

ICSID CASE No. ARB/22/30

**THE BANK OF NOVA SCOTIA**

*Claimant*

v.

**THE REPUBLIC OF PERU**

*Respondent*

**RESPONDENT'S REQUESTS FOR PRODUCTION OF  
DOCUMENTS  
(WITH THE CLAIMANT'S OBJECTIONS AND THE  
RESPONDENT'S RESPONSES TO THE CLAIMANT'S  
OBJECTIONS)**

**19 September 2025**

*Counsel for the Respondent*

**GAILLARD BANIFATEMI SHEL BAYA DISPUTES**

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1. In accordance with paragraph 15 of the Arbitral Tribunal's Procedural Order No. 1 dated 28 February 2024, the Republic of Peru ("**Peru**" or the "**Respondent**"), requests that the Claimant produce copies of the narrow and specific categories of Documents identified below that are or ought to be in the possession, custody or control of the Claimant.

**I. GENERAL DEFINITIONS AND INSTRUCTIONS**

2. For purposes of these document requests, the term "**Document**" shall have the meaning provided in the 2010 IBA Rules on the Taking of Evidence in International Arbitration, namely, a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means. Accordingly, the term "**Document**" includes, without limitation, correspondence, emails, letters, communications, memoranda, internal memoranda, minutes or records of meetings, agreements, contracts, analyses, reports, writings, agendas, notes, presentations, protocols, spreadsheets, and/or audio/video recordings. The term "**Document**" shall also include any copy which differs in any respect from the original or other versions of the Document, such as drafts, copies containing annotations, insertions, corrections, marginal notes or any other variations. For the avoidance of doubt, a draft or a non-identical copy is a separate Document.
3. A request for any Document shall be deemed to include a request for any and all transmittal sheets, cover letters, exhibits, annexes, enclosures, attachments or supplements to such Document, in addition to the Document in its full, unexpurgated form.
4. Capitalised terms that are not otherwise defined have the same meaning as in the Respondent's Counter-Memorial of 27 June 2025.
5. The date ranges indicated in each of the following document requests are inclusive of the limit dates listed.
6. The term "**Communication**" means the transmission or conveyance of any data, fact, statement or record in any form whatsoever, including, but not limited to, emails, facsimiles, letters, instant messages, WhatsApp messages (or similar phone applications), recordings, text messages, telephone calls and voicemails.
7. The term "**including**" shall mean "including without limitation".

8. The term “**and/or**” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.
9. The term “**any**” shall mean “any and all”.
10. The Respondent confirms that, to the best of its knowledge, the Documents requested below are not within its possession, custody or control. The Respondent reasonably believes such Documents to be within the possession, custody or control of the Claimant because they (i) were created by, for, on behalf of or at the request of the Claimant and/or Scotiabank Perú; (ii) were provided to the Claimant and/or Scotiabank Perú; (iii) have been referred to by the Claimant in its written submissions or in documentary evidence submitted therewith. For the avoidance of any doubt, the notion of possession shall include Documents in the possession, custody or control of the Claimant, Scotiabank Perú, as well as any affiliated entities and present or former representatives.
11. The Respondent also reasonably believes that the Documents requested must necessarily exist in the circumstances. Therefore, in responding to each of the Requests itemised below, the Claimant shall search for and produce all documents responsive to these Requests.
12. The Claimant is requested to provide all electronic data responsive to the categories of Documents described below in native format with intact metadata.
13. Where any responsive Document makes up a portion of a larger Document, the entire Document should be produced, including, but not limited to, annexes, attachments, or covering letters or emails.
14. In the event that portions of responsive Documents are subject to protection for demonstrable reasons of legal privilege or impediment, the Claimant must redact the Documents in such a way that solely the privileged portions are excluded from its production. Any claims of privilege or legal impediment must be precisely identified.
15. If no part of a responsive document can be disclosed for reasons of legal privilege or impediment, the Claimant must produce a detailed exemption log identifying any documents that are responsive to the Respondent's requests, but that the Claimant has chosen to withhold, identifying their author, date, type of document and the grounds for the alleged privilege or impediment.

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**Respondent's Document Requests**



16. Any Document request relating to the Claimant's case as pleaded may not be construed as an acknowledgment or admission by the Respondent of the accuracy or relevance of any of the Claimant's allegations.
17. The document requests below are continuing, such that the Claimant should produce any additional responsive Documents as they come to its attention or come into its possession, custody or control after the date of the initial production(s).

## II. THE RESPONDENT'S DOCUMENT REQUESTS

### A. THE CLAIMANT'S ACQUISITION OF ITS INTEREST IN BANCO WEISE AND THE ESTABLISHMENT OF SCOTIABANK PERÚ

| Document Request No.                                                         | Respondent's Document Request No. 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| Documents or category of documents requested (requesting Party)              | All Documents, including but not limited to due diligence materials, Board of Director minutes, presentations and meeting transcripts, internal or independent appraisals, valuation models, or other Documents supporting the calculation of the consideration paid by Scotiabank for 77% of the shares of Banco Sudamericano in 2006, which resulted in its 100% ownership of Banco Sudamericano.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Relevance and materiality, incl. references to submission (requesting Party) | <p>See <u>Counter-Memorial</u>, ¶¶ 461-462; see also <u>Memorial</u>, ¶¶ 26-30.</p> <p>When the Claimant acquired the shares in Banco Wiese Sudameris, it was aware of Banco Wiese's tax debt with SUNAT. The Respondent is currently not privy to sufficient information to confirm if, and to what extent, the purchase price paid by Scotiabank, accounted for the Tax Debt. A transcript of a Scotiabank conference call with analysts from 6 December 2005 noted that the consideration included "another couple [...] hundred" million for "coverage for potential future write-downs in relation to loans, legal, litigation issues, that kind of stuff" (see <u>R-334</u>). If Scotiabank paid less to acquire its investment because of the Tax Debt, these savings would need to be deducted from the damages that it seeks in this arbitration (see <u>Counter-Memorial</u>, ¶¶ 461-462; <u>Secretariat Report</u>, ¶¶ 3.4-3.5).</p> <p>Additionally, the requested Documents are relevant and material to evaluate the Claimant's awareness of the extant tax liability for IGV and default interest when it invested in Scotiabank Perú, as well as the reasons for its assumption of the outstanding debt in acquiring the 77% shares in Banco Wiese in 2006. The requested Documents are expected to be in the custody, possession and control of the Claimant.</p> |
| Reasoned objections to document production request (objecting Party)         | <p>Scotiabank objects to this request as it is neither relevant to the issues in dispute nor material to their outcome.</p> <p><u>First</u>, Perú claims the documents are relevant and material to the computation of damages in this arbitration. But they are not. Even if, <i>quad non</i>, Scotiabank took into consideration Banco Wiese's contingent tax debt with SUNAT when it invested in Scotiabank Perú, that finding can have <u>no impact</u> on the damages owed by Perú as a consequence of the measures claimed in this arbitration. The amount that Scotiabank paid for its investment</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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|                                                                          | <p>is irrelevant to determining the compensation to restore Scotiabank and Scotiabank Perú to the position they would have occupied but for the improper interference by different breaches of Perú's government with the Constitutional Court in the course of Scotiabank Perú's default interest <i>amparo</i> (see the discussion with respect to principles underlying the calculation of damages in Scotiabank's <u>Memorial</u>, ¶¶ 316-344). Put differently, in a world without the breach, Scotiabank would have received a full reimbursement of the default interest amounts paid under protest, regardless of any amount paid by Scotiabank in the 2006 transaction.</p> <p>Moreover, Scotiabank Perú's <i>amparo</i> proceeding was about the accrual of default interest, <u>not</u> the tax debt (<u>Memorial</u>, ¶¶ 53-54, 62-65). Any discount that Scotiabank could have received on the purchase price in 2006 would have been about the tax debt known at that time. That discount would not have contemplated the 23-fold increase in default interest that took place in the years to follow and was the subject of the Constitutional Court's decision.</p> <p><u>Second</u>, Perú also wrongly claims the requested documents are relevant and material to evaluate the Scotiabank's awareness of the tax liability when it invested in Scotiabank Perú. This is an impermissible fishing expedition. As Perú emphasizes in its Counter-Memorial, Scotiabank is not claiming for a violation of the FET claim (<u>Counter-Memorial</u>, ¶ 326). There is no claim based on legitimate expectations. Thus, what Scotiabank understood in respect of the tax liability at the time it made its investment is completely irrelevant, as well as immaterial, to the matters at hand: namely whether Perú violated the National Treatment standard after its unlawful interference in Scotiabank Perú's <i>amparo</i> process – a process that did not begin until 2016. None of this has to do with the tax liability or what was known about it in 2006. Perú cannot point to any part of the test for a violation of the National Treatment standard to which the documents would be relevant.</p> |
| Response to objections to document production request (requesting Party) | <p>The Claimant's objections are without merit and should be dismissed, and the Claimant should be ordered to produce the requested Documents for the reasons set out below:</p> <p><i>First</i>, the Claimant argues that the Documents requested by Peru are not relevant to the computation of damages in this arbitration, as the amount that Scotiabank paid for its investment in Scotiabank Perú is irrelevant to determining the compensation allegedly due to Scotiabank and which the Claimant seeks in this arbitration. Contrary to the Claimant's allegations, whether Scotiabank benefitted from the existence of the tax debt at the time of agreeing on the purchase price for its interest in Scotiabank Perú is relevant and material to the determination of any damages that may be payable to the Claimant (<i>quod non</i>). Simply put: the Claimant cannot benefit from the Tax</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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|                          | <p>Debt twice, by obtaining a discount in the purchase price and by seeking compensation for the same concepts in this arbitration. Peru refers to its submissions on this point in its Counter-Memorial (<i>see Counter-Memorial</i>, ¶¶ 461-463; <i>see also Counter-Memorial</i>, ¶ 64).</p> <p>In any event, this is a contentious issue that the Tribunal will have to decide during the proceedings. In order to fully present its case on the matter, Peru must have access to the Documents sought in <u>Request No. 1</u>, which must be in the Claimant's possession, custody or control.</p> <p><i>Second</i>, Peru rejects the Claimant's assertion that Peru's <u>Request No. 1</u> is "<i>an impermissible fishing expedition</i>". Peru's request is sufficiently narrow and specific, and it identifies documents that may reasonably be presumed to have been created in the context of an investment worth several hundred million dollars by a sophisticated investor such as Scotiabank, including due diligence reports, meeting minutes and presentations.</p> <p>The requested Documents are also directly relevant and material both to the liability and quantum issues before the Tribunal. In this regard, the Claimant's allegations that "[t]here is no claim based on legitimate expectations" and that "<i>Perú cannot point to any part of the test for a violation of the National Treatment standard to which the documents would be relevant</i>" are inapposite and a strawman argument. Establishing whether, from the Claimant's perspective at the time, it was likely that Scotiabank Perú would be ordered to pay the Tax Debt and its interest is relevant to show that this outcome was in line with the existing policy of the Peruvian tax authority and the case law of its Constitutional Court, thereby disproving the Claimant's allegations of discrimination. Moreover, in addition to being relevant and material to the merits of the case, the requested Documents are relevant and material to quantum issues, as explained by Peru.</p> <p><i>Finally</i>, Peru notes that the Claimant has not alleged that the Documents requested by Peru in its <u>Request No. 1</u> do not exist, nor that they are covered by privilege, or that it would be excessively onerous for the Claimant to collect and produce these Documents. This suggests that the Claimant is aware of the existence of disclosable documents responsive to <u>Request No. 1</u> that it could and should readily produce to Peru.</p> |
| Decision of the Tribunal | <p><i>Request granted as to due diligence materials, Board of Director minutes, presentations and meeting transcripts, internal or independent appraisals and valuation models supporting the calculation of the consideration paid by Scotiabank for 77% of the shares of Banco Sudamericano in 2006, which resulted in its 100% ownership of Banco Sudamericano.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

| Document Request No.                                                         | Respondent's Document Request No. 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| Documents or category of documents requested (requesting Party)              | All Documents regarding the due diligence materials, Board of Director minutes, presentations and meeting transcripts, internal or independent appraisals, valuation models, or other Documents supporting the calculation of the consideration paid by the Claimant to acquire a 78% stake in Banco Wiese Sudameris from its majority shareholder, the Italian financial group Banca Intesa S.p.A, in 2006.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Relevance and materiality, incl. references to submission (requesting Party) | <p>See <u>Counter-Memorial</u>, ¶¶ 461-462; see also <u>Memorial</u>, ¶¶ 26-30.</p> <p>According to the Claimant, in 2006 it completed its USD 330 million acquisition of Banco Wiese, which was conducted in three stages between 2005 and 2006 (see <u>Memorial</u>, ¶¶ 27-28). From Scotiabank Perú's institutional website, it further arises that the Claimant first increased its stake in Banco Sudamericano and subsequently acquired a 78% stake in Banco Wiese Sudameris (BWS) from its majority shareholder, the Italian financial group Banca Intesa S.p.A. (now Intesa Sanpaolo Group) (see <u>R-11</u>). It is unclear whether the consideration reportedly paid by Scotiabank to acquire Banco Wiese Sudameris also includes the amount paid for the remaining shares in Banco Sudamericano. This is relevant for the determination of the potential impact that the Tax Debt had on the consideration paid by Scotiabank for its interest in Scotiabank Perú, for which the Respondent must determine what was the total purchase price paid by the Claimant at the time (see <u>Counter-Memorial</u>, ¶¶ 461-462; <u>Secretariat Report</u>, ¶¶ 3.4-3.5).</p> <p>The requested Documents are expected to be in the custody, possession and control of the Claimant.</p> |
| Reasoned objections to document production request (objecting Party)         | Scotiabank objects to this request for the reasons outlined in its response to <u>Request No. 1</u> above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Response to objections to document production request (requesting Party)     | Peru refers to its response to the Claimant's objections, as set out for <u>Request No. 1</u> above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

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| <b>Decision of the Tribunal</b> | <i>Request granted as to due diligence materials, Board of Director minutes, presentations and meeting transcripts, internal or independent appraisals, and valuation models supporting the calculation of the consideration paid by the Claimant to acquire a 78% stake in Banco Wiese Sudameris from its majority shareholder, the Italian financial group Banca Intesa S.p.A, in 2006.</i> |
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| Document Request No.                                                         | Respondent's Document Request No. 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| Documents or category of documents requested (requesting Party)              | All Documents regarding due diligence materials, Board of Director minutes, presentations and meeting transcripts, internal or independent appraisals, valuation models, or other Documents supporting the calculation of the consideration paid by Scotiabank to Intesa, between May and August 2008, for the acquisition from Intesa of addition shares in Scotiabank Perú resulting in the Claimant's shareholding in Scotiabank Perú from 78% to approximately 98%.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Relevance and materiality, incl. references to submission (requesting Party) | <p>See <u>Counter-Memorial</u>, ¶¶ 461-462; see also <u>Memorial</u>, ¶¶ 26-30.</p> <p>Per the information provided in Scotiabank Perú's institutional website (see <u>R-011</u>; see also <u>Claimant's Memorial</u>, ¶ 30), Scotiabank increased its participation in Scotiabank Perú by acquiring additional shares from Intesa in 2008. Whether the amount paid by Scotiabank for the additional shares in Scotiabank Perú that it acquired from Intesa accounted for the Tax Debt as a contingency is relevant and material for the determination of the potential impact that the Tax Debt had on the consideration paid by Scotiabank in 2006 (see <u>Counter-Memorial</u>, ¶¶ 461-462; <u>Secretariat Report</u>, ¶¶ 3.4-3.5).</p> <p>The relevant documentation is expected to be in the custody, possession and control of the Claimant.</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p> |
| Reasoned objections to document production request (objecting Party)         | Scotiabank objects to this request for the reasons outlined in its response to <u>Request No. 1</u> above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Response to objections to document production request (requesting Party)     | Peru refers to its response to the Claimant's objections, as set out for <u>Request No. 1</u> above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Decision of the Tribunal                                                     | <i>Request granted as to due diligence materials, Board of Director minutes, presentations and meeting transcripts, internal or independent appraisals, and valuation models supporting the calculation of the consideration paid by Scotiabank to Intesa, between May and August 2008, for the acquisition from Intesa of addition shares in Scotiabank Perú resulting in the Claimant's shareholding in Scotiabank Perú from 78% to approximately 98%.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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Procedural Order No. 6 – Annex 2

***The Bank of Nova Scotia v. Republic of Peru***  
**Respondent's Document Requests**



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| Document Request No.                                                     | Respondent's Document Request No. 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| Documents or category of documents requested (requesting Party)          | Any and all Communications exchanged between the Claimant and Banco Intesa in relation to the Tax Debt and its impact on terms of the acquisition by the Claimant of its 100% interest in Banco Sudamericano and its 78% stake in Banco Wiese Sudameris.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Relevance and materiality (requesting Party)                             | <p>See <u>Counter-Memorial</u>, ¶¶ 461-462; see also <u>Memorial</u>, ¶¶ 26-30.</p> <p>When the Claimant acquired its shareholding in Banco Wiese Sudameris, it was aware of Banco Wiese's tax debt with the SUNAT. The Respondent is currently not privy to sufficient information to confirm if, and to what extent, the acquisition price paid by Scotiabank accounted for the Tax Debt. A transcript of a Scotiabank conference call with analysts from 6 December 2005 noted that the consideration included "another couple [...] hundred" million for "coverage for potential future write-downs in relation to loans, legal, litigation issues, that kind of stuff" (see <u>R-334</u>). If Scotiabank paid less to acquire its investment because of the Tax Debt, these savings would need to be deducted from the compensation that it seeks in this arbitration (see <u>Counter-Memorial</u>, ¶¶ 461-462; <u>Secretariat Report</u>, ¶¶ 3.4-3.5). The requested Documents are relevant and material to this issue, as they would show whether the Tax Debt impacted on the negotiations for the acquisition of the Claimant's participation in Banco Wiese, including the consideration price paid to this effect.</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p> |
| Reasoned objections to document production request (objecting Party)     | Scotiabank objects to this request for the reasons outlined in its response to <u>Request No. 1</u> above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Response to objections to document production request (requesting Party) | Peru refers to its response to the Claimant's objections, as set out for <u>Request No. 1</u> above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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Procedural Order No. 6 – Annex 2

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*The Bank of Nova Scotia v. Republic of Peru*  
Respondent's Document Requests



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| Decision of the Tribunal | <i>Request granted.</i> |
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| Document Request No.                                            | Respondent's Document Request No. 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| Documents or category of documents requested (requesting Party) | All Documents related to the agreements by which the Claimant acquired its 100% interest in Banco Sudamericano and its 78% stake in Banco Wiese Sudameris, including a complete copy of the Share Purchase Agreement of 5 December 2005 filed by the Claimant as Exhibit C-127, along with all Annexes, Schedules, the Disclosure Letter and any Documents delivered at execution or closing of the relevant transaction(s).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Relevance and materiality (requesting Party)                    | <p>See <u>Counter-Memorial</u>, ¶¶ 461-462; see also <u>Memorial</u>, ¶¶ 26-30.</p> <p>When the Claimant acquired its shareholding in Banco Wiese Sudameris, it was aware of Banco Wiese's tax debt with the SUNAT. The Respondent is currently not in possession of sufficient information to confirm if, and to what extent, the acquisition price paid by Scotiabank accounted for the Tax Debt. A transcript of a Scotiabank conference call with analysts from 6 December 2005 noted that the consideration included "another couple [...] hundred" million for "coverage for potential future write-downs in relation to loans, legal, litigation issues, that kind of stuff" (see <u>R-334</u>). If Scotiabank paid less to acquire its investment because of the Tax Debt, these savings would need to be deducted from the compensation that it seeks in this arbitration (see <u>Counter-Memorial</u>, ¶¶ 461-462; <u>Secretariat Report</u>, ¶¶ 3.4-3.5).</p> <p>The Claimant has submitted an incomplete copy of the Share Purchase Agreement between the Bank of Nova Scotia and Banca Intesa of 5 December 2005, by which the Claimant acquired a majority interest in Banco Wiese (see <u>C-127</u>). Notably, the Share Purchase Agreement does not include any of its Exhibits (which, according to the Table of Contents, comprise 11 Exhibits), nor any of its Schedules (totaling 17 Schedules) (see <u>C-127</u>, Table of Contents, p. 6), which form part of the Agreement (see <u>C-127</u>, clause 1.1(c), p. 18). The Claimant has also failed to produce the "Disclosure Letter" delivered by Banca Intesa to the Bank of Nova Scotia on the day of the execution of the Agreement, in accordance with the definition of "Excluded Disclosure Matters" in clause 1.1(a) (see <u>C-127</u>, p. 9). In accordance with the Share and Purchase Agreement, the Disclosure Letter lists those "Excluded Disclosure Matters", which may qualify the representations and warranties made by the Seller. Therefore, the requested Documents are relevant and material to establish the terms in which the Claimant acquired its investment in Peru, including whether the Tax Debt was disclosed and therefore excluded from the representations and warranties of the Seller.</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p> |
| Reasoned objections to document                                 | Scotiabank agrees to produce, subject to any potential claims of privilege, a complete copy of the Share Purchase Agreement (to the extent not already provided), along with all Annexes, Schedules, the Disclosure Letter and any                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| production request<br>(objecting Party)                                     | <p>other finalized transaction documents delivered at the execution or closing of the transaction of 5 December 2005. Scotiabank's agreement to produce documents responsive to the request is not an agreement to or admission of Perú's characterization of the relevance or materiality of such documents.</p> <p>Scotiabank objects to the balance of this request as it is vague and overbroad. Outside of producing these executed agreements and transaction documents, Perú's request for other documents "related to the agreements" is ambiguous and unclear, and is not a "narrow and specific requested category of documents" as contemplated under <u>Procedural Order No. 1</u>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Response to objections to document production request<br>(requesting Party) | <p>Peru notes the Claimant's agreement to produce, "<i>subject to any potential claims of privilege, a complete copy of the Share Purchase Agreement (to the extent not already provided), along with all Annexes, Schedules, the Disclosure Letter and any other finalized transaction documents delivered at the execution or closing of the transaction of 5 December 2005</i>".</p> <p>Peru disagrees with the Claimant's objection to "<i>the balance</i>" of the request, which it considers "<i>vague and overbroad</i>". Peru's request as drafted is specific and concrete as it is circumscribed by subject matter, <i>i.e.</i>, documents relating to "<i>the Claimant[s] acqui[sition of] its 100% interest in Banco Sudamericano and its 78% stake in Banco Wiese Sudameris</i>". Scotiabank cannot simply decide what it wishes to produce and thus circumscribe the Respondent's request. Clearly, Peru has not an extant list of all documents relating to these two transactions, including those documents delivered at closing, as it was not privy to the transactions; therefore, Peru should not be required to specifically list each one of them. Yet, the categories described by Peru are clearly identified and are limited to the periods of each transaction. Request No. 5 is meant to cover all documents relating to these two transactions not otherwise specified in Peru's subsequent requests, and in particular all those that concern the determination of the price ultimately paid by Scotiabank for its acquisition, including any Documents concerning price adjustments and/or closing accounts. The Respondent thus maintains its request as drafted.</p> <p><i>Finally</i>, should the Claimant withhold or redact any responsive Documents, it should submit a detailed log providing, at a minimum (i) a mention of the relevant Request, (ii) a brief description of the document in sufficient detail to determine whether privilege has been correctly invoked, (iii) a mention of the creator/sender of the document and its recipient(s), and (iv) the grounds on which privilege is asserted, including its specific legal basis.</p> |
| Decision of the Tribunal                                                    | <p><i>Request granted as to a complete copy of the Share Purchase Agreement (to the extent not already provided), along with all Annexes, Schedules, the Disclosure Letter and any other finalized transaction documents delivered at the execution or closing of the transaction of 5 December 2005, with any privilege claims to be logged on a Privilege Log. Request otherwise denied as</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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**Respondent's Document Requests**



|  |                   |
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|  | <i>overbroad.</i> |
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| Document Request No.                                                 | Respondent's Document Request No. 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| Documents or category of documents requested (requesting Party)      | A complete and executed copy of the Put and Call Option Agreement filed by the Claimant as Exhibit C-76, along with all Annexes, Schedules, and any enclosures, and any Documents delivered at execution or closing of the relevant transaction(s).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Relevance and materiality (requesting Party)                         | <p>See <u>Counter-Memorial</u>, ¶¶ 461-462. See also <u>Memorial</u>, ¶¶ 26-30.</p> <p>When the Claimant acquired its shareholding in Banco Wiese Sudameris, it was aware of Banco Wiese's tax debt with the SUNAT. According to Scotiabank Perú's institutional website, Scotiabank acquired its remaining shareholding in Scotiabank Perú in May 2008, although the specific terms of the transaction were not disclosed (see <u>R-11</u>).</p> <p>The Respondent is currently not in possession of enough information to confirm if, and to what extent, the acquisition price paid by Scotiabank accounted for the Tax Debt. A transcript of a Scotiabank conference call with analysts from 6 December 2005 noted that the consideration included "another couple [...] hundred" million for "coverage for potential future write-downs in relation to loans, legal, litigation issues, that kind of stuff" (see <u>R-334</u>). If Scotiabank paid less to acquire its investment because of the Tax Debt, these savings would need to be deducted from the compensation that it seeks in this arbitration (see <u>Counter-Memorial</u>, ¶¶ 461-462; <u>Secretariat Report</u>, ¶¶ 3.4-3.5). The requested Documents are relevant and material to this issue, as they are required to establish the consideration paid by the Claimant for the acquisition of its shareholding in Banco Wiese.</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p> |
| Reasoned objections to document production request (objecting Party) | Scotiabank agrees to produce, subject to any potential claims of privilege, a complete copy of the Put and Call Option Agreement filed as <u>Exhibit C-76</u> (to the extent not already provided), and related Annexes, Schedules, enclosures and finalized transaction documents delivered at the execution or closing of this transaction. Scotiabank's agreement to produce documents responsive to the request is not an agreement to or admission of Perú's characterization of the relevance or materiality of such documents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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| <b>Response to objections to document production request (requesting Party)</b> | Peru notes the Claimant's agreement to produce " <i>a complete copy of the Put and Call Option Agreement filed as <u>Exhibit C-76</u> (to the extent not already provided), and related Annexes, Schedules, enclosures and finalized transaction documents delivered at the execution or closing of this transaction</i> ". Accordingly, <b><u>no decision is required with respect to Request No. 6 at this point</u></b> , subject to the Claimant's complete production. Should the Claimant withhold or redact any responsive Documents, it should submit a detailed log providing, at a minimum (i) a mention of the relevant Request, (ii) a brief description of the document in sufficient detail to determine whether privilege has been correctly invoked, (iii) a mention of the creator/sender of the document and its recipient(s), and (iv) the grounds on which privilege is asserted, including its specific legal basis. |
| <b>Decision of the Tribunal</b>                                                 | <i>No decision necessary.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

| Document Request No.                                                 | Respondent's Document Request No. 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| Documents or category of documents requested (requesting Party)      | A complete and executed copy of all Documents relating to the acquisition by the Claimant of its remaining shareholding in Scotiabank Perú in May 2008.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Relevance and materiality (requesting Party)                         | <p>See <u>Counter-Memorial</u>, ¶¶ 461-462. See also <u>Memorial</u>, ¶¶ 26-30.</p> <p>When the Claimant acquired its shareholding in Banco Wiese Sudameris, it was aware of Banco Wiese's tax debt with the SUNAT. The Respondent is currently not in possession of sufficient information to confirm if, and to what extent, the acquisition price paid by Scotiabank accounted for the Tax Debt. A transcript of a Scotiabank conference call with analysts from 6 December 2005 noted that the consideration included "another couple [...] hundred" million for "coverage for potential future write-downs in relation to loans, legal, litigation issues, that kind of stuff" (see <u>R-334</u>). If Scotiabank paid less to acquire its investment because of the Tax Debt, these savings would need to be deducted from the compensation that it seeks in this arbitration (see <u>Counter-Memorial</u>, ¶¶ 461-462; <u>Secretariat Report</u>, ¶¶ 3.4-3.5). The requested Documents are relevant and material to this issue, as they are required to establish the consideration paid by the Claimant for the acquisition of its shareholding in Banco Wiese.</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p> |
| Reasoned objections to document production request (objecting Party) | <p>Scotiabank agrees to produce, subject to any potential claims of privilege, the executed transaction documents for the acquisition of its remaining shareholding in Scotiabank Perú in May 2008. Scotiabank's agreement to produce documents responsive to the request is not an agreement to or admission of Perú's characterization of the relevance or materiality of such documents.</p> <p>Scotiabank objects to the request for "all Documents relating to the acquisition" to the extent that it seeks any other document than the executed transaction documents to which Scotiabank has agreed to produce. Such request, as framed by Perú, is overly broad and not a "narrow and specific requested category of documents" as contemplated under <u>Procedural Order No. 1</u> in this arbitration.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

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| <b>Response to objections to document production request (requesting Party)</b> | <p>Peru notes the Claimant's agreement to produce "<i>the executed transaction documents for the acquisition of its remaining shareholding in Scotiabank Perú in May 2008. Scotiabank's agreement to produce documents responsive to the request is not an agreement to or admission of Perú's characterization of the relevance or materiality of such documents</i>".</p> <p>Peru disagrees with the Claimant's objection to Peru's request "<i>for all Documents relating to the acquisition</i>". Peru's request as drafted is specific and concrete as it is circumscribed by subject matter, <i>i.e.</i>, documents relating to Scotiabank's acquisition of its remaining shareholding in Scotiabank Perú in May 2008. The Claimant cannot simply decide what it wishes to produce and thus circumscribe the Respondent's request. Clearly, Peru has not an extant list of all documents relating to the final acquisition of Scotiabank's remaining shares in Banco Wiese Surameris as it was not privy to the transaction; therefore, Peru should not be required to specifically list each one of them. For instance, Documents regarding the determination of the price ultimately paid by Scotiabank for its acquisition, including any Documents concerning price adjustments and/or closing accounts, is not necessarily comprised in "<i>the executed transaction documents for the acquisition of its remaining shareholding in Scotiabank Perú in May 2008</i>", which Scotiabank has agreed to produce. In other words, Scotiabank cannot circumscribe Peru's request to said documents and decide which ones it wants to provide. Accordingly, Peru maintains its request as drafted.</p> <p>Should the Claimant withhold or redact any responsive Documents, it should submit a detailed log providing, at a minimum (i) a mention of the relevant Request, (ii) a brief description of the document in sufficient detail to determine whether privilege has been correctly invoked, (iii) a mention of the creator/sender of the document and its recipient(s), and (iv) the grounds on which privilege is asserted, including its specific legal basis.</p> |
| <b>Decision of the Tribunal</b>                                                 | <p><i>Request granted as to the executed transaction documents for the Claimant's acquisition of its remaining shareholding in Scotiabank Perú in May 2008. Request otherwise denied as overbroad.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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**B. THE CLAIMANT'S COMMUNICATIONS WITH JUSTICES OF THE CONSTITUTIONAL COURT**

| Document Request No.                                            | Respondent's Document Request No. 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| Documents or category of documents requested (requesting Party) | Any and all internal Documents to the Claimant or Scotiabank Perú relating to Scotiabank Perú's <i>amparo</i> regarding the default interest due by Scotiabank Perú to the SUNAT (case file No. 222-2017-PA/TC) sent to, prepared by, or shared with [REDACTED], including any internal reports, Communications or minutes on the matter.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Relevance and materiality (requesting Party)                    | <p>See <u>Memorial</u>, ¶¶ 71-73; <u>Counter-Memorial</u>, ¶¶ 252 <i>et seq.</i>, 265.</p> <p>In its Memorial on the Merits, the Claimant relies at length on the <i>Medina de Baca</i> judgment which, in the Claimant's position, established a line of case law from which the Constitutional Court departed in the case of Scotiabank Perú (see <u>Memorial</u>, ¶¶ 71-73). As explained by the Respondent, the Claimant omits that the <i>Medina de Baca</i> judgment entailed a stark departure from the Court's previously established case law, and that many other cases followed in which (as in the case of Scotiabank Perú), the Court found that the <i>amparo</i> proceedings were not the appropriate legal avenue to question the imposition of default interest on tax debts (see <u>Counter-Memorial</u>, ¶¶ 252 <i>et seq.</i>).</p> <p>The Claimant further omits that the <i>Medina de Baca</i> judgment, which is central to the Claimant's case both in the domestic courts and before the Tribunal, was drafted by [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] the rationale espoused by the Constitutional Court in the <i>Medina de Baca</i> decision—which entailed a departure from the Constitutional Court's prior case law on the matter—was a key element of the Claimant's arguments before the Constitutional Court (see <u>Bustamante Report</u>, ¶ 229). As a result, there is a risk that the <i>Medina de Baca</i> judgment may have been influenced by [REDACTED], the rapporteur of <i>Medina de Baca</i>.</p> <p>As such, the requested Documents are relevant to the case, as they relate to the circumstances in which the Constitutional Court issued its decision in the <i>Medina de Baca</i> case. This is material to the dispute, as the Claimant heavily relies on the <i>Medina de Baca</i> judgment in an attempt to portray the Constitutional Court's decision in case file No. 222-2017-PA/TC as being unreasonable, arbitrary and discriminatory, when the opposite is true: it was the <i>Medina de Baca</i> case that deviated from the Court's consistent case law</p> |

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|                                                                             | <p>on the matter, in Scotiabank Perú's favor.</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Reasoned objections to document production request (objecting Party)</b> | <p>Scotiabank objects to this request. It is a fishing expedition and improperly seeks privileged information.</p> <p><u>First</u>, Scotiabank objects to this request as the requested documents are neither relevant to the issues in dispute nor material to their outcome.</p> <p>Perú misconstrues Scotiabank's position in this case by alleging that the "Claimant heavily relies on the <i>Medina de Baca</i> judgment in an attempt to portray the Constitutional Court's decision in case file No. 222-2017-PA/TC as being unreasonable, arbitrary and discriminatory". Notably, Perú does not provide a single reference to Scotiabank's Memorial to support that statement. The <i>Medina de Baca</i> case <u>is not referenced a single time</u> in Scotiabank's analysis of the breach of National Treatment at paragraphs 210-316 of its Memorial. On the contrary, as explained in the <u>Memorial</u> (see ¶¶ 224-226, 275) and in the <u>Claimant's Requests for Documents</u> (see, e.g., Request Nos. 9,-16, 22 (outlining impugned measures and differential treatment)), Scotiabank claims that Perú breached the National Treatment provision in the FTA by improperly interfering with the Constitutional Court's decision making during the Scotiabank Amparo, successfully pressuring the Constitutional Court into completely reversing its position regarding that case, and refraining from replicating this Treatment across any of the Parties' Combined Domestic Comparators (see <u>Memorial</u>, ¶¶ 210-215, 224-246, 247, 275-315). Consequently, the Tribunal in this case does not need to determine whether the 2021 Decision was consistent with the <i>Medina de Baca</i> case or any other precedent from the Constitutional Court. Rather, the Tribunal is asked to compare the treatment accorded in Scotiabank Perú's case to the treatment accorded to domestic investors in similar default interest <i>amparo</i> cases.</p> <p>As Perú recognizes, [REDACTED] before any deliberations in that proceeding had occurred. Thus, Scotiabank and Scotiabank Perú's internal documents about Scotiabank Peru's <i>amparo</i> proceeding that were prepared by, or shared with [REDACTED] are irrelevant to determine whether Perú's actions constitute a breach of the National Treatment provision of the FTA.</p> <p><u>Second</u>, in any event, Perú has not pointed to any evidence, direct or indirect,</p> |

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|                                                                          | <p>suggesting the <i>Medina de Baca</i> judgment was improperly influenced by Scotiabank and/or Scotiabank Perú. It is notable that Perú strenuously objects to Scotiabank's claim that there was improper interference on the Constitutional Court, while at the same time claims there was interference in the Constitutional Court, calling into question the integrity of its Justices (see <u>Counter-Memorial</u>, ¶¶ 5-7, 168, 208-209).</p> <p>The request for documents prepared, sent or received by [REDACTED] "relating to Scotiabank Perú's <i>amparo</i> regarding the default interest due by Scotiabank Perú to the SUNAT" is not a "narrow and specific requested category of documents" as contemplated under <u>Procedural Order No. 1</u> in this arbitration. It is the definition of a fishing expedition.</p> <p><u>Third</u>, this irrelevant request broadly seeks essentially all documents shared with [REDACTED] about the <i>amparo</i> proceeding. Such documents (if they exist) would be privileged, as they would be communications about a legal proceeding within the organization.</p> <p>Notwithstanding the above, what the request really seems to seek is any evidence of communications between [REDACTED] about Scotiabank Perú's <i>amparo</i> in the lead-up to the <i>Medina de Baca</i> judgment. Scotiabank has conducted reasonable searches of [REDACTED] email inbox for such communications and did not identify any hits.</p> |
| Response to objections to document production request (requesting Party) | <p>The Claimant's objections are without merit and should be dismissed, and the Claimant should be ordered to produce the requested Documents for the reasons set out below:</p> <p><i>First</i>, the Claimant's allegation that the <i>Medina de Baca</i> case is entirely irrelevant to its case is baffling, considering that the Claimant devotes an entire sub-section of its Memorial to the <i>Elgo Ríos</i> and <i>Medina de Baca</i> cases (see <u>Memorial</u>, Part II, Section IV.A), stating that "[i]n order to put the treatment of Scotiabank Perú's case in context, the Tribunal must understand two decisions of the Constitutional Court: <i>Elgo Ríos Nuñez</i> ('<i>Elgo Ríos</i>') and <i>Emilia Rosario del Rosario Medina de Baca v. SUNAT</i> ('<i>Medina de Baca</i>')" (see <u>Memorial</u>, ¶ 66). Specifically, the Claimant relies on <i>Medina de Baca</i> to portray Perú's treatment of Scotiabank Perú as being discriminatory, comparing Scotiabank Perú to <i>Medina de Baca</i> to illustrate the alleged differences in treatment. In this regard, the Claimant states that "[l]ike Scotiabank Perú, Ms. <i>Medina de Baca</i> had also initiated a contentious administrative claim against the decisions of SUNAT and the Tax Court challenging the calculation of the principal tax amount, separate and apart from her Constitutional Court <i>amparo</i> challenging the accrual of default</p>                                       |

interest", to later describe the grounds on which the Constitutional Court ruled in favour of Ms. Medina de Baca, by contrast to its treatment of Scotiabank Perú (see **Memorial**, ¶¶ 72-73). In this light, the Claimant's newly raised argument that *"the Tribunal in this case does not need to determine whether the 2021 Decision was consistent with the Medina de Baca case or any other precedent from the Constitutional Court"* to evade Peru's Document Request is not credible.

Furthermore, the Claimant's statement that "[t]he Medina de Baca case is not referenced a single time in Scotiabank's analysis of the breach of National Treatment at paragraphs 210-316 of its Memorial" (emphasis in the original quote) is disingenuous. The Claimant's National Treatment analysis is largely based on cases that were decided following the *Medina de Baca* precedent, such as *Interbank* and *Paramonga*, which the Claimant describes at paragraphs 284-287 (see **Memorial**, ¶¶ 284-287). In fact, the Claimant itself recognizes the close connection between the *Interbank* and *Paramonga* cases and *Medina de Baca*. According to the Claimant: "[i]n 2016, the Constitutional Court released its decision in *Medina de Baca*. [...] In so doing, the Court developed a line of jurisprudential doctrine on this issue, in particular through the *Industrial Paramonga SAC v. SUNAT* ('**Paramonga**'), *Icatom v. SUNAT* ('**Icatom**'), *Jorge Francisco Baca Campodónico v. SUNAT* ('**Baca Campodónico**'), and *Telefónica del Perú S.A.A v. SUNAT* ('**Telefónica**') decisions" (**Memorial**, ¶ 141).

**Second**, the Claimant is also wrong to state that the requested Documents are irrelevant to establish a breach of the National Treatment provision of the FTA. As explained, the Claimant has portrayed the Constitutional Court's treatment of Scotiabank Perú as being discriminatory and contrary to what it claims to be the established case law of the Constitutional Court at the time. The requested Documents would be relevant to provide context on the allegedly discriminatory treatment of which the Claimant complains.

**Third**, the Claimant alleges that *"Perú has not pointed to any evidence, direct or indirect, suggesting the Medina de Baca judgment was improperly influenced by Scotiabank and/or Scotiabank Perú"* and that the request is not sufficiently narrow and specific. Contrary to the Claimant's allegations, Peru has identified the category of documents that it seeks with reasonable specificity, to the extent feasible. Given their nature, Peru is not privy to the requested Documents and therefore cannot provide a more detailed description. This notwithstanding, Peru notes that the Claimant does not argue that the requested Documents do not exist.

**Fourth**, as regards the Claimant's allegation that any responsive Documents *"would be privileged, as they would be communications about a legal proceeding within the organization"*, Peru rejects the Claimant's argument that the Documents would be privileged solely because they would consist of *"communications about a legal proceeding within the organization"*,

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|                          | <p>regardless of whether the sender and/or recipient are counsel providing legal advice. In any event, should any allegedly privileged responsive Documents be identified, the Claimant should not be excused from complying with Peru's request. Rather, the Claimant should include any such allegedly privileged documents in a detailed log providing, at a minimum (i) a mention of the relevant Request, (ii) a brief description of the document in sufficient detail to determine whether privilege has been correctly invoked, (iii) a mention of the creator/sender of the document and its recipient(s), and (iv) the grounds on which privilege is asserted, including its specific legal basis.</p> <p><i>Finally</i>, Peru notes the Claimant's statement that "<i>Scotiabank has conducted reasonable searches of [REDACTED] email inbox for [REDACTED] communications [with [REDACTED] and did not identify any hit</i>". While Peru appreciates the Claimant's stated search efforts, these do not cover the entirety of Peru's request, which is not focused on communications between [REDACTED], but rather <u>internal</u> communications concerning the proceedings initiated by Scotiabank Perú over the Tax Debt to which [REDACTED] may have been privy.</p> |
| Decision of the Tribunal | <p><i>Request denied as overbroad. The Tribunal notes the Claimant's representation that it has searched for communications between [REDACTED] [REDACTED] email inbox about Scotiabank Perú's amparo in the lead-up to the Medina de Baca judgment and found no responsive documents.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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| Document Request No.                                            | Respondent's Document Request No. 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| Documents or category of documents requested (requesting Party) | <p>Any Documents, including, without limitation, any Communications, reports, or minutes, discussing any meetings held between representatives of Scotiabank Perú and Justices of the Constitutional Court, including, but not limited to:</p> <p>(a) Meeting between [REDACTED]<br/>[REDACTED]</p> <p>(b) Meeting of [REDACTED]<br/>[REDACTED]</p> <p>(c) Meeting of [REDACTED]</p> <p>(d) Meeting of [REDACTED]<br/>[REDACTED]</p> <p>(e) Meeting of [REDACTED]</p> <p>(f) Meeting of [REDACTED]<br/>[REDACTED]</p> <p>(g) Meeting of [REDACTED]<br/>[REDACTED]</p> <p>(h) Meeting of [REDACTED]<br/>[REDACTED]</p> <p>(i) Meeting of [REDACTED]<br/>[REDACTED]</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Relevance and materiality (requesting Party)                    | <p>See <u>Memorial</u>, ¶ 118 <i>et seq.</i></p> <p>The requested Documents are relevant and material to the Claimant's allegation that certain Justices of the Constitutional Court "<i>confirmed</i>" that "<i>the Peruvian Government</i>" was exerting undue pressure on the Court to rule against Scotiabank Perú (see <u>Memorial</u>, ¶ 118 <i>et seq.</i>).</p> <p>To recall, the Claimant alleges that [REDACTED] informed representatives of Scotiabank Perú that members of the Peruvian Executive Branch unduly tried to influence the Justices of the Constitutional Court (see <u>Memorial</u>, ¶ 122). The Claimant also alleges that Justice Blume was sympathetic to its case (see <u>Memorial</u>, ¶ 133), and that Justice Ramos stated that the Court was unwilling to issue a judgment given the article published in the <i>Hildebrandt</i> on 6 June 2017 (see <u>Memorial</u>, ¶ 131). These grave allegations are based solely on the witness evidence provided by [REDACTED]<br/>[REDACTED], who testify to having attended various or having been informed of meetings between [REDACTED]<br/>[REDACTED] and on one contemporary email from [REDACTED] describing the meeting of [REDACTED]</p> |

*Bank of Nova Scotia v. Republic of Peru*  
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Procedural Order No. 6 – Annex 2

*The Bank of Nova Scotia v. Republic of Peru*  
Respondent's Document Requests



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|                                                                          | <p>██████████ In some instances, the Claimant has not submitted any direct witness evidence of the meetings but rather relies exclusively on ██████████ recollection of ██████████' accounts of the discussions maintained with the Justices, while failing to present ██████████ as a witness ██████████). In this context, the contemporary exchanges and other Documents discussing the content of these meetings are required to assess the accuracy and credibility of the witness evidence presented by the Claimant.<sup>1</sup></p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p>                                                                                   |
| Reasoned objections to document production request (objecting Party)     | <p>Scotiabank agrees to produce non-privileged documents responsive to this request. Scotiabank's agreement to produce documents responsive to the request is not an agreement to or admission of Perú's characterization of the relevance or materiality of such documents.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Response to objections to document production request (requesting Party) | <p>Peru notes the Claimant's agreement to produce "<i>non-privileged documents responsive to this request</i>". Accordingly, <b><u>no decision is required with respect to Request No. 9 at this point</u></b>, subject to the Claimant's complete production. Should the Claimant withhold or redact any responsive Documents, it should submit a detailed log providing, at a minimum (i) a mention of the relevant Request, (ii) a brief description of the document in sufficient detail to determine whether privilege has been correctly invoked, (iii) a mention of the creator/sender of the document and its recipient(s), and (iv) the grounds on which privilege is asserted, including its specific legal basis.</p> |
| Decision of the Tribunal                                                 | <p><i>No decision necessary.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

<sup>1</sup> For the avoidance of any doubt, this request should not be construed as an acceptance of the evidentiary value of the Claimant's hearsay evidence on the alleged content of the meetings between representatives of Scotiabank Perú and Justices of the Constitutional Court, regardless of the content of any simultaneous Documents, as may be produced by the Claimant.

| Document Request No.                                            | Respondent's Document Request No. 10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| Documents or category of documents requested (requesting Party) | Any and all Documents relating to the meetings allegedly held between Scotiabank Perú officials and members of the Executive Branch of the Republic of Peru, including, but not limited to, any Communications (internal or otherwise) or reports discussing the same.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Relevance and materiality (requesting Party)                    | <p>See <u>Memorial</u>, ¶ 116.</p> <p>The requested Documents are relevant and material to the Claimant's allegation that officials of the Peruvian Executive Branch were receptive to its request that "SUNAT cease its public campaign against Scotiabank Perú's case" (see <u>Memorial</u>, ¶ 116).</p> <p>In its Memorial, the Claimant relies on [REDACTED] account of a meeting that took place on [REDACTED]<br/>[REDACTED], and Mr. Fernando Zavala, the then Prime Minister and Minister of Economy and Finance, and his Chief of Staff, Mr. Enrique Felices (see <u>Memorial</u>, ¶ 116; [REDACTED]). According to [REDACTED] subsequently informed [REDACTED] that Mssrs. Zavala and Felices "understood and supported the position of Scotiabank Perú" [REDACTED]. To this effect, [REDACTED] relies on an email of [REDACTED] stating that "[b]oth Fernando and Enrique supported our case" (see <u>C-231</u>). However, the Claimant fails to provide evidence of any further discussions of the meeting with Mr. Zavala, including any and all responses to [REDACTED].</p> <p>The Claimant also refers to [REDACTED] recollection of a meeting between himself, [REDACTED] and Ms. Claudia Cooper, the then Vice Minister of Economy and Finance (see <u>Memorial</u>, ¶ 117; [REDACTED]). According to [REDACTED], Ms. Cooper expressed that the Peruvian Government was paying close attention to the matter.</p> <p>The requested Documents would provide further elements to determine the accuracy of [REDACTED] statements and the true nature of Scotiabank Perú's impressions following the meeting with Mssrs. Zavala and Felices and Ms. Cooper. Accordingly, the requested Documents are relevant to the case, as they relate to the Claimant's allegations that members of the Peruvian Executive Branch express their support for Scotiabank Perú's position in the proceedings before the Constitutional Court. The Documents are material to the case, as they may undermine the Claimant's attempt to portray the treatment that Scotiabank Perú received from the Constitutional Court as discriminatory, by contrast with the support that the Claimant claims to have</p> |

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|                                                                                 | <p>received from other authorities.</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Reasoned objections to document production request (objecting Party)</b>     | <p>Scotiabank agrees to produce non-privileged documents relating to the meetings discussed at paragraphs 116-117 of its <b>Memorial</b>. Scotiabank's agreement to produce documents responsive to the request is not an agreement to or admission of Perú's characterization of the relevance or materiality of such documents.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Response to objections to document production request (requesting Party)</b> | <p>Peru notes the Claimant's agreement to produce "<i>non-privileged documents relating to the meetings discussed at paragraphs 116-117 of its <b>Memorial</b></i>" (emphasis in the original quote). Accordingly, <b><u>no decision is required with respect to Request No. 10 at this point</u></b>, subject to the Claimant's complete production. Should the Claimant withhold or redact any responsive Documents, it should submit a detailed log providing, at a minimum (i) a mention of the relevant Request, (ii) a brief description of the document in sufficient detail to determine whether privilege has been correctly invoked, (iii) a mention of the creator/sender of the document and its recipient(s), and (iv) the grounds on which privilege is asserted, including its specific legal basis.</p> |
| <b>Decision of the Tribunal</b>                                                 | <p><i>No decision necessary.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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| Document Request No.                                                 | Respondent's Document Request No. 11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Documents or category of documents requested (requesting Party)      | Any Documents, including communications with Justices of the Constitutional Court, stating that members of the Executive Branch of the Republic of Peru attempted to influence one or more Justices of the Constitutional Court to rule against Scotiabank Perú in File No. 222-2017-PA/TC.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Relevance and materiality (requesting Party)                         | <p>See <u>Memorial</u>, ¶ 118 <i>et seq.</i></p> <p>The requested Documents are relevant and material to the Claimant's allegation that certain Justices of the Constitutional Court "<i>confirmed</i>" that "<i>the Peruvian Government</i>" was exerting undue pressure on the Court to rule against Scotiabank Perú (see <u>Memorial</u>, ¶ 118 <i>et seq.</i>).</p> <p>A central part of the Claimant's case is its allegation that [REDACTED] informed representatives of Scotiabank Perú that members of the Peruvian Executive Branch unduly tried to influence the Justices of the Constitutional Court (see <u>Memorial</u>, ¶ 122). These grave allegations are based solely on the witness evidence provided by [REDACTED] who testify to having attended various or having been informed of meetings between [REDACTED] and on one contemporary email from [REDACTED] describing the meeting of [REDACTED]. In some instances, the Claimant has not submitted any direct witness evidence of the meetings but rather relies exclusively on [REDACTED] recollection of [REDACTED] accounts of the discussions maintained with the Justices, while failing to present [REDACTED] as a witness [REDACTED]. In this context, any Documents relating to the Claimant's allegations that members of the Executive Branch were attempting to exert pressure on Justices of the Constitutional Court are relevant to establish the veracity, accuracy and completeness of the Claimant's allegations.</p> <p>The requested Documents are not in the possession, custody or control of the Respondent. Given that it is the Claimant who makes the accusations referenced herein, the Claimant should be privy to the requested Documents.</p> |
| Reasoned objections to document production request (objecting Party) | Further to <u>Request No. 9</u> above, Scotiabank has agreed to produce non-privileged documents related to any meetings between representatives of Scotiabank Perú and Justices of the Constitutional Court. This captures any communications with the Justices about Perú's attempts to influence the court and therefore captures the documents sought by this request. Anything further is vague and overbroad: it is not clear what date ranges or other context is required to conduct a reasonable search for documents outside of                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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|                                                                          | Request No. 9.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Response to objections to document production request (requesting Party) | Peru notes the Claimant's assertion that <u>Request No. 9</u> , for which the Claimant has agreed to voluntarily produce non-privileged responsive documents, " <i>captures any communications with the Justices about Perú's attempts to influence the court and therefore captures the documents sought by this request</i> ". Accordingly, <u>no decision is required with respect to Request No. 11 at this point</u> , subject to the Claimant's complete production under <u>Request No. 9</u> . As stated for <u>Request No. 9</u> , should the Claimant withhold or redact any responsive Documents, it should submit a detailed log providing, at a minimum (i) a mention of the relevant Request, (ii) a brief description of the document in sufficient detail to determine whether privilege has been correctly invoked, (iii) a mention of the creator/sender of the document and its recipient(s), and (iv) the grounds on which privilege is asserted, including its specific legal basis. |
| Decision of the Tribunal                                                 | <i>No decision necessary.</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

**C. SCOTIABANK PERÚ'S STRATEGY VIS-À-VIS THE 9 JUNE 2017 HILDEBRANDT ARTICLE**

| Document Request No.                                            | Respondent's Document Request No. 12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| Documents or category of documents requested (requesting Party) | Any and all Documents internal to the Claimant or Scotiabank Perú, including internal Communications, minutes and reports, discussing the circumstances of the publication of the article published on 9 June 2017 in <i>Hildebrandt en sus trece</i> reporting on the alleged 2017 Leaked Decision and its potential impact on the proceedings underway before the Constitutional Court in File No. 222-2017-PA/TC.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Relevance and materiality (requesting Party)                    | <p>See <u>Memorial</u>, ¶¶ 74-83; <u>Counter-Memorial</u>, ¶¶ 156-157.</p> <p>In its Memorial, the Claimant argues that SUNAT and a Justice of the Constitutional Court working together leaked a draft judgment, to the detriment of Scotiabank Perú (see <u>Memorial</u>, ¶¶ 74-83; [REDACTED]). Despite the Claimant's allegations, the true circumstances and repercussions of the publication of the alleged 2017 Leaked Decision remain unclear, including its true impact on Scotiabank Perú.</p> <p>As explained by the Respondent, and as acknowledged by the Claimant and its witnesses, Scotiabank Perú's external counsel held various meetings with Justices of the Constitutional Court in the months and weeks leading to the <i>Hildebrandt</i> article of 9 June 2017 (see [REDACTED]). Furthermore, despite its <i>ex post</i> allegations that the <i>Hildebrandt</i> article demonstrated the existence of an alleged bias on the part of the Constitutional Court, Scotiabank Perú did not state this alleged concern in the proceedings before the Constitutional Court until four years after its occurrence (see <u>Bustamante Report</u>, ¶ 248). Moreover, despite the grave nature of its allegations that the Executive Branch had improperly attempted and succeeded in influencing Justices of the Constitutional Court, Scotiabank Perú apparently failed to pursue any legal avenue within the Peruvian legal system to address its suspicions of bias and illegality on the part of the Constitutional Court (see <u>Counter-Memorial</u>, ¶¶ 156-157).</p> <p>Accordingly, the requested Documents are relevant to establish Scotiabank Perú's contemporaneous impressions of the repercussions that the so-called 2017 Leaked Decision would have on the ongoing case before the Constitutional Court and on Scotiabank Perú's reputation and standing. This is material to the case, as the Claimant heavily relies on the allegedly prejudicial nature of the publication of the <i>Hildebrandt</i> article as a core element of its discrimination claim under the National Treatment standard (see <u>Memorial</u>, ¶¶ 277 <i>et seq.</i>).</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant. Moreover, the Documents ought to exist; given the public notoriety of the <i>Hildebrandt</i> article and its close connection to Scotiabank</p> |

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|                                                                                    | <p>Perú's main dispute with the Peruvian State at the time, it is reasonable to presume that the article was discussed among Scotiabank Perú's personnel.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p><b>Reasoned objections to document production request (objecting Party)</b></p> | <p>Scotiabank objects to this request. It is overbroad and does not meet the requirements of relevance and materiality.</p> <p><u>First</u>, the documents sought are neither relevant nor material. Perú does not contest that a copy of the draft judgment in Scotiabank Perú's <i>amparo</i> case was leaked to the press in June 2017. Scotiabank claims that the Leaked Decision and the undue political pressure and interference that followed constitutes differential treatment towards Scotiabank Perú that was not present in any of the comparator cases. Scotiabank's contemporaneous impressions of the repercussions that the 2017 Leaked Decision had on its <i>amparo</i> proceeding have no relevance, nonetheless materiality, to deciding whether that external interference existed. Put differently, what Scotiabank thought about the Leaked Decision and whether it thought it <i>could</i> impact the <i>amparo</i> proceeding has no impact on whether, in fact, such government interference existed in this case and was not present in the comparator cases (see the discussion on the legal test for a breach of the National Treatment standard in Scotiabank's <u>Memorial</u>, beginning at ¶¶ 216-221).</p> <p>Moreover, Scotiabank has already provided evidence as to its internal impressions about the 2017 Leaked Decision at the time it occurred. As set forth in [REDACTED], at the time [REDACTED] "understood that this pressure would have no effect on the justices' considerations" and that, on the contrary, Scotiabank Perú "fully trusted in the independence of the Constitutional Court, which until that point had still been diligently handling [the] case" [REDACTED]</p> <p><u>Second</u>, Perú claims that the "true circumstances and repercussions of the publication of the [Leaked Decision] remain unclear, including its true impact on Scotiabank Perú." But Scotiabank is not the one in possession of the documents that will show that impact. Scotiabank has provided evidence indicating that [REDACTED] was the likely source of the leak and the circumstances that show this was government interference to stop the decision in favour of Scotiabank Perú being finalized and issued (see [REDACTED] <u>Memorial</u>, ¶ 232). Again, the question for the Tribunal will be to establish the existence of that <i>external</i> interference. Any further evidence of that governmental interference is in the possession of Perú (and subject to Scotiabank's document requests of Perú). But Scotiabank's internal</p> |

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|                                                                          | <p>documents are not the source of evidence to determine the existence and extent of that governmental interference.</p> <p><u>Third</u>, the unbounded nature of this request for “[a]ny and all Documents internal to the Claimant or Scotiabank Perú... discussing the circumstances of the publication of the [<i>Hildebrandt en sus trece</i>] article” does not refer to a narrow and specific category of documents and is overbroad.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Response to objections to document production request (requesting Party) | <p>The Claimant’s objections are without merit and should be dismissed, and the Claimant should be ordered to produce the requested Documents for the reasons set out below:</p> <p><i>First</i>, by claiming that “Peru does not contest that a copy of the draft judgment in Scotiabank Perú’s amparo case was leaked to the press in June 2017”, the Claimant misconstrues Peru’s position. As explained by Peru in its Counter-Memorial, the document that was reproduced in the June 2017 article published by <i>Hildebrandt en sus Trece</i> was <u>not</u> a “judgment”. Under Peruvian law, a judgment must be voted on, signed, and published by the Constitutional Court for it to be valid and binding, none of which occurred in the case of Scotiabank’s amparo over the amounts paid as default interest to SUNAT, registered as file No. 00222-2017-PA/TC (see <u>Counter-Memorial</u>, ¶¶ 136-139). As also explained by Peru, the Claimant failed to provide <u>any</u> evidence that the published document had been “leaked” by the Constitutional Court (see <u>Counter-Memorial</u>, ¶¶ 133, 407).</p> <p><i>Second</i>, Scotiabank is wrong to state that the requested Documents are not relevant and material. As explained by Peru, the <i>Hildebrandt</i> article reproducing a copy of an alleged draft judgment in the Scotiabank Perú amparo did not determine the outcome of that proceeding, which was decided fully in line with the Court’s contemporaneous case law (see <u>Counter-Memorial</u>, ¶¶ 408-412). This seems to also have been Scotiabank’s understanding of the facts as they were unravelling, which would explain why Scotiabank failed to denounce the alleged leak in the proceedings before the Constitutional Court (see <u>Counter-Memorial</u>, ¶¶ 156-164). To recall, it was the SUNAT, not Scotiabank, who first brought the alleged leak to the attention of the Court (see <u>Counter-Memorial</u>, ¶ 163). As explained by the SUNAT then, there is also a risk that the alleged draft may have been provided to the press by [REDACTED] prior to the publication of the <i>Hildebrandt</i> article (see <u>Counter-Memorial</u>, ¶ 163). In fact, Scotiabank did not formally address the leak in its submissions before the Court until 26 May 2021 (see <u>Counter-Memorial</u>, ¶ 157).</p> <p>In this light, contemporaneous documents may be relevant and material to establish the plausibility of Scotiabank’s position in this arbitration and of [REDACTED] testimony [REDACTED] particularly as regards its allegations that the document published by the <i>Hildebrandt</i> journal on June 2017 was (i) allegedly “leaked” by [REDACTED] to Scotiabank’s detriment,</p> |

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|                          | <p>and (ii) that that this alleged “leak” was determinative of the outcome of the proceedings before the Court.</p> <p><i>Third</i>, the Claimant’s statement that the requested Documents are in Peru’s power misconstrues the scope of <u>Request No. 12</u>, which concerns <u>internal</u> documents which, by definition, would not be in Peru’s custody, power or possession.</p> <p><i>Fourth</i>, Peru does not agree that <u>Request No. 12</u>, as written, is overbroad. This notwithstanding, in the spirit of cooperation, Peru is willing to restrict its request to Documents created or exchanged between June 2017 and November 2021.</p> <p><i>Finally</i>, Peru notes that the Claimant has not alleged that the Documents requested by Peru in its <u>Request No. 12</u> do not exist, nor that they are covered by privilege, or that it would be excessively onerous for the Claimant to collect and produce these Documents. This suggests that the Claimant is aware of the existence of disclosable documents responsive to <u>Request No. 12</u> that it could and should readily produce to Peru.</p> |
| Decision of the Tribunal | <p><i>Request denied as overbroad. The Tribunal notes that Requests 15 and 16 for more specific categories of related documents are granted.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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| Document Request No.                                            | Respondent’s Document Request No. 13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Documents or category of documents requested (requesting Party) | Any and all Documents relating to complaints or actions submitted by Scotiabank Perú before the Peruvian courts, the Constitutional Court, the Police Corps or Prosecutor’s Office in relation to the article published on 9 June 2017 in <i>Hildebrandt en sus trece</i> reporting on the alleged 2017 Leaked Decision.                                                                                                                                                                                                                                                                                                                                                                               |
| Relevance and materiality (requesting Party)                    | <p>See <u>Memorial</u>, ¶¶ 74-83; <u>Counter-Memorial</u>, ¶¶ 156-157.</p> <p>In its Memorial, the Claimant argues that SUNAT and a Justice of the Constitutional Court working together leaked a draft judgment, to the detriment of Scotiabank Perú (see <u>Memorial</u>, ¶¶ 74-83; [REDACTED]). However, despite the grave nature of these allegations, and the availability of several avenues to address the alleged illegality and bias that the Claimant alleges to have been a victim of (see <u>Bustamante Report</u>, ¶¶ 246-259), Scotiabank Perú apparently failed to pursue any legal avenue within the Peruvian legal system to address its suspicions of bias and illegality on the</p> |

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|                                                                             | <p>part of the Constitutional Court (see <u>Counter-Memorial</u>, ¶¶ 156-157).</p> <p>Accordingly, the requested Documents are relevant to conclusively establish whether Scotiabank Perú pursued any actions in response to the alleged leak of the 2017 draft judgment of which it complains in this arbitration.</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Reasoned objections to document production request (objecting Party)</b> | <p>Scotiabank objects to this request. It does not meet the requirements of relevance and materiality, and in any event, seeks information that would be in Perú's possession.</p> <p><u>First</u>, the requested documents are neither relevant to the issues in dispute nor material to their outcome. Whether Scotiabank Perú elected to pursue additional domestic remedies after the 2017 Leaked Decision has no bearing on the question before the Tribunal: whether Peruvian State organs exerted improper influence over the Constitutional Court in the <i>amparo</i> proceeding and no such influence existed in the comparator cases (see the discussion on the legal test for a breach of the National Treatment standard in Scotiabank's <u>Memorial</u>, beginning at ¶¶ 216-221).</p> <p><u>Second</u>, Perú is either seeking documents that do not exist or, if they do, then it has possession of them. Perú is seeking documents related to proceedings it claims were not commenced: it is by its own admission seeking documents that do not exist. If such legal proceedings were pursued, then those materials would have been filed with the Peruvian entities and would be in Perú's possession. Such facts are entirely knowable to the State of Perú.</p> <p><u>Third</u>, Perú's request suggests that Scotiabank sat idle in the wake of the 2017 Leaked Decision. But the evidence points to the exact opposite. As detailed in Scotiabank's <u>Memorial</u>, while Scotiabank Perú did not pursue a legal proceeding within the Peruvian legal system following the Leaked Decision, among other things, Scotiabank Perú sent over 40 requests to the Court for it to issue a decision in the years following the leak (<u>Memorial</u>, ¶¶ 115-117, 125-138, 143). When those requests went unanswered and it became increasingly clear the delay was a result of the government interference and pressure on the court, Scotiabank ultimately submitted a notice of intent to commence arbitration under the FTA (<u>Memorial</u>, ¶¶ 145-149). It proceeded to file a Request for Arbitration after the 2021 Constitutional Court Decision had been issued and the effect of the government's interference with Scotiabank Perú's <i>amparo</i> became known (<u>Memorial</u>, ¶¶ 160-161).</p> |

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| Response to objections to document production request (requesting Party) | <p>The Claimant's objections are without merit, for the reasons set out below:</p> <p><i>First</i>, the Claimant is wrong to allege that the requested Documents are not relevant and material to the case. As explained by Peru, the <i>Hildebrandt</i> article reproducing a copy of an alleged draft judgment in the Scotiabank Perú <i>amparo</i> did not determine the outcome of this proceeding, which was decided fully in line with the Court's contemporaneous case law (see <u>Counter-Memorial</u>, ¶¶ 408-412). This seems to also have been Scotiabank's understanding of the facts as they were unravelling, which would explain why Scotiabank failed to denounce the alleged leak in the proceedings before the competent authorities (see <u>Counter-Memorial</u>, ¶¶ 156-164). To recall, it was the SUNAT, not Scotiabank, who first brought the alleged leak to the attention of the Court (see <u>Counter-Memorial</u>, ¶ 163). As explained by the SUNAT then, there is also a risk that the alleged draft may have been provided to the press by [REDACTED] prior to the publication of the <i>Hildebrandt</i> article (see <u>Counter-Memorial</u>, ¶ 163).</p> <p>In this light, contemporaneous documents may be relevant and material to establish the plausibility of Scotiabank's position in this arbitration, particularly as regards its allegations that the document published by the <i>Hildebrandt</i> journal on June 2017 was (i) allegedly "leaked" by [REDACTED] to Scotiabank's detriment, and (ii) that this alleged "leak" was determinative of the outcome of the proceedings before the Court.</p> <p><i>Second</i>, as explained by Peru in its responses to the Claimant's Document Requests, the Prosecutors' Office does not have a central archive. Therefore, to conduct a search for complaints under the possession, custody or control of Peru would be required to conduct searches across the Constitutional Court and the Prosecutors' Office, for unspecified potential investigations, which may or may not have been archived under an adequately descriptive subject. Considering this, Peru is not in a position to conclusively affirm that no complaints have been made. Moreover, had the Claimant submitted any such complaints (which it should be able to easily ascertain), it would be manifestly less cumbersome for the Claimant to provide these documents than for Peru to search for them in tens of different offices, with the associated risk that the documents may not be found.</p> <p><i>Third</i>, as regards the Claimant's assertion that "while Scotiabank Perú did not pursue a legal proceeding within the Peruvian legal system following the Leaked Decision [...] Scotiabank Perú sent over 40 requests to the Court for it to issue a decision in the years following the leak", Peru notes—as it did in its responses to the Claimant's Document Requests—the Claimant's inappropriate use of this document production process to make submissions on the merits of the case. The Claimant's statements are irrelevant to any decision on Peru's Document Request No. 13 and therefore unhelpful for the Tribunal at this stage. Moreover, the Claimant's allegations do not change the fact that, for four years, the Claimant seemingly failed to pursue any action</p> |
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|                                 | <p>for what it believed to have been an unlawful act. This is directly relevant to establish the plausibility and credibility of the Claimant's position in this arbitration.</p> <p>The above notwithstanding, Peru notes the Claimant's statement that "<i>Scotiabank Perú did not pursue a legal proceeding within the Peruvian legal system following the Leaked Decision</i>", which Peru understands as an assertion that the requested documents do not exist. On this basis, the Respondent requests that the Claimant confirm this understanding. Peru reserves its right to request that the Tribunal compel the Claimant to produce documents responsive to <b>Request No. 13</b>, should the Claimant fail to provide said confirmation.</p> |
| <b>Decision of the Tribunal</b> | <p><i>Request denied, subject to the Claimant's direct confirmation to the Respondent that no responsive documents exist.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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| Document Request No.                                                     | <b>Respondent's Document Request No. 14</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Documents or category of documents requested (requesting Party)          | Any and all Documents relating to complaints or actions submitted by Scotiabank Perú before the Peruvian courts, the Constitutional Court, the Police Corps or Prosecutor's Office in relation to its suspicions that members of the Executive Branch were exerting undue pressure on the Court to rule against Scotiabank Perú in file No. 222-2017-PA/TC.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Relevance and materiality (requesting Party)                             | <p>See <u>Memorial</u>, ¶ 122; <u>Counter-Memorial</u>, ¶¶ 156-157.</p> <p>A central part of the Claimant's case is its allegation that [REDACTED] informed representatives of Scotiabank Perú that members of the Peruvian Executive Branch unduly tried to influence the Justices of the Constitutional Court (see <u>Memorial</u>, ¶ 122). However, despite the grave nature of its allegations, and despite the grave nature of these allegations, and the availability of several avenues to address the alleged illegality and bias that the Claimant alleges to have been a victim of (see <u>Bustamante Report</u>, ¶¶ 246-259), Scotiabank Perú apparently failed to pursue any legal avenue within the Peruvian legal system to address its suspicions of bias and illegality on the part of the Constitutional Court (see <u>Counter-Memorial</u>, ¶¶ 156-157). Accordingly, the requested Documents are relevant to conclusively establish whether Scotiabank Perú pursued any actions in response to its grave suspicions that members of the Ministry of Economy attempted to influence the Constitutional Court's decision-making in the <i>amparo</i> initiated by Scotiabank Perú.</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p> |
| Reasoned objections to document production request (objecting Party)     | Scotiabank objects to this request for the same reasons noted in respect of <u>Request No. 13</u> above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Response to objections to document production request (requesting Party) | See Peru's Response to the Claimant's Objections to <u>Request No. 13</u> . However, Peru notes that the Claimant has not affirmed that " <i>Scotiabank Perú did not pursue a legal proceeding within the Peruvian legal system</i> " in relation to its suspicions that members of the Executive Branch were exerting undue pressure on the Court to rule against Scotiabank Perú in file No. 222-2017-PA/TC—as it did for the Documents requested in <u>Request No. 13</u> . On this basis, the Respondent requests that the Claimant confirm whether this is also the case for the proceedings referred to in <u>Request No. 13</u> and, should that be the case, to confirm whether the requested Documents exist. Peru                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

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|                          | reserves its right to request that the Tribunal compel the Claimant to produce documents responsive to <b>Request No. 14</b> , should the Claimant fail to provide said confirmation. |
| Decision of the Tribunal | <i>Request denied, subject to the Claimant's direct confirmation to the Respondent that no responsive documents exist.</i>                                                            |

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| Document Request No.                                            | <b>Respondent's Document Request No. 15</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Documents or category of documents requested (requesting Party) | Any and all Documents relating to the services provided by the consulting firm "Llorente & Cuenca" to Scotiabank Perú in relation to the article published on 9 June 2017 in <i>Hildebrandt en sus trece</i> reporting on the alleged 2017 Leaked Decision including, but not limited to: (a) any and all Communications between Scotiabank Perú and Llorente & Cuenca relating to the terms of the engagement of the consulting firm to advise Scotiabank Perú in relation to this matter; (b) any and all Communications between Scotiabank Perú and Llorente & Cuenca discussing the strategy to be adopted by Scotiabank Perú in relation with the alleged 2017 Leaked Decision; (c) any and all reports prepared by Llorente & Cuenca providing advice on Scotiabank Perú's conduct in relation to the alleged 2017 Leaked Decision, and (d) any internal Communications discussing any of the preceding items.                                                                                                                                                                              |
| Relevance and materiality (requesting Party)                    | See <b>Memorial</b> , ¶¶ 115, 277 <i>et seq.</i> ; <b>Counter-Memorial</b> , ¶¶ 249-251.<br>According to the Claimant, following the publication in <i>Hildebrandt en sus trece</i> of the press article discussing the alleged draft decision in Scotiabank's case before the Constitutional Court, Scotiabank Perú hired the consulting firm Llorente & Cuenca for it to advise Scotiabank Perú on the strategy to be adopted vis-à-vis the alleged 2017 Leaked Decision (see <b>Memorial</b> , ¶ 115; [REDACTED] According to the Claimant and [REDACTED], Scotiabank Perú believed at the time that the draft judgment had been leaked to the press at the behest of the Ministry of Economy and Finance and the SUNAT, to the detriment of Scotiabank Perú (see <b>Memorial</b> , ¶ 115; [REDACTED] <b>WS</b> , ¶ 35). Despite the Claimant's allegations, the true circumstances and repercussions of the publication of the alleged 2017 Leaked Decision remain unclear, including its true impact on Scotiabank Perú. The requested Documents are relevant to establish Scotiabank Perú's |

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|                                                                                 | <p>contemporaneous impressions of the repercussions that the so-called 2017 Leaked Decision would have on the ongoing case before the Constitutional Court and on Scotiabank Perú's reputation and standing. This is material to the case, as the Claimant heavily relies on the allegedly prejudicial nature of the publication of the <i>Hildebrandt</i> article as a core element of its discrimination claim under the National Treatment standard (see <u>Memorial</u>, ¶¶ 277 <i>et seq.</i>).</p> <p>Due to their nature, the requested Documents ought to be in the possession of the Claimant. Moreover, the Documents ought to exist, as they pertain to the provision of services by Llorente &amp; Cuenca to Scotiabank Perú, as acknowledged by one of the Claimant's witnesses. Indeed, the Claimant's evidence shows that, at the very least, the firm Llorente assisted Scotiabank Perú in the preparation of "<i>a one pager which [Scotiabank] will privately distribute among certain business leaders</i>" (see <u>C-228</u>).</p>                                                                                                       |
| <b>Reasoned objections to document production request (objecting Party)</b>     | <p>Scotiabank objects to this request for the same reasons noted in respect of <u>Request No. 12</u> above. As discussed in Request No. 12, Scotiabank Perú's internal impressions of the leak are wholly irrelevant to the issues before the Tribunal because they have no bearing on the ultimate question of whether there was <u>in fact</u> government interference in this case that was not present in the comparator cases. Likewise, Scotiabank Perú's "strategy" in the aftermath of the leak, and internal documents discussing same, are irrelevant because they cannot speak to the existence or not of the differential treatment that is at the core of Scotiabank's National Treatment claim (see the discussion on the legal test for a breach of the National Treatment standard in Scotiabank's <u>Memorial</u>, beginning at ¶¶ 216-221).</p> <p>Perú claims that the requested documents are also relevant to Scotiabank Perú's "image and standing," but that is neither relevant nor material to the issue of whether there was governmental interference in Scotiabank Perú's case that was not present in the comparator cases.</p> |
| <b>Response to objections to document production request (requesting Party)</b> | <p>The Claimant's objections are without merit and should be dismissed, and the Claimant should be ordered to produce the requested Documents. Peru refers in this regard to its response to the Claimant's objections to Peru's <u>Request No. 12</u>. As explained by Peru, it is unclear whether Scotiabank understood, at the time that the article concerning Scotiabank Peru's <i>amparo</i> was published by <i>Hildebrandt</i>, that this had been detrimental to Scotiabank Perú in any way. This would explain why Scotiabank failed to denounce the alleged leak in the proceedings before the Constitutional Court or elsewhere (see <u>Counter-Memorial</u>, ¶¶ 156-164), as well as its decision not to formally address the leak in its submissions before the Court until 26 May 2021 (see <u>Counter-Memorial</u>, ¶ 157). Moreover, there is also a risk that the alleged draft may have been provided to the press by [REDACTED]</p>                                                                                                                                                                                                      |

*Bank of Nova Scotia v. Republic of Peru*  
(ICSID Case No. ARB/22/30)  
Procedural Order No. 6 – Annex 2

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*The Bank of Nova Scotia v. Republic of Peru*  
Respondent's Document Requests



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|                          | <p>prior to the publication of the <i>Hildebrandt</i> article (see <u>Counter-Memorial</u>, ¶ 163). In this light, contemporaneous documents may be relevant and material to establish the plausibility of Scotiabank's position in this arbitration, particularly as regards its allegations that the document published by the <i>Hildebrandt</i> journal on June 2017 was (i) allegedly "leaked" by [REDACTED] to Scotiabank's detriment, and (ii) that that this alleged "leak" was determinative of the outcome of the proceedings before the Court.</p> <p><i>Finally</i>, Peru notes that the Claimant has not alleged that the Documents requested by Peru in its <u>Request No. 15</u> do not exist, nor that they are covered by privilege, or that it would be excessively onerous for the Claimant to collect and produce these Documents. This suggests that the Claimant is aware of the existence of disclosable documents responsive to <u>Request No. 15</u> that it could and should readily produce to Peru.</p> |
| Decision of the Tribunal | <p><u>Request granted.</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| Document Request No.                                            | Respondent's Document Request No. 16                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| Documents or category of documents requested (requesting Party) | Any and all Documents regarding the <i>"one-on-one off-the-record meetings with key journalists"</i> , referred to by [REDACTED]<br>[REDACTED]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Relevance and materiality (requesting Party)                    | <p>See <u>Memorial</u>, ¶¶ 15, 16, 115, 196; <u>Counter-Memorial</u>, ¶¶ 156-159.</p> <p>In his email of 23 June 2017 to [REDACTED] and other Scotiabank officials, [REDACTED] stated that they had <i>"continued [with] one-on-one off-the-record meetings with key journalists"</i> (see <u>C-231</u>).</p> <p>Scotiabank claims that the alleged leaked decision of 2017 was leaked to the press at the behest of the Ministry of Economy of Finance and the SUNAT [REDACTED] and attempts to build a case on the allegation that that Perú mounted a political and media campaign against it following the aftermath of the <i>Hildebrandt</i> article in which the alleged 2017 Constitutional Court's Decision was published (see <u>Memorial</u>, Section C). According to the Claimant, the alleged leak purportedly resulted in the Justices rendering a decision in 2021 against Scotiabank (see <u>Memorial</u>, ¶¶ 15, 16, 196). According to the Claimant, "[f]ollowing the leak of the decision in Scotiabank Perú's favour, Peruvian media began covering Scotiabank Perú's amparo claim extensively. The coverage was politically tense and largely unfavourable to Scotiabank and Scotiabank Perú. SUNAT and senior government officials spread legally irrelevant or incomplete information among media outlets to exert pressure on the Constitutional Court to rule against Scotiabank Perú, alleging that a ruling in Scotiabank Perú's favour would create fiscal problems for the Peruvian Government and an incentive for other companies to avoid paying taxes, among other matters" (see <u>Memorial</u>, ¶ 94). Yet, at no point during the <i>amparo</i> proceedings did Scotiabank Perú raise any arguments on the alleged undue pressure on the Constitutional Court, nor on the allegation that the Ministry of Economy and Finance and the SUNAT had orchestrated the leak of the so-called 2017 Leaked Decision (see <u>Counter-Memorial</u>, ¶¶ 156-159), nor that Scotiabank was being targeted due to its foreign nationality, as it now claims (see <u>Memorial</u>, ¶ 94). In the [REDACTED] [REDACTED], Scotiabank make it clear that, in addition to organizing meetings with members of the Executive Branch, allegedly to ask that they keep the SUNAT from continuing with its purported <i>"media campaign"</i>, Scotiabank had been having <i>"one-on-one off-the-record"</i> meetings with <i>"key journalists"</i> about the controversy (see <u>C-231</u>). The Claimant has attempted to build its case on the circumstances regarding the leak of the so-called 2017 Leaked Decision, the supposed media campaign</p> |

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*The Bank of Nova Scotia v. Republic of Peru*  
Respondent's Document Requests



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|                                                                                 | <p>against it because of its foreign nationality, and other allegations based on innuendo and press reports. The information regarding the conversations held with different journalists, and the spins and versions fed to them by Scotiabank are relevant and material to determine the Claimant's contemporaneous understanding of the impact of the alleged leak of the so-called 2017 Leaked Decision on the ongoing proceedings before the Constitutional Court and Scotiabank Perú's image and standing.</p> <p>The Respondent is not privy to the requested Documents, which are not in the Respondent's possession, custody or control. Due to their nature, the requested Documents ought to be in the possession of the Claimant.</p> |
| <b>Reasoned objections to document production request (objecting Party)</b>     | <p>Scotiabank objects to this request for the same reasons noted in respect of <u>Request Nos. 12 and 15</u> above.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Response to objections to document production request (requesting Party)</b> | <p>Peru refers to its response to the Claimant's objections, as set out for <u>Requests No. 12 and 15</u> above.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Decision of the Tribunal</b>                                                 | <p><i>Request granted.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

D. THE CLAIMANT'S CLAIM FOR DAMAGES

| Document Request No.                                                         | Respondent's Document Request No. 17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| Documents or category of documents requested (requesting Party)              | All Documents concerning Scotiabank Perú's policies for dividend distribution, capital reductions, or any other form of shareholder distribution (and/or contributions for legal reserves), between 2014 and 2024, including ledger/accounting details for such transactions that occurred over this period.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Relevance and materiality, incl. references to submission (requesting Party) | <p>See <u>Counter-Memorial</u>, ¶ 459.</p> <p>The Claimant's quantum expert assumes that Scotiabank Perú's loss would be repatriated via a dividend to Scotiabank (see <u>KSV Report</u>, ¶ 4.5; see also <u>Counter-Memorial</u>, ¶ 459). Thus, Scotiabank Perú's policies for shareholder distributions are directly relevant to the calculation of the Claimant's alleged damages.</p> <p>As explained by Perú's quantum experts, as a general rule, dividends can only be issued based on profits. Scotiabank Perú's classification of the tax payments that were made in December 2013 and January 2014 as an accounts receivable limit the amount of profit that would result from a refund on 1 January 2019, thus limiting the amount of dividends that can be issued (see, <u>Secretariat Report</u>, ¶¶ 5.12–5.15). Scotiabank Perú's policies regarding shareholding distributions are relevant and material to determine what other avenues were available to repatriate funds in the But-for Scenario.</p> <p>The requested Documents are in the Claimant's possession, custody and control and, as demonstrated, are relevant and material to the calculation of the compensation sought by the Claimant in this arbitration.</p> |
| Reasoned objections to document production request (objecting Party)         | Scotiabank agrees to produce non-privileged documents responsive to this request. Scotiabank's agreement to produce documents responsive to the request is not an agreement to or admission of Perú's characterization of the relevance or materiality of such documents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Response to objections to document production request (requesting Party)     | Peru notes the Claimant's agreement to produce " <i>non-privileged documents responsive to this request</i> ". Accordingly, <b><u>no decision is required with respect to Request No. 17 at this point</u></b> , subject to the Claimant's complete production. Should the Claimant withhold or redact any responsive Documents, it should submit a detailed log providing, at a minimum (i) a mention of the relevant Request, (ii) a brief description of the document in sufficient detail to determine whether privilege has been correctly invoked, (iii) a mention of the creator/sender of the document and its recipient(s), and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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|                          | (iv) the grounds on which privilege is asserted, including its specific legal basis. |
| Decision of the Tribunal | No decision necessary.                                                               |

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| Document Request No.                                            | Respondent's Document Request No. 18                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Documents or category of documents requested (requesting Party) | All Documents regarding Scotiabank's decision to account for, and present in its Financial Statements the amounts paid to the SUNAT between 2013 and 2014 regarding the IGV and default interest debt at stake in this controversy, as accounts receivables regarding non-financial instruments, including, but not limited to, any Documents containing the opinions of the Bank Management and its legal advisors that these quantities would be refunded to Scotiabank Perú upon obtaining a favorable resolution in the case before the Constitutional Court.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Relevance and materiality (requesting Party)                    | <p>See especially <u>Counter-Memorial</u>, ¶¶ 65, 459, fn. 76.</p> <p>It is undisputed that Scotiabank inherited Banco Weise's IGV and default interest debts with the SUNAT (see <u>Memorial</u>, ¶ 49; see also <u>Counter-Memorial</u>, ¶¶ 48-49). It is the Respondent's position that, in so doing, Scotiabank assumed a liability, with the corresponding risk (see <u>Memorial</u>, ¶¶ 32, 48). It is also undisputed that, between 2013 and 2014, Scotiabank Perú paid the IGV liability and default interest to the Peruvian State (see <u>Memorial</u>, ¶ 61; see also <u>Counter-Memorial</u>, ¶ 86).</p> <p>Yet, Scotiabank Perú treated the litigation against the SUNAT and the payment made to the SUNAT as a tax credit, as reported in its Financial Statements (see <u>Counter-Memorial</u>, ¶ 65, fn. 76), stating that, in the opinion of the Bank's Management and its legal advisors, Scotiabank Perú would recover the amounts paid as they expect to prevail in their claim. As stated in Scotiabank Perú's Financial Statements: "the balance of tax claims as of 31 March 2014, includes [REDACTED] as of 31 December 2013) corresponding to payments made under protest due to a resolution issued by the Tax Administration, which is being contested in judicial courts by the Bank. In the opinion of the Bank's Management and its legal advisors, these amounts will be refunded to the Bank upon obtaining a favourable resolution in this case" (C-168, p. 11).</p> |

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|                                                                      | <p>It is the Respondent's submission that neither at the time that Scotiabank acquired its interest in Banco Wiese Sudameris in 2006, nor at the time that it paid the IGV and default interest to the SUNAT in 2013-2014, or in fact when it initiated the <i>amparo</i> proceedings in November 2013 (even before it commenced the action before the contentious administrative courts), Scotiabank could have any expectation that this constitutional recourse would result in a favourable result to it. As explained by the Respondent, at the time that Scotiabank Perú submitted its <i>amparo</i>, there were simply no precedents in which the Court had ruled in a manner consistent with Scotiabank Perú's position (see <u>Counter-Memorial</u>, ¶¶ 49-59, ¶¶ 64-67, ¶¶ 72-76). The Respondent also submits that Scotiabank's calculated strategy to artificially challenge the IGV Liability, on the one hand, and the default interest on the other, has no legal basis as a matter of Peruvian law (see <u>Counter-Memorial</u>, ¶¶ 88-102).</p> <p>The Claimant's quantum expert assumes that Scotiabank Perú's loss would be repatriated via a dividend to Scotiabank (see <u>KSV Report</u>, ¶ 4.5; see also <u>Counter-Memorial</u>, ¶ 459). Thus, Scotiabank Perú's policies for shareholder distributions are directly relevant to the calculation of the Claimant's alleged damages. As explained by Perú's quantum experts, as a general rule, dividends can only be issued based on profits. Scotiabank Perú's classification of the tax payments that were made in December 2013 and January 2014 as accounts receivable limits the amount of profit that would result from a refund on 1 January 2019, thus limiting the amount of dividends that could have been distributed (see, <u>Secretariat Report</u>, ¶¶ 5.12-5.15).</p> <p>Accordingly, the requested Documents, all of which should be in the custody, possession and control of the Claimant, are relevant and material in several respects, including: (i) as regards the Claimant's assumption of a liability in acquiring its investment in Peru and the reasonableness of its alleged expectations that it would recover said amounts, considering the relevant legal framework on the application and recovery of default interest, (ii) the rationale behind the registration of ongoing litigation as a credit or account receivable, and (iii) the Claimant's damages calculation.</p> |
| Reasoned objections to document production request (objecting Party) | <p>Scotiabank objects to this request. It seeks information that is neither relevant nor material to the issues in this arbitration and would, in any event, be subject to privilege.</p> <p><u>First</u>, the request seeks documents that are neither relevant to the issues nor material to their outcome. Peru claims this is relevant to Scotiabank's "assumption of a liability in acquiring its investment in Peru and the reasonableness of its alleged expectations that it would recover said amounts, considering the relevant legal framework on the application and recovery of default interest." As set out in response to <u>Request No. 1</u> above, Scotiabank's claim that Peru has breached the National Treatment provision of the FTA is</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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|                                                                          | <p>unrelated to Scotiabank's legitimate expectations in acquiring the investment. The documents requested by Peru are irrelevant to the reason for registering the amounts as accounts receivables and any opinions or expectations by Scotiabank that such funds would be returned has no impact on the liability issue of whether there was governmental interference in Scotiabank's amparo proceeding that was not present in the comparator cases. It also has no impact or relevance to the damages owing. As set out in the response to Request No. 1, the question is what amounts are owed but for Perú's breach. Perú has Scotiabank's financial statements and has the information as to how this liability was recorded. The reasons behind it have no impact on the issues or damages owed.</p> <p><u>Second</u>, on its face, this request seeks documents that are privileged as it seeks "Documents containing the opinions of the Bank Management and its legal advisors". Scotiabank is under no obligation to produce privileged documents.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Response to objections to document production request (requesting Party) | <p>The Claimant's objections are without merit and should be dismissed, and the Claimant should be ordered to produce the requested Documents for the reasons set out below:</p> <p><i>First</i>, Peru rejects the Claimant's assertion the requested Documents are not relevant and material. In this regard, the Claimant's allegations that "[t]here is no claim based on legitimate expectations" and that "Scotiabank's claim that Peru has breached the National Treatment provision of the FTA is unrelated to Scotiabank's legitimate expectations in acquiring the investment" are inapposite and a strawman argument. Establishing whether, from the Claimant's perspective, it was reasonable for it to consider that Scotiabank Perú would recover the Tax Debt and its interest is relevant to show whether Scotiabank Perú was discriminated against by the Constitutional Court, or whether this outcome was in line with the existing policy of the Peruvian tax authority and the case law of its Constitutional Court, thereby disproving the Claimant's allegations of discrimination.</p> <p><i>Second</i>, as regards the Claimant's allegation that any responsive Documents would be privileged, Peru notes that (i) not all documents from legal advisors are privileged, which is a determination that must be made on a case by case basis, and (ii) the Request, as drafted, covers opinions by the bank's management, which would not be subject to privilege. In any event, should any privileged responsive Documents be identified, the Claimant should not be excused from complying with Peru's request. Rather, the Claimant should include any such privileged Documents in a detailed log providing, at a minimum (i) a mention of the relevant Request, (ii) a brief description of the document in sufficient detail to determine whether privilege has been correctly invoked, (iii) a mention of the creator/sender of the document and</p> |

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|                          | <p>its recipient(s), and (iv) the grounds on which privilege is asserted, including its specific legal basis.</p> <p><b>Finally</b>, Peru notes that the Claimant has not alleged that the Documents requested by Peru in its <u>Request No. 18</u> do not exist or that it would be excessively onerous for the Claimant to collect and produce these Documents. This suggests that the Claimant is aware of the existence of disclosable documents responsive to <u>Request No. 18</u> that it could and should readily produce to Peru.</p> |
| Decision of the Tribunal | <p>Request granted.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |