

In the matter of an arbitration under the UNCITRAL Arbitration Rules

between

**1. WCV WORLD CAPITAL VENTURES CYPRUS LTD, 2. CHANNEL
CROSSINGS LTD**

Claimants

v.

THE CZECH REPUBLIC

Respondent

**DECISION ON
REQUEST FOR BIFURCATION**

ARBITRAL TRIBUNAL

Juan Fernández-Armesto (Chairman)
Stanimir Alexandrov
Mark Clodfelter

ASSISTANT TO THE TRIBUNAL

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I. PROCEDURAL BACKGROUND

1. On 5 August 2016 the Respondent filed its Memorial on Jurisdiction [the “**Memorial**”] and Request for Bifurcation [the “**Request**”].
2. In its Memorial the Czech Republic set out six legal grounds supporting the lack of jurisdiction of this Arbitral Tribunal and/or the dismissal of Claimants’ claims [the “**Objections**”]:
 - Objection 1: judicial decisions on domestic constitutional law cannot *prima facie* breach the BIT or Internacional Law;
 - Objection 2: the case is brought under an Intra-EU BIT;
 - Objection 3: the claims have already been litigated before the Czech Courts;
 - Objection 4: the Czech Republic did not consent to a multi-party arbitration;
 - Objection 5: Claimants do not have their permanent seat in Cyprus;
 - Objection 6: the claims are brought in bad faith.
3. The Respondent requested that the proceedings be bifurcated to first adjudicate the above six Objections.
4. On 26 August 2016 Claimants produced their response to the Request [the “**Response**”], claiming that the requirements for bifurcation have not been met and requesting that the Respondent’s Objections be heard with the merits.
5. On 2 September 2016 the Parties and the Arbitral Tribunal held a conference call to address Respondent’s Request.

II. THE DECISION

6. The 1976 UNCITRAL Rules [the “**Rules**”], which apply to this arbitration, provide as follows:

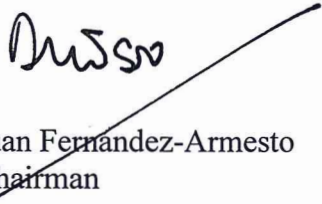
“21.4 In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such plea in the final award”.
7. The Rules clearly state that, as a general rule, the Tribunal should bifurcate the proceedings; the Rules, however, also empower the Tribunal to decide otherwise and to resolve jurisdictional objections in the final award. The Tribunal is of the opinion that it should only deviate from the standard rule for good reason.
8. The ultimate goal of bifurcation is to achieve procedural efficiency: if a jurisdictional objection is successful, bifurcation will allow for an early

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termination of the arbitration, sparing the time and cost required to adjudicate the merits.

9. It follows that the Arbitral Tribunal should order the proceedings to bifurcate, except when, after analysing each Objection separately, there are good reasons to believe that no procedural efficiency will be achieved.
10. After a careful study, the Tribunal resolves that, pursuant to the general principle enshrined in Art. 21.4 of the Rules, the proceedings be bifurcated to address Objections 3 – 6 separately [the “**Bifurcated Objections**”], as a preliminary matter.
11. The Tribunal decides not to bifurcate the proceedings with respect to Objections 1 and 2, but to join these Objections to the merits:
 - It is disputed whether Objection 1 is a jurisdictional Objection or rather a request for an *a limine* dismissal for lack of merit; in any event, the Tribunal finds that this Objection is closely intertwined with the merits of the case and it seems therefore more appropriate to adjudicate Objection 1 together with the merits (provided that such stage is reached);
 - Objection 2 is closely related to a future decision by the European Court of Justice which according to Respondent may affect the validity of arbitration clauses in Intra-EU BITs. The Respondent has repeatedly argued the potential relevance of that decision and has even requested a stay of the proceedings until the decision is issued. The Tribunal thus, finds it more appropriate to decide on Objection 2 at a later stage of the proceedings, when dealing with the merits of the dispute (provided that such stage is reached).
12. Please find attached the procedural calendar applicable for the first stage of the arbitration dealing with the Bifurcated Objections, as agreed in Procedural Order no. 1.

On behalf of the Arbitral Tribunal



Juan Fernandez-Armesto
Chairman

Date: 6 September 2016

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Annex I – Procedural Timetable

Answer on Bifurcated Objections	Claimants	October 28, 2016
Reply on Bifurcated Objections	Respondent	November 18, 2016
Rejoinder on Bifurcated Objections	Claimants	December 9, 2016
Notification of witnesses to be called to the Hearing on Bifurcated Objections	Both Parties	December 23, 2016
Hearing on Bifurcated Objections	All	January 16-18, 2017
Post-Hearing Submissions on Bifurcated Objections	Both Parties	The Tribunal will determine at the end of the Hearing on Bifurcated Objections if Post-Hearing Submissions are necessary
Statement on costs	Both Parties	TBD