, ICSID Case No. ARB/23/32, Procedural Order No. 7, 9 September 2024, **CL-0183**, ¶ 29).

⁵⁹ Response, ¶¶ 57-58.

⁶⁰ Response, ¶¶ 59-60.

⁶¹ Response, ¶¶ 61, 63.

⁶² Response, ¶¶ 62-65.

⁶³ Response, ¶ 67.

⁶⁴ Response, ¶¶ 68-69.

portion of the dispute.⁶⁵ *Third*, the objection would not be serious or substantial since – according to the Claimants – it is formulated in tentative terms.⁶⁶

(e) Fifth jurisdictional objection

52. Following a similar line of reasoning, the Claimants also oppose the bifurcation Respondent’s fifth objection based on the Claimants’ alleged parallel pursuit of the same claims and remedies in annulment proceedings in Mexico, in violation of the Treaties’ waiver requirements. The Claimants point out that these parallel proceedings, which seek only declaratory relief (and not damages), fall squarely within the scope of the exception to the waiver requirement in Article 11 of the Mexico-UK BIT and Article 13 of the Mexico-China BIT, demonstrating that the objection would not be serious or substantial.⁶⁷ Moreover, some of Claimants’ subsidiaries would have withdrawn their local annulment actions shortly after Claimants filed their Memorial.⁶⁸ Finally, invoking *Nord Stream 2 AG v. European Union*, the Claimants argue that any interplay between the domestic annulment proceedings and the merits of the Claimants’ claims would touch upon facts that are relevant to the merits of the dispute and should therefore not be decided in a preliminary phase.⁶⁹

(f) Admissibility objection

53. As for the Respondent’s admissibility objection related to the notice of intent and alleged abuse of process, the Claimants point out that it would be factually and legally unfounded, and that the Respondent has not met its burden of substantiating this objection or showing how it would satisfy the relevant bifurcation test.⁷⁰ In addition, for the Claimants, the extent to which the Parties have consulted and negotiated, as well as the factual issues related to the re-organization of the Bacanora group and Ganfeng International’s acquisition of the Project, are fact-intensive inquiries that are better addressed while assessing the merits of the dispute.⁷¹
54. Based on the foregoing, the Claimants ask the Tribunal to:
- (i) Reject the Respondent’s Request in its entirety;
 - (ii) Order Mexico to pay all costs incurred by the Claimants associated with the Request; and
 - (iii) Adopt Scenario No. 2 of the Procedural Timetable in Annex B of Procedural Order No. 1.⁷²

V. THE TRIBUNAL’S ANALYSIS

55. At the outset, the Tribunal observes that the Parties generally agree on the relevant legal standard to decide whether the Respondent’s objections should be bifurcated. The Tribunal’s authority to

⁶⁵ Response, ¶ 70.

⁶⁶ Response, ¶ 71.

⁶⁷ Response, ¶¶ 74-77, 79 (citing, *e.g.*, Mexico-China BIT, **CL-0002**, Art. 13 and Mexico-UK BIT, **CL-0001**, Art. 11, which exempt “proceedings for injunctive, declaratory or other similar relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Contracting Party” from the requirement to submit a waiver).

⁶⁸ Response, ¶ 78.

⁶⁹ Response, ¶ 80 (citing *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 4, 31 December 2020, ¶ 48.)

⁷⁰ Response, ¶ 81-99, 102.

⁷¹ Response, ¶¶ 100-101.

⁷² Response, ¶ 103.

bifurcate preliminary objections stems from Article 41(2) of the ICSID Convention⁷³ and Rules 42 to 44,⁷⁴ which the Parties have referred to in their submissions.

56. Rule 44(1) describes the procedure that shall apply to requests for bifurcation relating to preliminary objections, as follows:

Rule 44

(1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:

(a) unless the parties agree otherwise, the request for bifurcation shall be filed:

- (i) within 45 days after filing the memorial on the merits;
- (ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or
- (iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(a)(i) and (ii);

(b) the request for bifurcation shall state the preliminary objection to which it relates;

(c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;

(d) the Tribunal shall fix time limits for submissions on the request for bifurcation; and (e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the last submission on the request. [...]

57. It is not contested that, as the Respondent avers, its Request complies with the requirements of Rule 44(1).⁷⁵
58. Additionally, Rule 44(2) sets forth the criteria that the Tribunal shall consider when deciding whether the bifurcation of preliminary objections is appropriate:

⁷³ ICSID Convention, Art. 41(2) provides: “Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.”

⁷⁴ For example, ICSID Arbitration Rule 42 (Bifurcation), in its relevant part provides:
“(1) A party may request that a question be addressed in a separate phase of the proceeding (‘request for bifurcation’).

(2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.”

Further, Rule 43(1) provides that: “[a] party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal (‘preliminary objection’).”

Per Rule 43(4), the Tribunal “may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits”, whether “upon request of a party pursuant to Rule 44 or at any time on its own initiative, in accordance with the procedure in Rule 44(2)-(4).”

⁷⁵ Request, ¶ 39.

Rule 44

- (1) [...].
- (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
 - (a) bifurcation would materially reduce the time and cost of the proceeding;
 - (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
 - (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical. [...]

- 59. This provision, which was added to the 2022 Rules, reflects accepted criteria that have been consistently applied by ICSID tribunals under the previous (2006) Arbitration Rules. The Parties agree that the three circumstances expressly listed in Rule 44(2) are an integral part of the legal standard that the Tribunal should apply to decide whether to bifurcate the objections advanced by the Respondent.⁷⁶ However, they differ on whether the Tribunal can (and should) consider additional factors not explicitly mentioned in Rule 44(2).
- 60. Specifically, while in its Request the Respondent has applied the three-pronged test of Rule 44(2)(a), (b) and (c) to each of its objections, the Claimants argue that the Tribunal should also consider two additional factors, namely: (i) whether the Respondent's preliminary objections are *prima facie* serious and substantial; and (ii) whether bifurcation would be procedurally fair and efficient.⁷⁷ In their Response, the Claimants have placed particular emphasis on the first of these additional factors, explaining why each of the Respondent's objections should be regarded as *prima facie* not serious or substantial, and therefore not suitable to be considered in a preliminary phase.⁷⁸
- 61. The Tribunal recognizes that several ICSID tribunals have indeed applied one or both of these additional criteria when adjudicating bifurcation claims, including in cases conducted under the current Rules.⁷⁹ It also generally agrees with the interpretation of Rule 44(2) carried out by the tribunals in *Fotowatio v. Mexico* and *Klesch v. Germany*, pursuant to which the use of the term "including" in the opening sentence of Rule 44(2) signals that the Parties may invoke other "relevant circumstances" and that the list set out in the following sub-paragraphs is not comprehensive.⁸⁰
- 62. That said, in the spirit of efficiency and for the purposes of the present decision, the Tribunal will focus primarily on the three criteria listed in Rule 44(2) on which the Parties agree, namely:
 - (i) Whether bifurcation would materially reduce the time and cost of the proceeding;
 - (ii) Whether determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and

⁷⁶ See, e.g., Response, ¶ 11 ("The Parties agree that in evaluating Mexico's request, the Tribunal should consider the various factors set forth in Rule 44(2) of the ICSID Arbitration Rules.")

⁷⁷ See Section IV.A.2 above.

⁷⁸ See Section IV.B.2 above.

⁷⁹ *Stratius Investments Ltd. v. Hungary*, ICSID Case No. ARB/24/6, Procedural Order No. 1, 12 February 2025, **CL-0177**, ¶ 33; *Huawei Technologies Co., Ltd. v. Kingdom of Sweden*, ICSID Case No. ARB/22/2, Procedural Order No. 3, 28 April 2023, **CL-0181**, ¶¶ 32-33.

⁸⁰ *Fotowatio Renewable Ventures S.L.U., et al., v. Mexico*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, 14 April 2025, **CL-0176**, ¶ 74; *Klesch Grp. Holdings Ltd. and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Bifurcation, 8 April 2025, **CL-0168**, ¶ 8.

(iii) Whether the preliminary objection and the merits are so intertwined as to make bifurcation impractical.

63. For the purposes of this decision, the Tribunal makes no finding on whether the *prima facie* seriousness of jurisdictional objections is integral to the bifurcation test in ICSID cases. From a purely practical standpoint, the Tribunal considers it unnecessary to assess the *prima facie* seriousness of the Respondent's preliminary objections in this case (and at this early stage) when the Request fails to meet the elements of the test on which the Parties do agree, as explained further below.
64. Relying on a 2018 ICSID study and on the Respondent's reservation of its rights to raise additional objections, the Claimants appear to favor a more demanding, "reinforced" bifurcation standard, such that "absent a strong case for bifurcation, bifurcation ought to be rejected".⁸¹ The Tribunal disagrees. While there is no presumption in favor of bifurcation in ICSID arbitration, the opposite is also true. The Tribunal will follow the well-established principle that there is no presumption for or against bifurcation in ICSID arbitration.⁸² The decision of whether to bifurcate preliminary objections or not falls within the discretionary powers of the Tribunal.⁸³
65. The Tribunal generally agrees with the comments made by the Parties as to the exercise required by Rule 44(2). It shares the view that it must weigh whether "the cost and time of [a bifurcated] proceeding would [...] be justified in terms of the reduction in costs at the subsequent phase [...]",⁸⁴ considering the complexity of the submissions, documents, witness and expert testimony, among elements.⁸⁵
66. The Parties agree that the decision of whether to bifurcate or not turns, fundamentally, on questions of procedural efficiency. Accordingly, in applying the three bifurcation criteria described above, the Tribunal is guided by the overarching goal of bifurcation, which is to assist in the efficient and cost-effective conduct of the proceedings.⁸⁶ The Tribunal's assessment considers whether the bifurcation

⁸¹ Response, ¶¶ 10, 16.

⁸² *Klesch Grp. Holdings Ltd. and Raffinerie Heide GmbH v. Federal Republic of Germany*, ICSID Case No. ARB/23/49, Decision on Bifurcation, 8 April 2025, **CL-0168**, ¶ 7; *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3, Decision on Bifurcation, 16 October 2024, **RL-0002**, ¶ 50; *Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited and Silver Point Mauritius v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 3, 1 March 2024, **CL-0220** (also filed by Respondent as **RL-0012**), ¶ 89.

⁸³ *Aris Mining Corporation v. Republic of Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 3, Decision on the Respondent's Request for Bifurcation, 17 January 2020, **RL-0013**, ¶¶ 24-25; *Mario Noriega Willars v. United Mexican States*, ICSID Case No. ARB/23/29, Procedural Order No. 3, Decision on Bifurcation, 24 March 2025, **RL-0004**, ¶ 77.

⁸⁴ Response, ¶ 12(a) (citing *Glamis Gold, Ltd., v. United States of America*, UNCITRAL, Procedural Order No. 2 (Revised), 31 May 2005, **CL-0171**, ¶ 21). See also *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3, Decision on Bifurcation, 16 October 2024, **RL-0002**, ¶ 53; *Aris Mining Corporation v. Republic of Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 3, Decision on the Respondent's Request for Bifurcation, 17 January 2020, **RL-0013**, ¶ 25).

⁸⁵ *Suffolk (Mauritius) Limited, Mansfield (Mauritius) Limited and Silver Point Mauritius v. Portuguese Republic*, ICSID Case No. ARB/22/28, Procedural Order No. 3, 1 March 2024, **CL-0220** (also filed by Respondent as **RL-0012**), ¶¶ 92-93.

⁸⁶ *Aris Mining Corporation v. Republic of Colombia*, ICSID Case No. ARB/18/23, Procedural Order No. 3, Decision on the Respondent's Request for Bifurcation, 17 January 2020, **RL-0013**, ¶ 27; *Fotowatio Renewable Ventures S.L.U., et al., v. Mexico*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, 14 April 2025, **CL-0176**, ¶ 75; *BA Desarrollos v. Argentine Republic*, ICSID Case No. ARB/23/32, Procedural Order No. 7, 9 September 2024, **CL-0183**, ¶ 14; C. Schreuer *et al.*, *The ICSID Convention: A Commentary* (2009), **CL-0187**, p. 537; ICSID Rules Working Paper 2, **RL-0009**, ¶ 273; G. Born, *International Commercial Arbitration* (3d Ed.), **CL-0188**, at 2410 (p. 45 bates stamp); *Gran Colombia Gold Corp. v. Republic of*

of preliminary objections would either assist or hinder procedural efficiency, both individually and as a whole.⁸⁷ In practice, this means that, even if the objections are not individually able to put an end to the dispute, a combination of them might achieve that outcome.

67. Applying the standard described above, the Tribunal ultimately finds that the objections raised by the Respondent in its Request do not satisfy the criteria of Rule 44(2) and that bifurcation is not warranted in this case. The Tribunal will refer below to each of the Respondent's jurisdictional and admissibility objections and the reasons why they fail to meet the criteria of Rule 44(2).

(a) First jurisdictional objection

68. The Respondent's first objection is that the Tribunal would lack jurisdiction *ratione personae* because of certain provisions included in the Mexican mining concessionaires' bylaws, whereby the Claimants would have agreed to be treated as Mexican nationals, waiving their rights to commence arbitration under the Treaties.
69. Without delving into an analysis of the merits of this argument, the Tribunal makes a series of observations that are relevant to its decision not to bifurcate.
70. The language of the purported waiver clauses in the Mexican concessionaires' bylaws and in the relevant regulations invoked by the Respondent refer to "*socios extranjeros*".⁸⁸ The Claimants aver that "*socios*" are the concessionaires' direct shareholders, and that, as a result, the provisions in those bylaws would not bind Claimants Ganfeng International and Bacanora Lithium (which are not direct shareholders or "*socios*").⁸⁹ The Respondent translates the terms "*socios extranjeros*" as "foreign partners".⁹⁰
71. It is not disputed that Ganfeng International and Bacanora Lithium (and even Sonora Lithium, except for its participation in Chemco) only have indirect interests in the Project concessions. Implicit in the Respondents' objection, therefore, is the assumption that the Claimants should be considered as "*socios extranjeros*" bound by the so-called waiver provisions included in the Mexican concessionaires' bylaws, even though (at least) two of them would only be indirect shareholders in those concessionaires. However, the Respondent has not made out that case, nor has it offered any arguments or evidence to substantiate its position that these purported "waivers" can be invoked *vis-à-vis* those Claimants that are indirect shareholders.
72. Therefore, if, absent an explanation from the Respondent as to why the alleged waivers affect indirect shareholders, the Tribunal were to conclude that they can only bar the claims of direct shareholders, then the Respondent's objection would not dispose of a substantial portion of the case, as the claims brought by Ganfeng International, Bacanora Lithium (and even Sonora Lithium, except for its participation in Chemco) would survive. In that scenario, there would be no material reduction of the length and cost of the proceedings or simplification of the issues to be decided in a merits phase. The Respondent has not clearly laid out an alternative scenario. As a result, the Tribunal considers that any potential procedural gains from bifurcating this objection are at best unclear.

Colombia, ICSID Case No. ARB/18/23, Procedural Order No. 3, Decision on the Respondent's Request for Bifurcation, 17 January 2020, **CL-0184**, ¶ 25.

⁸⁷ *Fotowatio Renewable Ventures S.L.U., et al., v. Mexico*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, 14 April 2025, **CL-0176**, ¶ 76; *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3, Decision on Bifurcation, 16 October 2024, **RL-0002**, ¶ 51.

⁸⁸ See, e.g., Bylaws, Borax, **R-0004**, Art. 5 (Nationality); Regulation of Foreign Investment Law and the National Registry of Foreign Investments, **R-0003**, Art. 14.

⁸⁹ Response, ¶ 31.

⁹⁰ Request, ¶ 54.

73. While the tribunals in *Mario Noriega v. Mexico* and *Doups Holdings v. Mexico* bifurcated similar objections, the Tribunal agrees with the Claimants that those decisions are not entirely apposite on this point. They were largely premised on other, unrelated grounds and were issued under the USMCA, which has a distinct bifurcation regime.⁹¹

(b) Second jurisdictional objection

74. The Respondent's second *ratione personae* objection is based on two separate contentions: (i) that Bacanora Lithium and Sonora Lithium do not qualify as protected investors since they do not have "business operations" in the UK and have not "made" an investment within the meaning of the Mexico-UK BIT; and (ii) that Bacanora Lithium and Sonora Lithium cannot submit arbitration claims on behalf of Borax and Chemco because they have not demonstrated that they own and control these entities.
75. In the Tribunal's view, this objection would fail the elements of the applicable bifurcation test. The Respondent avers that "[e]xcluding the British companies' claim would significantly narrow the scope of the dispute and save time and costs for all involved", eliminating the need to hear arguments under the Mexico-UK BIT.⁹² The Tribunal believes otherwise. Even if this objection could potentially dispose of the claims brought by the two UK-based Claimants, Bacanora Lithium and Sonora Lithium, Ganfeng International's claims under the Mexico-China BIT would still stand. The Respondent does not contest this. Instead, it points out that Ganfeng International's claims would be insignificant and that, in any event, Ganfeng International would also lack standing to bring autonomous claims for damages caused to its indirect subsidiaries (as it explains in the context of its fourth jurisdictional objection).
76. The Tribunal notes that Ganfeng International's claims are not substantially different from those raised by the other two Claimants and share a common set of facts, which would still need to be analyzed in a merits phase. The standards of treatment at issue under the two Treaties are broadly similar. Eliminating the need to assess arguments under the Mexico-UK BIT would therefore not imply a significant reduction of the legal issues at play that could have a material impact on the costs of the arbitration.
77. In addition, the Claimants' damages have thus far been calculated considering the alleged loss of the Project as a whole. In this context, the bifurcation of the Respondent's second objection is unlikely to dispose of all or a substantial portion of the dispute, or materially reduce the costs or length of the proceeding. In fact, the opposite might be true, as bifurcation would extend the duration of the proceedings by at least several months. The case would inevitably move on to a second phase, with Ganfeng International as the only Claimant, in which the Tribunal would have to consider largely the same arguments, evidence and issues as with three Claimants.
78. Finally, the Tribunal believes that adjudication of this second objection would likely involve a heavy and detailed inquiry into issues of corporate control, ownership and re-structuring of the investments at different moments in time, which would also be material to the merits of the case, making it procedurally more efficient to ventilate these questions in a single phase.

⁹¹ *Doups Holdings LLC v. United Mexican States*, ICSID Case No. ARB/22/24, Procedural Order No. 3, Decision on Bifurcation, 16 October 2024, **RL-0002**, ¶¶ 20, 62-63, 67; *Mario Noriega Willars v. United Mexican States*, ICSID Case No. ARB/23/29, Procedural Order No. 3, Decision on Bifurcation, 24 March 2025, **RL-0004**, ¶¶ 101-109; USMCA, **CL-0198**, Art. 14.D.7(4)(b).

⁹² Request, ¶ 88.

(c) Third jurisdictional objection

79. For similar reasons, the bifurcation of the Respondents' third jurisdictional objection – that the Tribunal would lack jurisdiction to hear claims related to Mexilit's concessions – is inappropriate. The Respondent accepts that its objection extends to the five concessions held by Mexilit, but that the Claimants' claims related to the La Ventana and La Ventana 1 concessions held by Borax would remain unaffected by this objection.⁹³ Without making any factual determinations and taking the Parties' allegations at face value, the La Ventana and La Ventana I concessions do not seem to be insignificant or peripheral, but would appear to have an outsized importance in the Project.
80. Thus, the Tribunal is not persuaded that, if successful, the Respondent's third jurisdictional objection could either dispose of a substantial portion of the dispute or materially reduce the time and cost of the proceedings. While the potential removal of Mexilit's concessions from the scope of the dispute could have an impact on the Parties' damages claims, it is difficult to ascertain at this stage to what extent they could be reduced or simplified. The Tribunal believes that any such impact would likely not be sufficient to offset the added costs and efforts resulting from a longer arbitration with two phases.

(d) Fourth jurisdictional objection

81. The Respondents' fourth objection – that Ganfeng International would lack standing under the Mexico-China BIT to bring claims on behalf of (or for losses suffered by) Borax and Chemco – faces certain hurdles for bifurcation.
82. In the view of the Tribunal, the determination of whether Ganfeng International's claims for so-called derivative or reflective losses under the Mexico-China BIT is not a purely legal question, but one which may require the Tribunal to delve into the merits of the dispute. It would call for a detailed analysis of the structure of Ganfeng International's indirect investments in Chemco and Borax and its role and impact on the Project, among other factual questions that would also be relevant to the merits.
83. In addition, the Tribunal agrees with the Claimants that the Respondent has not clearly substantiated its objection, but merely raised doubts as to whether the Mexico-China BIT's provisions "are sufficient to create" the right to claim for such type of losses, and if so, "what would be the limits."⁹⁴ The Tribunal finds that, in presenting its objection in this way, the Respondent has not met its burden of proving that its fourth objection complies with the requirements of Rule 44(2) and that bifurcation would be procedurally efficient.

(e) Fifth jurisdictional objection

84. Mexico alleges that the Tribunal lacks jurisdiction *ratione voluntatis* because the Claimants would have failed to comply with the waiver requirements of Articles 13.4 of the Mexico-China BIT and 11.5 of the Mexico-UK BIT by continuing to pursue annulment actions before the Mexican Federal Court of Administrative Justice seeking the restitution of the disputed concessions, the same relief sought by the Claimants in these proceedings. As with the first and fourth objections, the Tribunal finds that the Respondent has not met its burden of proving that its fifth objection complies with the requirements of Rule 44(2) and that bifurcation would be procedurally efficient.
85. The Parties agree that the Treaties contain an exemption which allows a party to pursue "proceedings for injunctive, declaratory or other similar relief, not involving the payment of damages, before an

⁹³ Request, ¶¶ 93-94, 100.

⁹⁴ Request, ¶ 110.

administrative tribunal or court under the law of the disputing Contracting Party” without submitting a waiver.⁹⁵ Both Parties have alluded to this carve-out in their submissions. Specifically, in its Request, the Respondent asserts that the Claimants are pursuing annulment actions in Mexico which “do not legally fit within the exception contained in both treaties, that is: ‘proceedings for the application of declaratory or other similar precautionary measures, which do not involve the payment of damages.’”⁹⁶ Yet the Tribunal observes that the Respondent has offered no explanation or evidence to substantiate its claim that the domestic actions pursued by the Claimants do not fall within this exemption, relying mostly on a blanket assertion.

86. The Respondent describes these domestic, parallel proceedings as administrative lawsuits that seek purely declaratory relief: the annulment of the impugned measures.⁹⁷ On its face, the Request does not argue that these domestic suits involve claims for remedies other than declaratory or injunctive relief, or that the Claimants have requested compensation before the Mexican Federal Court of Administrative Justice. Rather, the Respondent’s sole rationale for bifurcating this objection appears to be that one of the alternative remedies sought by the Claimants in this arbitration consists of the restitution of the concessions and related rights, plus the payment of compensation of [REDACTED]⁹⁸
87. The Respondent has therefore not explained or offered any evidence of how the impugned domestic proceedings would fall afoul of the Treaties’ waiver requirements. As such, the Respondent has not met its burden of proving that this objection could effectively reduce the length or cost of the proceedings, dispose of all or a substantial portion of the dispute or result in any efficiency gains.

(f) Respondent’s admissibility objection

88. The Tribunal now turns to the Respondent’s admissibility objection based on alleged deficiencies in the notice of intent and the submission of claims by different shareholders under two different treaties, which, in the Respondent’s view, would amount to an abuse of process. Preliminarily, the Tribunal notes that the Request does not explain how this objection would satisfy each of the three criteria of Rule 44(2). In this respect, the Tribunal understands that this admissibility objection would likely raise issues that are intertwined with the merits, such as, for example, the analysis of the conduct of negotiations between the Parties and the nature and timing of the re-organization of the Claimants’ investments, which would require a broader and fact-intensive inquiry that would be better placed while assessing the merits of the dispute.
89. Further, as a matter of procedural efficiency, the Tribunal believes that a single admissibility objection would not ordinarily warrant bifurcation of the proceedings, unless there were grounds to bifurcate any of the other jurisdictional objections.

(g) Analysis of the objections as a whole

90. The Tribunal’s conclusion that bifurcation is not warranted in this case remains unchanged even when the Respondent’s jurisdictional objections are considered as a whole. The Tribunal acknowledges that, when paired or otherwise combined, some of the Respondent’s jurisdictional objections could theoretically lead to a dismissal of the case (for example, the Respondents’ second and fourth objections).⁹⁹ That said, the Tribunal must weigh the benefits of isolating a few objections compared

⁹⁵ Mexico-China BIT, **CL-0002**; Art. 13 and Mexico-UK BIT, **CL-0001**, Art. 11.

⁹⁶ Request, ¶ 120

⁹⁷ Request, ¶ 119.

⁹⁸ Request, ¶ 120.

⁹⁹ Assuming, for the sake of this analysis and taking the Respondent’s arguments at face value, that the Respondent’s fourth objection would encompass both the claims brought by Ganfeng International on behalf

to the costs and time associated with bifurcated proceedings. Borrowing the reasoning of the *Amerra v. Mexico* tribunal, should the Tribunal ultimately find against the Respondent with respect to the first set of objections, the proceedings on the merits could be significantly delayed while several other jurisdictional issues would remain outstanding.¹⁰⁰ In this vein, the Tribunal does not consider it procedurally efficient to split the consideration of preliminary objections which share a common factual matrix, with some jurisdictional arguments being deferred to a possible future merits stage.

91. The Tribunal therefore concludes that, whether the objections raised by the Respondent are considered separately or together, the interests of procedural efficiency would not be served by bifurcation.

VI. DECISION

92. Based on the above considerations, the Tribunal:
- (i) Rejects the Respondent's Request in its entirety;
 - (ii) Orders that, as of the date of this Procedural Order, the proceedings be conducted in accordance with "Scenario 2" of the Procedural Timetable at Annex B of Procedural Order No. 1 ("Request for Bifurcation filed and denied");
 - (iii) Invites the Parties to reach an agreement on the outstanding deadlines in "Scenario 2" of the Procedural Timetable, including hearing dates, and submit a joint proposal to the Tribunal within 30 days;
 - (iv) Defers its decision on the costs associated with the Request;
 - (v) Dismisses all other requests.

For and on behalf of the Tribunal,

[signed]

Mr. Eduardo Zuleta
President of the Tribunal
Date: 25 August 2025
Revision notified on 26 September 2025

of Borax and Chemco and on its own behalf (for reflective losses suffered by its indirect subsidiaries), as the Respondent appears to suggest. *See, e.g.* Request, ¶ 109.

¹⁰⁰ *Amerra Capital Management LLC et al v. Mexico*, ICSID Case No. UNCT/23/1, Procedural Order No. 3, 3 November 2023, **CL-0193**, ¶ 18. *See also Fotowatio Renewable Ventures S.L.U., et al., v. Mexico*, ICSID Case No. ARB/24/5, Procedural Order No. 3, Decision on Bifurcation, 14 April 2025, **CL-0176**, ¶ 84.