

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER THE UNITED  
MEXICAN STATES – SINGAPORE AGREEMENT ON THE PROMOTION AND  
RECIPROCAL PROTECTION OF INVESTMENTS AND  
THE UNCITRAL ARBITRATION RULES (2010)**

**PACC Offshore Services Holdings Ltd**

**v.**

**The United Mexican States**

**(UNCT/18/5)**

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**PROCEDURAL ORDER NO. 4**

***Members of the Tribunal***

Dr. Andrés Rigo Sureda, Presiding Arbitrator  
Prof. W. Michael Reisman, Arbitrator  
Prof. Philippe Sands QC, Arbitrator

***Secretary of the Tribunal***

Ms. Mercedes Cordido-Freytes de Kurowski

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November 7, 2019

**I. Procedural Background**

1. In accordance with the Document Production Schedule attached as Annex 2 to the Tribunal's Procedural Order No. 1 of November 28, 2018 ("**PO-1**"), as amended on June 26, 2019, the Parties submitted (i) on September 18, 2019 their respective Requests for Production of Documents with the supporting Redfern Schedule ("**Requests**"); (ii) on October 2, 2019, their respective objections to the other Party's document production request; and (iii) on October 16, 2019, their respective reply to the other Party's objections.
2. In their Requests, the Parties reflected: (i) the Documents requested, with indication of the relevance and materiality according to the requesting party; (ii) the Objections to Document Requests; and (iii) the Reply to the Objections.

**II. Applicable Rules Governing Document Production**

3. Regarding documentary evidence, Section 18.5 of PO-1 provides:

*"Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration dated 29 May 2010 (IBA Rules) may guide the Tribunal and the parties regarding document production in this case."*

4. Article 3(3) of the IBA Rules provides:

*"A Request to Produce shall contain:*

- (a) (i) *a description of each requested Document sufficient to identify it, or*  
  
*(ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;*
- (b) *a statement as to how the Documents requested are relevant to the case and material to its outcome; and*
- (c) (i) *a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and*

*(ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.”*

5. Article 9(2) of the IBA Rules provides:

*“The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons:*

- (a) lack of sufficient relevance to the case or materiality to its outcome;*
- (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;*
- (c) unreasonable burden to produce the requested evidence;*
- (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;*
- (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;*
- (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or*
- (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.”*

6. Pursuant to Section 18 of PO-1, which is incorporated by reference, the Parties agreed on the terms and conditions that would apply to the procedure concerning the Production of Documents in the present case.
7. It was agreed that a “Disputed Request would be decided by the Tribunal on a case-by-case basis, as soon as possible, upon receipt of the reply to the objections.”
8. In accordance with Section 18.9 of PO-1, the Tribunal has included its decision on the Disputed Request in the same Redfern Schedule containing the Request, objections and reply, using the column reserved for that purpose.

**III. Tribunal's Decision and Order**

9. The Tribunal has reviewed the Requests guided by the IBA Rules. For the reasons and with the limitations set out in the Redfern Schedules at **Annex A** (Decision on Claimant's Request to Produce Documents) and **Annex B** (Decision on Respondent's Request to Produce Documents) to this Procedural Order, the Tribunal:

Orders the Parties to produce the requested documents by **Thursday, December 5, 2019** (within four weeks from the date of this Procedural Order No. 4) in accordance with the revised Procedural calendar. Claims of legal privilege by a party shall: (i) identify the documents subject to privilege; (ii) identify the legal basis for the claim; and (iii) provide sufficient information about the withheld documents to enable the other party and the Tribunal to assess the validity of the objection.

For and on behalf of the Tribunal,

[Signed] \_\_\_\_\_

Dr. Andrés Rigo Sureda  
President of the Tribunal  
Date: November 7, 2019

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(ICSID Case No. UNCT/18/5)

**Respondent Objections to Claimant's Request for the Production of Documents**

**October 2th, 2019**

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In accordance with the IBA Rules on the Taking of Evidence in International Arbitration (2010) (the **IBA Rules**), Claimant has limited its requests to specific documents or categories of documents that Claimant reasonably believes to exist, and Claimant has narrowly tailored its requests with respect to both subject matter and the time period in which Claimant believes that the documents were generated or obtained. Moreover, as explained further in the attached Redfern Schedule, these documents are relevant and material to the outcome of the case in that they directly relate to the issues raised by the parties in their written submissions and/or accompanying evidentiary materials. Finally, Claimant believes the requested documents are in Respondent's possession, custody, or control (and are not in Claimant's possession, custody, or control).

All documents should be produced together with any attachments, enclosures or annexes. To the extent that documents already submitted in this arbitration fall within any of the requests, Claimant does not ask Respondent to produce them. Additionally, to the extent that documents are responsive to multiple requests, Claimant does not ask Respondent to produce the documents more than once.

Where not further specified, the documents should be produced from any government agency or entity involved in the measures at issue or in overseeing such entities.

For the purposes of Claimant's Requests:

- “**Document**” is used in these Requests as that term is defined in the IBA Rules: 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. For the avoidance of any doubt, the term includes email correspondence.
- “**Government**,” “**State**” or “**Mexico**” should be understood to mean all Mexican state entities, ministries, agencies, departments, or offices, whether at the national, county, or municipal level, including, for example, but not limited to, the President's Office, the Parliament, the Senate, the judicial courts, the *Unidad de Inteligencia Financiera*, the *Procuraduría General de la República*, the Ministry of Economy, the National Audit Office, all Crime Investigation Units, and all officials, representatives, and employees of such entities.
- “**State Entities**” should be understood to mean all State-owned or State-controlled entities, including, for example, but not limited to, Petróleos Mexicanos (**Pemex**) or Pemex Exploración y Producción (**PEP**), and all officers, directors, representatives, and employees of such entities.
- “**between**” certain dates should be understood to include the dates mentioned.
- “**including**” should be understood to mean “including without limitation.”

## Claimant's Request for the Production of Documents

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- “**SOC**” refers to Claimant’s Statement of Claim dated March 20, 2019.
- “**SOD**” refers to Respondent’s Statement of Defense dated August 21, 2019.
- “**Banamex**” means Banco Nacional de México, a subsidiary of Citibank.
- “**BIT**” or “**Treaty**” refers to the Agreement between the Government of the United Mexican States and the Government of the Republic of Singapore on the Promotion and Reciprocal Protection of Investments.
- “**CNBV**” means *Comisión Nacional Bancaria y de Valores* of Mexico.
- “**CNBV Investigation**” means the investigation by CNBV into Banamex in connection to the factoring facility granted to OSA.
- “**FAU**” means Financial Analysis Unit of the *Procuraduría General de la República*.
- “**FIL Decision**” refers to Annex 3 of the Expert Report on Mexican Foreign Investment Law prepared by David Enríquez.
- “**FIL**” means Mexico’s Foreign Investment Law.
- “**IMSS**” means *Instituto Mexicano del Seguro Social*.
- “**Infonavit**” means *Instituto del Fondo Nacional de la Vivienda para los Trabajadores*.
- “**Measures**” means the measures that culminated in the destruction of Claimant’s investment.
- “**Mr. Díaz**” refers to Mr. Martín Díaz, a shareholder of Oceanografía, S.A. de C.V.
- “**Mr. Yáñez**” refers to Mr. Amado Omar Yáñez Osuna, a shareholder of Oceanografía, S.A. de C.V.
- “**OCU**” means Organized Crime Unit.
- “**OIC**” refers to the Internal Control Body (*Órgano Interno de Control*) of Pemex/PEP.
- “**OSA**” means Oceanografía, S.A. de C.V.
- “**OSV**” means offshore service vessel.
- “**Parliament Committee**” refers to *Comisión de Vigilancia de la Cámara de Diputados*.

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- “**Pemex**” means *Petróleos Mexicanos*.
- “**PEP**” means *Pemex Exploración y Producción*.
- “**PFF**” means *Procuraduría Fiscal de la Federación*.
- “**PGR**” means *Procuraduría General de la República*.
- “**SAE**” means *Servicio de Administración y Enajenación de Bienes*.
- “**SEC**” means the U.S. Securities and Exchange Commission.
- “**Senate Committee**” refers to the *Comisión del Senado para la Atención y Seguimiento al Caso de Oceanografía S.A. de C.V.*
- “**SFP**” means *Secretaría de la Función Pública*
- “**UIF**” means Financial Intelligence Unit of the Ministry of Treasury.

Terms used in the attached schedule should, if not defined above or herein, be understood to have the meanings given to them in Claimant's Statement of Claim (**SOC**), unless the context requires otherwise.

None of Claimant's Requests constitutes the acceptance of the premise or validity of any of Respondent's arguments, even where Claimant has assumed the relevance of Respondent's allegations for the purposes of document production.

When providing the documents responsive to Claimant's Requests, please group the documents according to each numbered Request, and please provide a list or index of the documents produced. We would appreciate electronic production of the requested documents, such as through a secure file-transfer server.

If any document is to be withheld or redacted on the ground of privilege (or any other claimed legal basis), Claimant requests that Respondent provide a privilege log identifying the relevant document (including subject, date, addressees) and the basis on which legal privilege is asserted.

If any document or categories of documents are confidential under Mexican Law, Claimant and Claimant's counsel offer to enter into a confidentiality agreement with Respondent, whereby they undertake to keep the documentation confidential, only use it for the purposes of this arbitration, and destroy it once the arbitration or related proceedings are over.

## Claimant's Request for the Production of Documents

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### RESPONDENT'S OBJECTIONS

In accordance with paragraph 18.7 and Annex 1 of the Procedural Order n° 1 (PO1), the Respondent submits its objections to the Claimant's request for the production of documents dated on September 18, 2019.

Pursuant to paragraph 18.5 of PO1, the International Bar Association Rules on Taking Evidence in International dated 29 May 2010 (IBA Rules) may guide the Tribunal and the parties regarding document production in this case.

In addition, paragraph 18.6 of PO1 provides that every request of production of documents shall precisely identify each document, or category of documents, sought and establish its relevance and materiality to the outcome of the case.

### CLAIMANT'S GENERAL COMMENT ON RESPONDENT'S OBJECTIONS

*Through its objections to Claimant's document requests, Respondent has transformed the document production phase of this arbitration into an unnecessarily onerous, costly, and time-consuming process. The most glaring evidence of Respondent's unreasonable approach is the fact that Respondent has objected to 40 out of Claimant's 42 document requests.<sup>1</sup> This alone makes it clear that Respondent set out to object automatically to any document request, for whatever reason, even if its objections are unfounded, unnecessary, and have no chance of success.*

*In addition to the sheer number of overall objections, within each objection, Respondent includes a clearly excessive number of grounds for objecting to a given request. Respondent objected to 22 out of the 42 requests on five separate grounds, and to 14 out of the 42 requests on four separate grounds. It would have been difficult for Claimant to make such excessive and improper document requests even on purpose. Unsurprisingly, Respondent's numerous grounds for objection are boiler-plate, repetitive and frivolous.*

*Respondent's approach has created an undue burden for Claimant (who has had to respond to each and every objection, regardless of its merits), and will create an undue burden for the Tribunal (which will have to digest and decide upon Respondent's litany of*

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<sup>1</sup> Respondent did not object to Requests No. 2 and 42.



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*long-winded objections). Indeed, due to Respondent's unnecessarily onerous objections, this document has reached the unfortunate length of 133 pages.*

*In stark contrast to Respondent, Claimant took a judicious and constructive approach to their document request objections. Claimant agreed to 23 of Respondent's 46 document requests (in whole or in part), and within each of its objections, Claimant was careful to limit the grounds for objection to those that are directly relevant and necessary (illustratively, Claimant never objected to any request on four or more separate grounds). Claimant requests that the Tribunal consider the greatly divergent approaches that the Parties have followed vis-à-vis document production as it considers and rules upon the Parties' document requests.*

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### RESPONDENT'S GENERAL OBJECTION

Claimant's requests are irreconcilable with the IBA Rules on the Taking of Evidence in International Arbitration (IBA Rules). As discussed below, it appears that Claimant has two significant misconceptions: that disclosure in international arbitration is similar to U.S. pre-trial discovery practices, and that Respondent has unlimited power to compel the disclosure of confidential information of other agencies and private companies.

As O'Malley explains:

[Unlike in an Anglo-American-style system], the presumption in arbitration is that a party will establish its case based largely (if not entirely) on the documents within its own possession. Thus, a wide-ranging discovery process that allows a party to substantiate a case by "discovering" the primary evidence to support its arguments is not compatible with this threshold concept. Indeed, it is more accurate to view disclosure under [IBA Rules] article 3.3 as a limited process aimed at filling gaps or providing assistance in covering important, but discreet, issues raised by the factual record, for which sufficient evidence has not been voluntarily supplied by the parties.

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Nathan D. O'Malley, *Rules of Evidence in International Arbitration* 38-39 (2012); *see also* Nigel Blackaby et al., *Redfern and Hunter on International Arbitration* 382 (6th ed. 2015) (noting that the IBA Rules “establish the principle, . . . , that the parties should produce the evidentiary documents on which they rely as the first stage”).

Thus, in this gap-filling exercise, tribunals consider:

[T]he necessity of the requests made to the point the requesting party wishes to support, the relevance and likely merit of the point the requesting party seeks to support, the cost and burden of the request on the Claimant and the question of how the request may be specified so as to both fulfill legitimate requests by a party while not allowing inquiries that are an abuse of process.

*Aguas del Tunari S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction, ¶ 25 (Oct. 21, 2005) (quoting Procedural Order No. 1, ¶ 14 (2003)). More specifically, each request must satisfy five conditions. The request must:

1. sufficiently describe the document;
2. if a category of documents is requested, then provide a “narrow and specific” description of the category;
3. provide a reasoned explanation as to why they are “relevant to the case” and “material to its outcome”;
4. confirm that the documents are not in [the requesting party's] control; and
5. explain why the documents are assumed to be in the control of the other party.

O'Malley, *supra*, at 37.

The Respondent sets forth below certain general objections to which it will refer in each respective request to avoid unnecessary repetitions.

## Claimant's Request for the Production of Documents

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### CLAIMANT'S COMMENT TO RESPONDENT'S GENERAL OBJECTION

*Respondent argues that Claimant has approached document production in this international arbitration as “similar to U.S. pre-trial discovery,” and rather than as a gap-filling exercise. Respondent’s allegations are without merit.*

*Contrary to Respondent’s assertions, Claimant laid out the factual basis of its case in the Statement of Claim, where Claimant produced the documentary evidence on which it relied, including 246 exhibits, 3 witness statements, and 5 expert reports. Thereafter, Procedural Order No. 1 grants both Parties the right “to request a reasonable number of documents... from the other disputing party”<sup>2</sup> as long as they are relevant to the case and material to its outcome, and are in the counterparty’s possession, custody or control, in accordance with IBA Rules 3 and 9. Claimant’s document requests are consistent with these requirements.*

*As it is common—if not universal—in investor-state arbitration, Claimant’s case is based on certain measures adopted by the government. Here, these measures are related to State-driven administrative proceedings (the Unlawful Sanction) and criminal investigations (the Joint Investigation)—to which Claimant was not a party—and State-driven judicial proceedings (Insolvency Proceeding)—to which Claimant is no longer a party. There is an evident and severe asymmetry between the parties vis-à-vis the access to relevant and material information, and the document production phase in the arbitration is an essential tool to address that disparity.*

*Claimant’s requests are specifically tailored to address the main issues in dispute in the arbitration: the interpretation of the Mexican Foreign Investment Law; the contracts with Pemex; the administrative, insolvency and criminal proceedings conducted by the Mexican authorities; and the damages suffered by Claimant. The number of requests made by Claimant is more than reasonable, given the fact that most of the documentation concerning the issues in dispute is exclusively in the State’s possession, custody, or control. Claimant, in fact, has made even fewer document requests than did Respondent (42 as opposed to 46). Claimant’s requests are fully consistent with Procedural Order No. 1 and the IBA Rules.*

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<sup>2</sup> Procedural Order No. 1, November 28, 2018, para. 18.1.

## Claimant's Request for the Production of Documents

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### Respondent's Objection 1: Request irrelevant to the case as well as immaterial to its final outcome

Articles 3(3)(b) and 9(2)(a) of the IBA Rules sets forth important standards that apply to requests for and to decisions on the production of documents: they must be relevant to the case or material to its outcome. Particularly, article 9, paragraph 2, subsection (a) of the IBA Rules sets forth that “[the] Arbitral Tribunal shall, at the request of a Party [...] exclude from evidence or production any Document, statement, oral testimony or inspection for [...]: (a) lack of sufficient relevance to the case or materiality to its outcome.” In *Tidewater v. Venezuela*, the tribunal established that “in deciding whether or not it is necessary to order production of a document, [the Tribunal] should be guided by the tests of relevance and materiality in the IBA Rules [to decide the case]”<sup>3</sup>, and in *Aguas del Tunari v. Bolivia*, the tribunal noted that it would bear “in mind [...] the necessity of the request made to the point the requesting party wishes to support.”<sup>4</sup>

The relevance of the document consists in convincingly demonstrating why document Y will support contention X and demonstrating why the documents are necessary to meet its burden of proof. O’Malley, *supra*, at 56-57.

Furthermore, “when a party alleges that its opponent has failed to provide the evidence for a submission it has made and requests that party to produce the relevant evidence, this request should in most cases be dismissed.” O’Malley, *supra*, at 301 (citing Bernard Hanotiau, “Document Production in International Arbitration: A Tentative Definition of ‘Best Practices’”, in ICC Bulletin, 2006 Special Supplement: Document Production in International Arbitration).

The materiality to the outcome goes to the decision of the Tribunal that the contention sought to be probed in itself would not affect or [ultimately] impact the final award. O’Malley, *supra*, at 58.

As stated in paragraphs 341 and 342 of the Statement of Defense, only two measures that arose from OSA’s attachment and insolvency proceedings were directly related to the Subsidiaries: the attachment of the POSH vessels and the Precautionary Measure issued in the insolvency proceedings. But even those measures were addressed to all of the many parties participating in the OSA proceedings. The Tribunal should bear in mind that the Claimant has attempted to treat itself as the representative of OSA and merge the treatment of

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<sup>3</sup> *Tidewater, Inc. et. al. v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB/10/5, Procedural Order No. 1 on Production of Documents, ¶ 14 (March 29, 2011).

<sup>4</sup> *Aguas del Tunari S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent’s Objections to Jurisdiction, ¶ 25 (Oct. 21, 2005) (quoting Procedural Order No. 1, ¶ 14 (2003)).

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OSA with itself, without any legal or factual basis to do so. The Claimant has not established that it can “stand in the shoes” of OSA in pursuing its claim.

Thus, for example, when the Claimant requests documents related to “measures taken by Mexico against OSA” those requests are irrelevant and immaterial to the outcome of the case. They do not have a sufficient causal link to the Claimant.

### Claimant's Response to General Objection No. 1.

*Respondent argues that (i) “when a party alleges that its opponent has failed to provide the evidence for a submission it has made, and requests that party to produce the relevant evidence, this request should in most cases be dismissed;”<sup>5</sup> and that (ii) only two measures that arose from OSA’s attachment and insolvency proceedings were directly related to the Subsidiaries, so document requests related to other measures should also be dismissed. Respondent’s allegations are without merit.*

*First, Respondent contends that if a party (here, Claimant) alleges that the counterparty (here, Respondent) has made an unsubstantiated claim, the first party (Claimant) cannot request documents to prove the unsubstantiated nature of the second party’s (Respondent’s) claim. This is groundless. Nothing in the IBA Rules suggests that such a limitation exists. The IBA Rules are clear that a tribunal may order production in connection with a document request if “the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome.”<sup>6</sup> Claimant’s document requests all meet that standard.*

*Throughout the SOD, Respondent has made numerous unsubstantiated assertions without submitting any documentary evidence as support. Claimant has submitted document requests hoping to establish whether support for these Respondent’s assertions actually exists. If the requests are granted, Respondent will respond to these document requests in one of two ways. Either:*

- 1) Respondent will not produce any documents that support its assertions. Such a failure would indicate that the given assertion is untrue, or at the very least lacking in any evidentiary foundation— a fact that undoubtedly would be “relevant to the case and material to its outcome”; or*

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<sup>5</sup> See Respondent’s General Objection No. 1 *supra*.

<sup>6</sup> 2010 IBA Rules on the Taking of Evidence in International Arbitration, Article 3(7).

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- 2) *Respondent will produce supporting evidence, which also would be “relevant to the case and material to its outcome.” If Respondent were to produce supporting evidence, it would indicate that Respondent may have been strategically holding back that evidence until its final written pleading on Claimant's claims (i.e. after Claimant's final written pleading). That kind of ploy would substantially prejudice Claimant, who would have no real opportunity to respond to that evidence in writing or to compare the evidence to other contemporaneous documents on the same subject (which Claimant would receive through document production). Compelling the production of such evidence in document production both thwarts any such improper “gaming” of the evidence, and permits Claimant a fair opportunity to respond to the evidence.*

*In either scenario, the document requests in question would generate a response from Respondent that is “relevant to the case and material to its outcome.” It follows that these requests are entirely permissible under the IBA Rules.*

*Second, Respondent contends that only two measures adopted by the Mexican authorities possibly concern POSH and the Subsidiaries, whereas many other measures were addressed to “all of the many parties participating in the OSA proceedings.”<sup>7</sup> Respondent concludes that any document request made in connection with these latter measures should be automatically dismissed. This is without merit.*

*As Claimant will elaborate further in the Reply, there is no rule of international law or investment treaty jurisprudence that suggests that the State's acts must intentionally target a specific investor, or that specific investor alone, in order to be wrongful. Rather, an investor has legal standing to claim under international law when certain internationally wrongful acts impact that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Effect, not intention, is the relevant factor to determine standing. Here, all of the Measures had a direct effect on, and caused serious damages to, POSH and the Subsidiaries. And the documents related to the Measures are relevant and material to ascertain the effect they had on, and the damages they caused to, the Subsidiaries.*

*Even if Respondent's characterizations of the measures were accurate—and they are not—whether the Measures had effect on, and caused damages to the Subsidiaries is a substantive argument that is inherently intertwined with the merits of the case, which Claimant will rebut in the Reply. Even apart from the substantive defects of the argument, due process alone dictates that the*

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<sup>7</sup> See Respondent's General Objection No. 1 *supra*.

## Claimant's Request for the Production of Documents

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***Tribunal should not reject any document request based on this argument raised by Respondent, prior to Claimant having had a chance to properly address it in the Reply.***

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### **Objection 2: Requests for information from other agencies and state enterprises not under control**

Claimant's apparent assumption that all documents in the Mexican territory are somehow in Respondent's possession, custody or control is misguided. Indeed, according to Claimant's summary assertions, Respondent's unfettered power to obtain information extends to all departments, branches, and levels of the Mexican state, broadly defined, as well as state-owned and state-controlled entities. But Claimant fails to acknowledge Respondent's legal inability to compel these entities to provide information for use in these proceedings. *See, e.g.*, Reto Marghitola, *Document Production in International Arbitration* 67 (2015) ("Documents are in the possession, custody or control of a party if the party or an entity of the same group of companies holds the requested documents or has a right to obtain the requested documents."); *cf.* Noah Rubins, *Particularities when Dealing with State Entities, in Guerrilla Tactics in International Arbitration* 4 (Günther Horvath & Stephan Wilske eds., 2013) (listing for states "two useful exceptions to production," including a lack of "control" over "departments, ministries, agencies, and state-owned companies" "other than the one responsible for the arbitration").

Moreover, it is important to note, "Where . . . the documents requested are in the public domain and equally and effectively available to both parties, we believe that there would be no necessity for requiring the other party physically to produce and deliver the documents to the former for inspection and copying." *ADF Group Inc. v. United States of America*, ICSID Case No. ARB(AF)/00/1, Procedural Order No. 3, ¶ 4 (Oct. 4, 2001); *see also* Marghitola, *supra*, at 69 ("Document production requests for public documents unnecessarily harass the other party."). And as a prerequisite, the requesting party must itself attempt to obtain the documents without the other party's assistance. *See Vera-Jo Miller Aryeh v. The Islamic Republic of Iran*, Case Nos. 842, 843, 844, Chamber One, Order (Mar. 6, 1992) ("Having regard to the Respondent's submission and in view of the fact that the record does not demonstrate what specific efforts, if any, the Claimant has made to obtain the documents through other sources, the Tribunal finds the Claimant's request inadmissible.").

## Claimant's Request for the Production of Documents

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### Claimant's Response to General Objection No. 2

*Remarkably, Respondent argues that it does not have the “power to obtain information... [from] all departments, branches, and levels of the Mexican state... as well as state-owned and state-controlled entities” and that there would be a “legal inability to compel these entities” to produce relevant documents. Judging by its objections, it would seem that Respondent has no control over any single department, branch or entity of the Mexican State. These surprising assertions are baseless and fundamentally incompatible with Respondent’s role under the Treaty and in this arbitration.*

*According to the international law rules of attribution, Respondent—the United Mexican States—represents and must respond to claims based on the actions of any organ of the national, state, or local government, or agents thereof, or entities acting at its direction; all of those are actions “of” the State. Correspondingly, any document in the possession of the State or state-controlled entities is deemed to be in the possession of the State. Respondent’s allegations that it cannot “compel” its very own State entities to produce documents is wholly groundless, since Respondent already is deemed to be in possession of those documents. Respondent does not specify the alleged “legal inability” that would prevent Respondent from compelling its own entities to produce relevant documents, because no such inability exists. Even if it did exist, however, this would be a domestic law issue, and it is well-established that Respondent may not plead its own domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.*

*The most glaring evidence of Respondent’s unsubtle strategy is that, while arguing for purposes of document production that it does not have access to certain records, Respondent has already demonstrated that it has access to the very same records by using documents obtained therefrom as exhibits to the SOD, when it believes they serve its interests. For example, Respondent has filed as its exhibits documents obtained from court records (Exhibits R-50, R-53, R-54, R-55, R-57, R-58), from PGR’s records (Exhibits R-33, R-42, R-51, and R-52), and from Pemex’s records (Exhibits R-71 to R-78).*

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## Claimant's Request for the Production of Documents

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### Objection 3: Claimant requests confidential information of criminal and administrative investigations of unrelated persons

Claimant's requests likewise sidestep the issue of confidentiality of investigations, which preclude the investigating authorities from divulging information about past or ongoing investigations in Mexico. See, e.g., *Código Nacional de Procedimientos Penales* [National Code of Criminal Procedures], art. 218<sup>8</sup>; *Ley Federal de Transparencia y Acceso a la Información Pública* [Federal Law on Transparency and Access to Public Information] articles 110<sup>9</sup> and 113<sup>10</sup>; *Ley General de Transparencia y Acceso a la Información Pública* [General Law on Transparency and Access to Public Information] articles 113 and 116.

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<sup>8</sup> *Artículo 218. Reserva de los actos de investigación* Los registros de la investigación, así como todos los documentos, independientemente de su contenido o naturaleza, los objetos, los registros de voz e imágenes o cosas que le estén relacionados, son estrictamente reservados, por lo que únicamente las partes, podrán tener acceso a los mismos, con las limitaciones establecidas en este Código y demás disposiciones aplicables.

[...]

<sup>9</sup> *Artículo 110. Conforme a lo dispuesto por el artículo 113 de la Ley General, como información reservada podrá clasificarse aquella cuya publicación:* VII. *Obstruya la prevención o persecución de los delitos; [...]* XI. *Vulnere la conducción de los Expedientes judiciales o de los procedimientos administrativos seguidos en forma de juicio, en tanto no hayan causado estado; XII. Se encuentre contenida dentro de las investigaciones de hechos que la ley señale como delitos y se tramiten ante el Ministerio Público, y XIII. Las que por disposición expresa de una ley tengan tal carácter, siempre que sean acordes con las bases, principios y disposiciones establecidos en esta Ley y no la contravengan; así como las previstas en tratados internacionales.*

<sup>10</sup> *Artículo 113. Se considera información confidencial: I. La que contiene datos personales concernientes a una persona física identificada o identificable; II. Los secretos bancario, fiduciario, industrial, comercial, fiscal, bursátil y postal, cuya titularidad corresponda a particulares, sujetos de derecho internacional o a sujetos obligados cuando no involucren el ejercicio de recursos públicos, y III. Aquella que presenten los particulares a los sujetos obligados, siempre que tengan el derecho a ello, de conformidad con lo dispuesto por las leyes o los tratados internacionales.*

*La información confidencial no estará sujeta a temporalidad alguna y sólo podrán tener acceso a ella los titulares de la misma, sus representantes y los Servidores Públicos facultados para ello.*

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The disclosure of such information may lead to sanctions to government officials under Articles 206 (IV) of the LGTAIP<sup>11</sup>, and 186 (IV) of the LFTAIP.<sup>12</sup> Further, pursuant to articles 210<sup>13</sup>, 214 section IV<sup>14</sup> and 225 section XXVIII<sup>15</sup>; of the *Código Penal Federal* [Federal Criminal Code] the disclosure of reserved information or documents related to a criminal investigation is considered a crime.

The protection of the confidentiality of files related to the criminal and administrative investigations is not disproportionate or unreasonable, since the dissemination of information could seriously affect the prosecution and the administration of justice, as well as human rights protected by international treaties signed by Mexico, such as the American Convention on Human Rights (i.e. Right to a Fair Trial and Right to Privacy), because the files contain personal information of persons who are unrelated to POSH and its Subsidiaries.

Similarly, the various government entities identified by Claimant may object to production on “grounds of special political or institutional sensitivity . . . that the Arbitral Tribunal determines to be compelling.” IBA Rules art. 9.2(f); *see generally* Marghitola, *supra*, at 98 (“National laws often bind governments and their administrations to keep their internal communication secrets.”). Such

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<sup>11</sup> *Artículo 206. La Ley Federal y de las Entidades Federativas, contemplarán como causas de sanción por incumplimiento de las obligaciones establecidas en la materia de la presente Ley, al menos las siguientes: IV. Usar, sustraer, divulgar, ocultar, alterar, mutilar, destruir o inutilizar, total o parcialmente, sin causa legítima, conforme a las facultades correspondientes, la información que se encuentre bajo la custodia de los sujetos obligados y de sus Servidores Públicos o a la cual tengan acceso o conocimiento con motivo de su empleo, cargo o comisión;*

<sup>12</sup> *Artículo 186. Serán causas de sanción por incumplimiento de las obligaciones establecidas en la materia de la presente Ley, de conformidad con el Capítulo II del Título Noveno de la Ley General, las siguientes conductas: IV. Usar, sustraer, divulgar, ocultar, alterar, mutilar, destruir o inutilizar, total o parcialmente, sin causa legítima, conforme a las facultades correspondientes, la información que se encuentre bajo la custodia de los sujetos obligados y de sus Servidores Públicos o a la cual tengan acceso o conocimiento con motivo de su empleo, cargo o comisión;*

<sup>13</sup> *Artículo 210.- Se impondrán de treinta a doscientas jornadas de trabajo en favor de la comunidad, al que sin justa causa, con perjuicio de alguien y sin consentimiento del que pueda resultar perjudicado, revele algún secreto o comunicación reservada que conoce o ha recibido con motivo de su empleo, cargo o puesto.*

<sup>14</sup> *Artículo 214.- Comete el delito de ejercicio ilícito de servicio público, el servidor público que: IV. Por sí o por interpósita persona, sustraiga, destruya, oculte, utilice, o inutilice ilícitamente información o documentación que se encuentre bajo su custodia o a la cual tenga acceso, o de la que tenga conocimiento en virtud de su empleo, cargo o comisión.*

<sup>15</sup> *Artículo 225.-Son delitos contra la administración de justicia, cometidos por servidores públicos los siguientes: XXVIII.-Dar a conocer a quien no tenga derecho, documentos, constancias o información que obren en una carpeta de investigación o en un proceso penal y que por disposición de la ley o resolución de la autoridad judicial, sean reservados o confidenciales;*

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objection does not necessarily require a formal “secret” classification. See *Merrill & Ring Forestry L.P. v. Government of Canada*, NAFTA/UNCITRAL/ICSID, Decision of the Tribunal on Production of Documents, ¶ 18 (July 18, 2008) (“Even if such information is not formally classified as ‘secret,’ the purpose of the privilege is quite evidently to prevent disclosure of documents containing information which is sensitive in nature.”); see also Marghitola, *supra*, at 98 (adding that “‘special political or institutional sensitivity’ is broader than the term ‘state secret’”).

### Claimant's Response to General Objection No. 3

*Respondent argues that producing information in connection with past or ongoing government investigations is contrary to Mexican Law, under which that information would be confidential, and contrary to the IBA Rules, under which it would be politically sensitive. These allegations are without merit and do not constitute a valid objection for at least the following reasons.*

*First, Respondent's blanket, overarching invocation of Mexican law as a defense to producing documents is inconsistent with the international law maxim that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.*

*Respondent's efforts to shelter behind domestic law in order to use public officials' actions and documents against Claimant while at the same time denying Claimant access to the rest of those public officials' records cannot be countenanced. Moreover, it is clear that Respondent does have the power to obtain documents from those investigations and to disclose them as it likes. Respondent expressly acknowledges here that its criminal expert, Mr. Paz, “had access to... documents of the criminal investigations after he signed a non-disclosure agreement,”<sup>16</sup> which disclosure, according to Respondent's own argument here, would have violated Mexican Law. Evidently, then, whatever confidentiality rules that Respondent invokes to resist this request are not, in reality, a constraint on its access to, use, or disclosure of such documents. In any case, Procedural Order No. 3 provides that the documents produced in this arbitration will not be made public; and Claimant has further stated, and reiterates herein, that “If any document or categories of documents are confidential under Mexican Law, Claimant and Claimant's counsel offer to enter into a confidentiality agreement with Respondent, whereby they undertake to keep the documentation confidential, only use it for the purposes of this arbitration, and destroy it once the arbitration or related proceedings are over.”<sup>17</sup> Respondent's objection is,*

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<sup>16</sup> Respondent's Objections to Claimant's Document Request no. 11.

<sup>17</sup> Page 1 of this Document Request.

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*therefore, unjustified. More comprehensively, Respondent's grant of access to its expert proves that its broad claims of confidentiality are false or, at the very least, invalid here.*

***Second**, Respondent's allegation that the documents would be of "special political or institutional sensitivity" is vague and contradictory with its position in the arbitration:*

- 1) Respondent does not specify any reason why the requested documents would be politically sensitive. Respondent's objection is, in fact, so vague that Claimant is unable to respond in any meaningful way. An objection based on "special political or institutional sensitivity" (SPIS) under Article 9(2)(f) of the IBA Rules should be made out on a document-by-document basis in a privilege log so that the Tribunal may "determine the admissibility, relevance, materiality and weight of evidence" (IBA Rules, Article 9(1)). A party invoking SPIS under Article 9(2)(f) must justify the assertion by sufficiently "compelling" grounds to exclude production of responsive documents. Respondent has failed to do so.*
- 2) Respondent's argument is entirely contradictory with its position in this arbitration. Claimant has asserted that the Peña Nieto administration led a politically motivated campaign to sever OSA's ties with Pemex, eventually leading to OSA's demise and the destruction of Claimant's investment. Respondent states, in contrast, that OSA's poor financial condition was the cause of its insolvency, and that the administrative, criminal and insolvency proceedings were duly justified and properly conducted. Respondent argues, in sum, that there were no political motivations behind the government's actions. Thus, it contradicts itself when it simultaneously claims, inexplicably, that the documents requested by Claimant would be of special political sensitivity. There are only two possible explanations for this contradiction: (i) the objection is completely groundless and a further attempt to shield access to relevant information; or, (ii) if the objection is grounded, it represents Respondent's acknowledgement that the Measures were indeed politically motivated.*

\* \* \* \* \*

### **Objection 4: Claimant requests confidential commercial information of unrelated companies**

Respondent has requested confidential commercial information precluded from production by IBA Rules Article 9.2(e), which provides for exclusion from production on the "grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling." In fact, "as a general rule, it is customary within international arbitration for consideration to be given to the legitimate

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need to keep sensitive business or technical information secret.” O’Malley, *supra*, at 301. As one treatise explains: “[Companies] cannot be expected to produce [their secrets] even in a confidential arbitration procedure and independently from confidentiality measures that would be taken.” Marghitola, *supra*, at 93-94. Accordingly, a tribunal may, for instance, deny:

[R]equests for documents that relate[] to the financial status of a company, including bank statements and also tax returns, for being unduly invasive. Rulings of this kind may seem reasonable when applied to evidence that reveals the financial inner workings of a company since the repercussions for a party if such information were to be improperly disclosed are potentially great. Such reasoning would also extend to formulas, know-how, trade secrets or other proprietary information which firms go to great lengths to keep confidential.

O’Malley, *supra*, at 301 (citing ICC Case No. 1000, Procedural Order No. 8 (2006) (unpublished)).

### Claimant's Response to General Objection No. 4:

*Respondent argues that Claimant “has requested confidential commercial information precluded from production by IBA Rules Article 9.2(e)” but makes no attempt to specify, in any way, (i) the allegedly confidential documents; or (ii) the allegedly confidential information included in the documents; and (iii) the rule or legal obligation that would establish the confidential nature of that information under international law. Respondent’s objection is so vague that Claimant is unable to respond in any meaningful way.*

*Even if it were sufficiently precise—which is not the case—Respondent’s objection would be groundless for at least the following reasons: (i) Procedural Order No. 3 provides that any and all documents used in these proceedings shall not be made public; (ii) Claimant and Claimant’s counsel have offered to sign a non-disclosure agreement in connection with potential confidential information produced by Respondent; (iii) most of the documents requested by Claimant, and data contained therein, is “historic” and, given the frequent changes in the offshore marine services market, this old, outdated information sought in this arbitration has no current commercial value; and (iv) Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation.*

\* \* \* \* \*

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### Objection 5: Requests not sufficiently precise

Article 3.3 of the IBA Rules requires that requests for documents include a sufficiently detailed description of the requested document. Claimant's requests fail to comply with these requirements. Several Claimant's requests follow the formula: “[a]ll contracts” “[a]ll documents” “[a]ll communications” “[t]he complete case file”. Most of the requests omitted to specify the time period and / or to limit the requests.

The following examples illustrate the sweeping nature of Claimant's requests:

“Any document, draft, memoranda or resolution of any type—administrative, judicial or otherwise—issued by the State, . . . , in connection with . . . .” Claimant Request No. 1.

“Copies of contracts entered into by Pemex/PEP with offshore service vessel (OSV) companies from 2014 to date.” Claimant Request No. 6.

“Copies of all documents, background documentation and work-product, including reports, minutes or memoranda, analyzed, that were received, prepared or issued by [a Senate Committee].” Claimant Request No. 7.

“The complete file of the investigation of the Public Prosecutors Office . . . in connection with . . . .” Claimant Request No. 8.

“The complete file of any and all investigations initiated by the Government against SAE in connection with OSA, whether conducted by . . . or any other Government entity.” Claimant Request No. 32.

IBA Rules Article 3.3 sets out the applicable definition of “documents”: “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.” In international arbitration, it is not appropriate to name every conceivable type of document, and it is insufficient to state that the claimant believes that certain documents exist:

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[A] document production request that begins with “All memoranda, minutes and correspondence . . .” is typically considered to be too broad in arbitration. In addition, a request for all documents relating to a specific contract or for all minutes of the board meetings for the past three years generally does not satisfy the requirement of specificity. Similarly, . . . [a] request for “all Field Site Instruction for Areas [A], [B], [C] and [D]” [has been held] to be insufficiently specific.

Marghitola, *supra*, at 41. Consequently, Claimant's attempt to broaden the definition of documents by references to “records” and “file[s]” and the use of various other terms impermissibly exceeds the definition of documents contained in the IBA Rules and lacks the requisite specificity required by those rules. Claimant's requests are the antithesis of a "category of precise and specific requested for documents". Likewise, they are equivalent to the practice of requiring the “discovery” of documents in accordance with common law civil litigation procedures, contrary to the intent and language of the IBA Rules that reflect the practice of producing specific documents in arbitration international.

Moreover, where, as here, “[r]equests for disclosure . . . look to obtain ‘all documents’ within a vague time frame [or no time frame at all], ‘relating’ to a broad topic, [such requests] will in most cases be judged by tribunals to be too broad or in violation of the ‘narrow and specific’ standard.” O'Malley, *supra*, at 41 (citing, *inter alia*, *Waste Management Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/00/3, Final Award, ¶ 21 (Apr. 30, 2004) (ruling that a request for all invoices issued over a period of two years was “prima facie” too burdensome)).

In particular, Claimant fails to explain why documents outside of the governing Mexico-Singapore BIT's three-year limitations period, Article 11.8, are “reasonably tailored” to comply with IBA Rules Article 3.3(a)(ii). And even for request of documents that fall within the three-year period, the timeframe alone will not be sufficient to show relevance and materiality. Rather, Claimant's request must comply with all aspects of IBA Rules Article 3.3, thus each “request should seek the disclosure of documents that relate to well-defined issues in the arbitration, not a general contention or broad description of a claim.” O'Malley, *supra*, at 40.

In addition, as pointed out in the comments to the IBA Rules 2010:

*The Working Party was able to reach agreement on certain principles governing document production because practices in international arbitration can be, and have been, harmonised to a large extent. The Working Party was guided by several principles:*

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1. Expansive American- or English-style discovery is generally inappropriate in international arbitration. Rather, requests for documents to be produced should be carefully tailored to issues that are relevant and material to the determination of the case.

[...]

*Article 3.3 provides certain requirements regarding the content of a request to produce, which are generally designed to have the request specifically describe the documents being sought. Article 3.3 is designed to prevent a broad "fishing expedition", while at the same time permitting parties to request documents that can be identified with reasonable specificity and which can be shown to be relevant to the case and material to its outcome. This specificity of the information required by Article 3.3 is also designed to help the receiving party decide whether it wants to comply with the request voluntarily (as provided in Article 3.4), or if it wants to raise objections (Article 3.5). The specificity of the request is also designed to make it possible for the arbitral tribunal to decide, if there is an objection to the request to produce, whether or not to grant the request pursuant to the standards set forth in Article 3.7.*

Further, Claimant's requests exhibit the "popular ploy to circumvent the requirement for a narrow and specific category" by "divid[ing] a request for a broad category of documents into numerous sub-requests for narrow categories of documents." Marghitola, *supra*, at 41. This, is an ill-informed effort to "disguise[] common law-style requests [that] should be treated as requests for broad categories of documents and therefore be dismissed." *Id.*

Finally, requests for categories of documents must articulate a "substantial nexus" to "the likely materiality of such documents to the outcome of the case." *Glamis Gold Ltd. v United States of America*, UNCITRAL, Decision on Objections to Document Production, ¶¶ 26-28 (July 20, 2005) (denying a request for documents "wherever located" as the "geographically wide ranging broad request" lacked that kind of nexus); *see also* Blackaby et al., *supra*, at 382 (noting that the IBA Rules "also enable[] arbitral tribunals to deny document requests where, although the requested documents would generally be relevant, they consider that their production will not affect the outcome of the proceedings"). Claimant's requests are particularly deficient in this regard because virtually all of their requests relate to treatment of persons and parties unrelated to the Claimant.



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### Claimant's Response to General Objection No. 5

*Respondent argues that Claimant's document requests lack specificity, and that the IBA Rules do not permit the following: (i) requests containing "[a]ll contracts" "[a]ll documents" "[a]ll communications" "[t]he complete case file;" (ii) references to "records" or "file[s]," which would "exceed the definition of documents contained in the IBA Rules"; and (iii) "divid[ing] a request for a broad category of documents into numerous sub-requests for narrow categories of documents." This is without merit.*

*Claimant has made specific requests of narrow categories of documents, in an attempt to facilitate their search and production by Respondent. Respondent has never claimed not to understand the requests, or not to be able to identify the appropriate parameters for the search. Respondent makes empty assertions with the sole purpose of shielding access to relevant documentation.*

*First, requests for "all contracts," "all documents" or "complete file" made by Claimant are always narrowed to a very specific and targeted topic,<sup>18</sup> and are generally followed by a list of sample documents, in an attempt to facilitate the search and production by Respondent (e.g., all documents, including reports, minutes, memoranda...).<sup>19</sup> Claimant does not attempt to divide broad categories*

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<sup>18</sup> For instance, Request No. 3 concerns "all contracts entered into by and between (i) Oceanografía, S.A (OSA) on one side; and (ii) Petróleos Mexicanos (Pemex) or any of its affiliates, including Pemex Exploración y Producción (PEP) on the other side for offshore marine services." The request specifies the parties to the contracts, and the purpose of those contracts. The request is specific, easy to understand and the requested documents are easy to identify and produce.

Also, Request No. 6 concerns the "complete file of the investigation launched by the Comisión de Vigilancia de la Cámara de Diputados (Parliament Committee) in connection with OSA, including all background documentation, reports, minutes or memoranda, that were received, analyzed, prepared or issued by the Parliament Committee). The request is narrow and focused, and includes a list of sample documents to facilitate the search and production of documents by Respondent.

<sup>19</sup> For instance, Request No. 7 concerns "Copies of all documents, background documentation and work-product, *including* reports, minutes or memoranda, analyzed, that were received, prepared or issued by the *Comisión del Senado para la Atención y Seguimiento al Caso de Oceanografía S.A. de C.V.* (the **Senate Committee**) that are not publicly accessible at: <http://www.senado.gob.mx/comisiones/oceanografia/>

Also, Request No. 10 concerns "The complete file of the administrative proceeding that led to the sanction imposed by the Secretaría de la Función Pública (SFP) on Emilio Lozoya, Director General of Pemex at the time of the measures that culminated in the destruction of Claimant's investment (the Measures), as well as the complete file of any criminal investigations launched against him by the State in connection with his work at Pemex, *including the following*: (i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation; (ii) all memoranda or reports discussing evidence collected in the investigation; (iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;

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*into narrow subcategories, as claimed by Respondent, but to provide guidance and facilitate Respondent's task. Respondent itself has repeatedly requested "internal documents," which Respondent defined as "any Document, such as notes, minutes, memoranda, opinions and reports, prepared by Claimant senior management, directors, shareholders or any third party at their behest (e.g., external advisors/consultants)." The only difference between Claimant's and Respondent's approach is that Respondent has included the list of sample documents in the definition of the term "internal document."*

*Second, Claimant's reference to "records" or "files" does not broaden the definition of "documents" included in the IBA Rules, which is as broad as possibly conceivable, and which encompasses "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."*

*Respondent's objections only seek to shield access to documentation that is relevant to this arbitration and material to its outcome.*

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(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes. The request is narrow and focused, and includes a list of sample documents to facilitate the search and production of documents by Respondent.

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### A) FOREIGN INVESTEMENT LAW

<b>Request</b>	<b>1</b>
<b>Document / Category of Documents:</b>	<p>Any document, draft, memoranda or resolution of any type —administrative, judicial or otherwise— issued by the State, including the Ministry of Economy or the Directorate General of Foreign Investment, in connection with the application of and/or exceptions to the restrictions provided under Article 7 of the Foreign Investment Law (<b>FIL</b>).</p> <p>In particular, but not limited to, any resolution of any type —administrative, judicial or otherwise— addressing whether shipping owning companies that do not operate vessels, but merely bareboat charter or lease them to a third party, are affected by foreign ownership restrictions provided under Article 7 of the Mexican FIL, including, but not limited to, decisions analogous to that produced as Annex 3 of the Expert Report prepared by David Enríquez on Mexican Foreign Investment Law (the <b>FIL Decision</b>).</p>
<b>Justification:</b>	<p>Claimant has established that the Mexican FIL does not apply to ship-owning companies whose business consists of bareboat chartering vessels to a third party, without retaining operation of such vessels. Claimant has produced an expert report and the FIL Decision issued by the State, confirming this point (Oficio No. DAJCNIE.315.14.292). Respondent has indirectly questioned this assertion, arguing that Claimant would have violated the FIL (SOD, ¶¶ 542-548) allegedly affecting the Tribunal's jurisdiction, but without producing any evidence in support of these allegations.</p> <p>We understand that Mexico has issued resolutions analogous to the FIL Decision, which are relevant and material to the issue of whether Claimant violated the FIL or not. This will permit the Tribunal to examine the veracity of Respondent's allegations and to properly assess its jurisdiction to hear the case. Based on advice by local counsel, we understand that any public process involving a request to the Government to release these documents under Mexican Law would not guarantee their final and complete disclosure and, in any case, could take several months.</p>

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<b>Objections:</b>	<p>The Respondent objects based on the lack of specificity (General Objection 5). A request for “Any document, draft, memoranda or resolution of any type” is overly broad and vague. Further, Claimant does not identify the presumed date or time frame within which the documents are thought to have been established.</p> <p>Claimant has Mexican counsel and therefore can perform its own legal research.</p>
<b>Reply:</b>	<p>Claimant's request does not lack specificity (Claimant's Response to General Objection No. 5). The scope of the request is narrowly tailored to cover only documents issued by the State in connection with the interpretation, application of, and/or exceptions to, the restrictions provided under Article 7 of the Foreign Investment Law (<b>FIL</b>). Claimant also clarifies and facilitates Respondent's search by citing the FIL Decision as an example.</p> <p>Respondent directs Claimant to perform its own research. Claimant, however, has already performed its own search, which is illustrated by the fact that Claimant has produced the FIL Decision. As previously noted, based on advice by local counsel, Claimant understand that any further public process involving a request to the Government to release these documents under Mexican Law would not guarantee their final and complete disclosure and, in any case, could take several months. Respondent has not disputed this assertion.</p> <p>In the interest of good faith, Claimant would be willing to limit the search to documents issued prior to August 2011, when the joint-venture company GOSH was incorporated, and in connection with shipping companies.</p>
<b>Tribunal's decision:</b>	<p>The Respondent to produce final documents dated before 2011 showing the grounds for questioning the Claimants' assertion based on the FIL Decision (Oficio No. DAJCNIE.315.14.292).</p>

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<b>Request</b>	2
<b>Document / Category of Documents:</b>	Copy of the complete file of the Mexican National Registry of Foreign Investment for GOSH.
<b>Justification:</b>	<p>Claimant asserts that it made its investment in accordance with Mexican Law. Respondent argues that GOSH violated Mexican law because it did not report Mayan's 49% ownership of GOSH (SOD, ¶ 37) and it therefore surpassed FIL's ownership restrictions (SOD, ¶¶ 37, 542 et ss.), which would affect the Tribunal's jurisdiction. Respondent, however, fails to produce the complete file of the Mexican National Registry in support of these allegations.</p> <p>These documents are relevant and material to ascertain whether Respondent registered the correct ownership of GOSH in the Mexican National Registry and whether the investment was made in accordance with Mexican Law, thereby testing the veracity of Respondent's assertion and permitting the Tribunal to properly assess its jurisdiction to hear the case.</p>
<b>Objections:</b>	<p>Under Mexican law, GOSH was obliged to provide information to the Mexican National Registry and therefore Claimant should have a copy of the complete file of its subsidiary.</p> <p>Nevertheless, based on the principle of good faith, the Respondent is providing the requested documents.</p>
<b>Reply:</b>	
<b>Tribunal's decision:</b>	No need for Tribunal's action.

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**B) PEMEX**

<b>Request</b>	<b>3</b>
<b>Document / Category of Documents:</b>	<p>Copies of all contracts entered into by and between (i) Oceanografía, S.A (<b>OSA</b>) on one side; and (ii) Petróleos Mexicanos (<b>Pemex</b>) or any of its affiliates, including Pemex Exploración y Producción (<b>PEP</b>) on the other side for offshore marine services.</p> <p>Scope: up to February 10, 2014, date of the Unlawful Sanction.</p>
<b>Justification:</b>	<p>Claimant has established that OSA and Pemex had a long-standing and stable relationship and entered into numerous contracts over the years, and that Pemex had a consistent practice of renewing the contracts entered with OSA, and/or awarding new contracts for the same vessels. Based on that practice, Claimant asserts that it had a reasonable expectation that the OSA-Pemex contracts associated with the Subsidiaries' vessels would also be renewed, or new contracts would be awarded to the same vessels. Respondent admits that Pemex had had 106 contracts with OSA (SOD, ¶ 123), but denies this consistent practice by Pemex and rejects any expectation by Claimant of establishing a long relationship with Pemex (SOD, ¶¶ 478 et ss.). Respondent, however, merely produces a list of OSA-Pemex contracts—which does not specify the vessels associated with the contracts (R-19)—, and fails to produce the substantive terms of the contracts, which would permit an assessment of whether they were in fact comparable, whether they were renewals, etc. In fact, Respondent only produces documentation involving Pemex when it believes it is favorable to its position in the arbitration—e.g., Respondent does produce the Termination Notices of the OSA-Pemex contracts associated with the Subsidiaries' vessels (R-71 to R-78).</p> <p>The complete sequence of contracts between OSA and Pemex are relevant and material to the issue of whether Pemex had a long-term relationship with OSA and awarded numerous contracts to the same vessels and, therefore, whether Claimant had a legitimate expectation that this would continue in the future. This will permit the Tribunal to assess whether Claimant had legitimate expectations, and whether Mexico violated the obligations set forth in the Agreement between the United Mexican States and the Government of the Republic of Singapore for the Reciprocal Promotion and Protection of Investments (<b>Treaty</b>), causing damages to Claimant.</p>

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	<p>These contracts are not accessible via Pemex's online webpage. Based on advice by local counsel, we understand that any public process involving a request to the Government to release these contracts under Mexican Law would not guarantee their final and complete disclosure and, in any case, could take several months.</p>
<p><b>Objections:</b></p>	<p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). The Claimant states that "OSA and Pemex had a long-standing and stable relationship and entered into numerous contracts over the years, and that Pemex had a consistent practice <u>of renewing the contracts entered with OSA, and/or awarding new contracts for the same vessels</u>" but without showing <i>prima facie</i> the existence of any contract in which this "practice <u>of renewing the contracts (...) for the same vessels</u>" referred. Further, what the Claimant argues is irrelevant because OSA is not a disputing party in this arbitration. The Claimant does not explain the reasons for requiring contracts executed by Pemex with third parties before the alleged treaty violation; indeed, this request extends beyond the 3-year limitation period in Article 11.8 of the Mexico-Singapore BIT.</p> <p>Second, the Respondent objects to the request on the basis that the information is from a state enterprise not under control, as stated in General Objection 2.</p> <p>Third, the Respondent objects to the request on the grounds that the requested information is confidential commercial information as explained in General Objection 4. The requested contracts were executed by Pemex with third parties, and should be expected to contain confidential information of those third parties, <i>inter alia</i>, sales prices, costs, technical aspects, expenses, services, goods, distribution, among others. Moreover, Article 82 of the Industrial Property Law (<i>Ley de la Propiedad Industrial</i>) prohibits the disclosure of that information to the public or third parties and is protected in terms of Articles 113 (II) of the Law on Transparency and Access to Public Information (LFTAIP).<sup>20</sup> In addition, it is important to note that POM, one of Claimant's subsidiaries,</p>

<sup>20</sup> *Ley de la Propiedad Industrial. Artículo 82.-Se considera secreto industrial a toda información de aplicación industrial o comercial que guarde una persona física o moral con carácter confidencial, que le signifique obtener o mantener una ventaja competitiva o económica frente a terceros en la realización de actividades económicas y respecto de la cual haya adoptado los medios o sistemas suficientes para preservar su confidencialidad y el acceso restringido a la misma.*

*Artículo 113. Se considera información confidencial: [...] II. Los secretos bancario, fiduciario, industrial, comercial, fiscal, bursátil y postal, cuya titularidad corresponda a particulares, sujetos de derecho internacional o a sujetos obligados cuando no involucren el ejercicio de recursos públicos [...]*

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	<p>is currently a supplier of Pemex and continues to provide offshore marine services in Mexico. It would be especially inappropriate to deliver competitors' information to the Claimant.</p> <p>Fourth, the Respondent objects to the request on the ground that it is an unreasonable burden in accordance with 9(2)(c) of the IBA Rules. Pemex has executed thousands of contracts with third parties through itself and at least five subsidiaries. There would be no practical manner in which to conduct a search for the requested contracts involving offshore marine services, especially going back to the creation of Pemex and its subsidiaries. The Claimant's request is a pure "fishing expedition".</p> <p>Fifth, the Respondent objects based on the lack of specificity (General Objection 5). A request for "all contracts" is overly broad and vague.</p>
<b>Reply:</b>	<p>Respondent objects on five separate grounds, each of which is without any basis in fact or law, as explained next.</p> <p><i>First</i>, the requested documents are relevant to the case and material to its outcome. Claimant has established that OSA and Pemex had a long-standing and stable relationship (which Respondent has not disputed), and that Pemex had a consistent practice of renewing the contracts entered into with OSA, and/or awarding new contracts for the same vessels. Contrary to Respondent's allegations, Claimant has provided evidence of this consistent practice. Claimant's Industry Expert, Ms. Jean Richards confirmed that "Under normal circumstances and, given the low age of the vessels, I consider that PEMEX would have renewed the existing contracts [with OSA]... As with most government entities, long-term relationships are valued and the initial costs of mobilization and modifications to suit a particular market argue strongly against swopping between owning partners. As a result, PEMEX's consistent business practices show that it generally continues to work with known and trusted operators and owners with Mexican flag tonnage." (Expert Report by Jean Richards, para. 2.6). The requested documents are relevant and material to assess whether this statement, invoked by Claimant and now denied by Respondent, is accurate or not. Given that Respondent denies the proposition, it cannot object to disclosing the documents on which its denial is (or rather, should be) founded.</p> <p>In addition, the fact that OSA is not a party to the arbitration does not render the contracts entered into by Pemex and OSA any less relevant. As noted in Claimant's Response to General Objection No. 1, and as will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain</p>



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internationally wrongful acts *impact* that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess such internationally wrongful acts. In this case, Claimant's legitimate expectations relied on the contracts entered into between Pemex and OSA. These contracts are, therefore, relevant and material to assess whether POSH's expectations were legitimate or not.

Finally, the relevance and materiality of the requested documents bears no relation with the three-year statute of limitations provided for in the Treaty. The statute of limitations represents the period of time during which Claimant may file its claim under the Treaty. Relevance and materiality are requirements for the production of documents under each party's control under the IBA Rules. Documents issued or prepared beyond three years prior to the commencement of the arbitration can obviously be relevant to the arbitration and material to its outcome, provided that they assist the Tribunal in resolving the issues in dispute.

*Second*, the requested documents are in Respondent's possession, custody or control (Claimant's Response to General Objection No. 2). According to the international law rules of attribution, Mexico represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent from producing the documents. Even if that inability existed—which is not the case—this would be a domestic law issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. The most glaring evidence that Respondent has access to Pemex records is that it has used documents obtained from these records as exhibits, when it believes they serve its interests (see e.g. Exhibits R-71 to R-78).

*Third*, Respondent's objection on the ground of confidential commercial information is groundless for several reasons (Claimant's Response to General Objection No. 4): (i) Procedural Order No. 3 provides that any and all documents used in these proceedings will not be made public; (ii) Claimant and Claimant's counsel have offered to sign a confidentiality agreement in connection with potential confidential information produced by Respondent; (iii) the documents requested by Claimant, and data contained therein, is "historic" (prior to February 2014); given the frequent changes in the offshore marine services market, this old, outdated information sought in this arbitration would have no current commercial value, and would provide no competitive or

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	<p>economic advantage; and (iv) Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned with confidentiality issues, but rather with improperly shielding access to relevant documentation. Claimant is open to discuss reasonable redactions with Respondent.</p> <p><i>Fourth</i>, Respondent argues that the search for the documents would be unreasonably burdensome because “Pemex [would have] executed <i>thousands of contracts with third parties</i> through itself and at least five subsidiaries.” This objection is not consistent with the request. Claimant has only requested the contracts entered into by and between Pemex (and affiliates), and OSA specifically (<i>not any other third party</i>) for offshore marine services. The request is specific and provides the appropriate parameters to narrow the search.</p> <p><i>Fifth</i>, this request does not lack specificity (Claimant’s Response to General Objection No. 5). The request for “all contracts” is narrowed to a very specific topic (offshore marine services) and to very specific parties (OSA and Pemex), to facilitate Respondent’s search and production of documents.</p>
<b>Tribunal’s decision:</b>	Objection rejected. The Respondent to produce the 106 contracts of PEMEX with OSA.

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<b>Request</b>	<b>4</b>
<b>Document / Category of Documents:</b>	<p>Copies of the sequence of offshore marine services contracts entered into by and between Pemex/PEP and any of its affiliates on one side, and other marine services companies on the other sides, associated with the same vessels, including extensions, renewals or new contracts for the same vessels and similar services.</p> <p>Scope: Since 2008, at least 5 years prior to the valuation date, up to the present (and continuing forward during the pendency of these proceedings).</p>
<b>Justification:</b>	<p>Claimant has established that Pemex had long-standing and stable relationships with marine services operators, and had a consistent practice of renewing contracts entered into with them, and/or awarding new contracts to the same vessels. Based on that practice, Claimant argues that it had a reasonable expectation that the OSA-Pemex contracts associated with the Subsidiaries’ vessels would also be renewed, or new contracts would be awarded to the same vessels (SOC, ¶¶ 103 et ss.). Respondent denies this practice by Pemex and any expectation by Claimant of establishing a long relationship with Pemex (SOD, ¶¶ 478 et ss.), but fails to provide data about or produce any contracts with any other marine services company in support of its allegations. In fact, Respondent only produces documentation involving Pemex when it believes it is favorable to its position in the arbitration—e.g., Respondent does produce the Termination Notices of the OSA-Pemex contracts associated with the Subsidiaries’ vessels (R-71 to R-78).</p> <p>The sequence of contracts between Pemex and other marine services operators, for the same vessels and similar services, are relevant and material to the issue of whether Pemex had long-term relationships with marine services operators and awarded numerous contracts to the same vessels and, therefore, whether Claimant had a legitimate expectation that this would happen with the OSA-Pemex contracts. This will permit the Tribunal to assess whether Claimant had legitimate expectations, and whether Mexico violated the obligations set forth in the Treaty, causing damages to Claimant.</p> <p>These contracts are not accessible via Pemex’s online webpage. Based on advice by local counsel, we understand that any public process involving a request to the Government to release these contracts under Mexican Law would not guarantee their final and complete disclosure and, in any case, could last several months.</p>

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<b>Objections:</b>	The Respondent incorporates by reference the objections set out in response to Request No. 3. This request is another fishing expedition.
<b>Reply:</b>	Claimant repeats here by reference its Reply, as spelled out in Request No. 3. Claimant is willing to accept reviewing partially anonymized version of the contracts, and to discuss reasonable redactions thereon with Respondent.
<b>Tribunal's decision:</b>	Objection upheld. The request is too broad, marine services are unidentified.

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<b>Request</b>	<b>5</b>
<b>Document / Category of Documents:</b>	<p>Copies of contracts entered into by Pemex/PEP with offshore service vessel (<b>OSV</b>) companies from 2014 to date.</p> <p>This request differs from Request no. 4. Request no. 4 concerns instances when Pemex/PEP have awarded more than one offshore marine services contract to the same vessel, including renewals, extensions and new contracts. Request no. 5 concerns all contracts from awarded to offshore marine services companies.</p>
<b>Justification:</b>	<p>Claimant has established that Pemex had long-standing and stable relationships with marine services operators, and had a consistent practice of renewing contracts entered into with them, and/or awarding new contracts to the same vessels. Based on that practice, Claimant argues that it had a reasonable expectation that the OSA-Pemex contracts associated with the Subsidiaries' vessels would also be renewed, or new contracts would be awarded to the same vessels (SOC, ¶¶ 103 et ss.). Respondent denies this practice by Pemex and any expectation by Claimant of establishing a long relationship with Pemex (SOD, ¶¶ 478 et ss.), but fails to produce any contracts with any other marine services company in support of its allegations. In fact, Respondent only produces documentation involving Pemex when it believes it is favorable to its position in the arbitration—e.g., Respondent does produce the Termination Notices of the OSA-Pemex contracts associated with the Subsidiaries' vessels (R-71 to R-78).</p> <p>The contracts between Pemex and other marine services operators are relevant and material to the issue of whether Pemex had a long-term relationships with marine services operators, whether new contracts awarded after OSA's demise included repositioning costs and the average charter period of those contracts. This will permit the Tribunal to more accurately assess whether Mexico violated the obligations set forth in the treaty and the amount of damages caused to Claimant.</p> <p>These contracts are not accessible via Pemex's online webpage. Based on advice by local counsel, we understand that any public process involving a request to the Government to release these contracts under Mexican Law would not guarantee their final and complete disclosure and, in any case, could last several months.</p>
<b>Objections:</b>	The Respondent incorporates by reference the objections set out in response to Request No. 3. This request is another fishing expedition.

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<b>Reply:</b>	Claimant repeats here by reference its Reply, as spelled out in Request No. 3. Claimant is willing to accept reviewing anonymized version of the contracts, and to discuss reasonable redactions thereon with Respondent.
<b>Tribunal's decision:</b>	Objection upheld. For the same reason as in Request No. 4.

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#### C) INVESTIGATIONS AND OTHER STATE PROCEEDINGS

<b>Request</b>	<b>6</b>
<b>Document / Category of Documents:</b>	Copies of the complete file of the investigation launched by the <i>Comisión de Vigilancia de la Cámara de Diputados (Parliament Committee)</i> in connection with OSA, including all background documentation, reports, minutes or memoranda, that were received, analyzed, prepared or issued by the Parliament Committee.
<b>Justification:</b>	<p>Respondent asserts that the Mexican Parliament launched a committee to investigate OSA's wrongdoings (SOD, ¶ 129), but fails to produce a single document from that Parliament Committee, and merely cites a document prepared by the separate Senate Committee instead, which had already been produced by Claimant (SOD, fn. no. 115).</p> <p>The documents received, analyzed, prepared or issued by the Parliament Committee are relevant and material to the issue of whether the Government duly investigated OSA and/or found violations of Mexican Law, and/or whether there were political motivations behind that investigation. This will permit the Tribunal to assess whether Mexico violated the international obligations set forth in the Treaty.</p> <p>Based on advice by local counsel, we understand that any public process involving a request to the Government to release these documents under Mexican Law would not guarantee their final and complete disclosure and, in any case, could last several months.</p>
<b>Objections:</b>	<p>First, The Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). The review of OSA does not relate to any measure taken with respect to the Claimant.</p> <p>Second, the Respondent also objects to the request on the basis that it would be an unreasonable burden under 9(2)(c) of the IBA Rules. The information required by the Claimant is from 2006, i.e., 13 years ago. The Respondent suggests that the Claimant conduct its own research in the database of <i>Cámara de Diputados'</i> official gazette at <a href="http://gaceta.diputados.gob.mx/">http://gaceta.diputados.gob.mx/</a></p>

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	<p>Third, the Respondent objects on the basis of General Objection 2, as the Respondent lacks control over the <i>Comisión de Vigilancia</i>, which is part of the <i>Cámara de Diputados</i>, the lower chamber of the Legislative Branch of the Federal Government of Mexico.</p> <p>Fourth, the Respondent objects on the basis of lack of specificity (General Objection 5). A request for “the complete file” is overly broad and vague.</p> <p>Lastly, it should be noted that Respondent’s references to the <i>Comisión de Vigilancia</i> (SoD, ¶ 129) was based on the Claimant’s factual exhibits, specifically C-126, p. 12. In other words, the Claimant introduced that evidence.</p>
<b>Reply:</b>	<p>As explained next, while Respondent objects to this request on four grounds, none of those objections has any basis in fact or law.</p> <p><i>First</i>, the requested documents are relevant to this arbitration and material to its outcome. Respondent simply states that “the review of OSA does not relate to any measure taken with respect to the Claimant,” without producing any evidence to support this assertion. It is unclear whether Respondent is repeating here the argument that that some of the measures were addressed to OSA, not to POSH or the Subsidiaries. Were that the case, Claimant reiterates its Response to General Objection No. 1 (above). An investor has legal standing to file a claim under international law when certain internationally wrongful acts <i>impact</i> that investor and its investment, regardless of who the intended addressee of the act was (OSA or others), or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess the international wrongful acts. In this case, the investigation launched by the Parliament Committee into OSA is relevant and material to determine whether the Government duly investigated OSA and/or found violations of Mexican Law, and to test the veracity of Respondent’s allegations.</p> <p>Moreover, it was Respondent who first claimed that “in 2007, an Oversight Commission was created within the Chamber of Deputies to investigate possible abuses by Oceanografía (surcharge of vessel rental) and for possible crimes related to the company” (SOD ¶ 129). One would assume that Respondent would not have included this statement unless it believed this was relevant information for the Tribunal. It seems clear that Respondent made that statement in an attempt to disparage Claimant and suggest to the Tribunal that Claimant is suspected or guilty of other illegal acts, without producing evidence or even allegations to that effect—a tactic that should not be</p>



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countenanced. Respondent cannot be allowed to make the statement for tactical advantage, but then deny the relevance of its own statement for the purpose of thwarting Claimant's legitimate document request.

*Second*, searching for the requested documents would not constitute an unreasonable burden just because the Parliament Committee's investigation was conducted in 2007. Again, it was Respondent who referred to this investigation in the first place, and one would assume that Respondent would not have made the statement without having located the relevant evidentiary support. In any case, judging by Respondent's own words in the SOD, this investigation was the only one launched by the Mexican Parliament into OSA, so it should be clearly identifiable.

*Third*, the requested documents are in Respondent's possession, custody or control (Claimant's Response to General Objection No. 2). According to the international law rules of attribution, Mexico represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent from producing the documents; and, even if that inability existed, this would be a domestic law issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.

*Fourth*, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). The request for the complete file is narrowed to a very specific category, which is the investigation launched by the Parliament Committee. Respondent was the first party to refer to the investigation and, therefore, cannot claim not to understand the content of the request, or know the details of the investigation.

Lastly, Respondent argues that Claimant introduced evidence regarding the investigation launched by the Parliament Committee. This is untrue. Claimant made no reference to this investigation in the SOC. Claimant produced only a document prepared by the separate Senate Committee, which mentioned the investigation by the Parliament Committee in passing (Exhibit C-126, p. 12). But Claimant produced no evidence from the latter (the Parliament Committee). It was Respondent who first mentioned this investigation in paragraph 129 of the SOD.

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	In any case, in the spirit of good faith and efficiency, Claimant agrees to limit its request to being granted on-site access to the file of the Parliament Committee, in order to examine and make copies of relevant documents, without the need for Respondent to gather and send all the documents to Claimant.
<b>Tribunal's decision:</b>	Objection upheld. The Tribunal considers that the Claimant has not sufficiently established the relevance of the Parliamentary Committee's investigation.

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<b>Request</b>	7
<b>Document / Category of Documents:</b>	Copies of all documents, background documentation and work-product, including reports, minutes or memoranda, analyzed, that were received, prepared or issued by the <i>Comisión del Senado para la Atención y Seguimiento al Caso de Oceanografía S.A. de C.V.</i> (the <b>Senate Committee</b> ) that are not publicly accessible at: <a href="http://www.senado.gob.mx/comisiones/oceanografia/">http://www.senado.gob.mx/comisiones/oceanografia/</a>
<b>Justification:</b>	<p>Claimant has asserted that there was a political motivation behind Mexico's actions against OSA and its business partners (SOC, ¶¶ 118 et ss.) and has produced certain reports prepared by the Senate Committee which so state (Exhibit C-135). Respondent denies this, asserting that OSA committed numerous violations of Mexican Law and citing the Senate Committee's investigation (SOD, ¶ 129).</p> <p>A few reports of activities by the Senate Committee are available online, but Claimant understands that the complete file of the Senate Committee's investigation is not publicly available. This file is relevant and material to ascertain whether the Government's actions against OSA were appropriate, whether it duly investigated OSA, whether violations of Mexican Law were found, and whether there were political motivations behind the Government's actions. This will permit the Tribunal to assess whether Mexico violated the obligations set forth in the Treaty.</p> <p>Based on advice by local counsel, we understand that any public process involving a request to the Government to release these documents under Mexican Law would not guarantee their final and complete disclosure and, in any case, could last several months.</p>
<b>Objections:</b>	<p>First, The Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). The Claimant has not established a basis for asserting treaty violations based on the Senate investigation of OSA.</p> <p>Second, the Respondent objects on the basis of General Objection 2, as the Respondent lacks control over the Mexican Senate, which is part of the Legislative Branch of the federal government of Mexico. In fact, the Senate</p>

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	<p>Committee at issue performed its duties with considerable transparency, and a substantial amount of information is already available on its website.</p> <p>Third, the Respondent objects based on the lack of specificity (General Objection 5). A request for “all documents, background documentation and work-product” is overly broad and vague.</p>
<b>Reply:</b>	<p>While Respondent makes three automatic, boiler-plate objections, none of them has any basis in fact and law.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome. As grounds for this objection, Respondent merely states that “Claimant has not established a basis for asserting treaty violations based on the Senate investigation of OSA.” This bare statement—which would not render the requested documents irrelevant or immaterial in any case—is untrue. Since most documents from the investigations and proceedings conducted by the Mexican authorities are not publicly accessible, one of the main sources of information on the Government’s actions against OSA was the Senate Committee. As an example, one of the documents prepared within the Senate Committee found that “[i]t is not known whether SAE has performed crucial tasks regarding Oceanografía because of the opacity exercised in the preparation of the diagnosis of goods, assets and liabilities of the shipping company. SAE has also failed to provide the investigative commission of this Senate with the details of the technical assessment it should have made of Oceanografía in order to fully understand the nature of the fraud... It can be concluded that SAE did not meet its fiduciary responsibilities in the Oceanografía case in terms of transparency and sufficient disclosure of information” (Exhibit C-135). It is clear that the Senate Committee found several wrongdoings in connection with OSA. And it is clear that not all documents are publicly accessible, since Respondent itself acknowledges that “<i>a substantial amount</i> of information [<i>i.e.</i> <u>not</u> all information] is... available on its website...”</p> <p><i>Second</i>, Respondent’s statement that the Mexican State “lacks control over the Mexican Senate” is, on its face, groundless. The Mexican Senate <i>is</i> Respondent (Claimant’s Response to General Objection No. 2). According to the international law rules of attribution, Mexico represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent from producing the documents; and, even if it existed, it would constitute a domestic law issue, and it</p>

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	<p>is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.</p> <p><i>Third</i>, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). The request for documents, background documentation and work-product is clear and specific. A good faith reading of the request shows that Claimant is looking for documents or records of communications that were analyzed or prepared by Senate Committee as part of its investigation.</p>
<b>Tribunal's decision:</b>	Objection upheld for the same reason as in Request No. 6.

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<b>Request</b>	<b>8</b>
<b>Document Category Documents:</b>	<p>The complete file of the investigation of the [REDACTED]</p>
<b>Justification:</b>	<p>Respondent argues that the [REDACTED] Respondent suggests that this investigation is somehow connected to OSA's shareholders, but produces no single piece of official evidence to support this allegation, despite having full access to the records of the investigation.</p> <p>The file of the investigation is relevant and material to the issue of whether this investigation is or is not actually linked to OSA, POSH and/or the Subsidiaries, or to the underlying facts of this case in any way. Access to the full file is the only way to test the veracity of Respondent's allegations.</p>
<b>Objections:</b>	<p>Respondent notes that the discussion of the investigation in the SOD was based on public information (R-021) and was mentioned to put in context POSH's lack of due diligence in choosing its Mexican partner. The Respondent did not allege that the investigation related to POSH.</p> <p>First, The Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). The Claimant has not established a basis for asserting treaty violations based on the reported investigation.</p> <p>Second, the Respondent objects to the request on the basis of General Objection 2, since Claimant is requesting information from the Public Prosecutor's Office (<i>Fiscalía General de la República</i> from now on <i>FGR</i>), which is not under the control of counsel for the Respondent.</p> <p>Third, Respondent objects to this request on the basis of General Objection 3 because Claimant is requesting confidential information of investigations of persons unrelated to POSH.</p>

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	<p>Fourth, the Respondent objects based on the lack of specificity (General Objection 5). A request for “the complete file of the investigation” is overly broad and vague.</p>
<b>Reply:</b>	<p>While Respondent makes four automatic, boiler-plate objections, none of them has any basis in fact and law.</p> <p><i>First</i>, the requested documents are relevant to this arbitration and material to its outcome. As grounds for this objection, Respondent merely states that “Claimant has not established a basis for asserting treaty violations based on the reported investigation.” This bare and empty statement does not render the requested documents irrelevant or immaterial to the case.</p> <p>It was Respondent who first mentioned this investigation in the SOD, casting a shadow over OSA’s shareholders: “there is a new line of criminal investigation by the Attorney General of the Republic known as “Libertad Servicios Financieros” or “Caja Libertad”. This case <i>is about an alleged money laundering network that was carried out through the company</i> “Libertad Servicios Financieros, S.A. from C.V. S.F.P. “ <i>Messrs. Amado Yáñez, Javier Rodríguez Borgio and Martín Díaz, as well as other individuals, have been mentioned in this new line of research.</i> Until 2014, Mr. Martín Díaz also served as Chairman of the Board of Directors of “Libertad Servicios Financieros” ” (SOD fn. no. 113, p. 31). One would assume that Respondent would not have included this statement unless it believed this was relevant information for the Tribunal. Indeed, it seems clear that Respondent made that statement in an attempt to disparage Claimant and suggest to the Tribunal that OSA or its shareholders would be suspected or guilty of other illegal acts, without producing evidence or even allegations to that effect—a tactic that should not be countenanced. Respondent cannot be allowed to make the statement for tactical advantage, but then deny the relevance of its own statement for the purpose of thwarting Claimant’s legitimate document request.</p> <p><i>Second</i>, the requested documents are in Respondent’s possession, custody or control (Claimant’s Response to General Objection No. 2). According to the international law rules of attribution, Mexico represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent from producing the documents; and, even if that inability existed, this would be a domestic law issue, and it is well-established that Respondent may not plead its domestic</p>

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law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.

*Third*, the objection based on the ground of confidentiality of investigations is groundless (Claimant's Response to General Objection No. 3). Respondent's blanket invocation of Mexican law as a defense to producing documents is inconsistent with the international law maxim that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. Moreover, it is clear that Respondent *does* have the power to obtain documents from those investigations and to disclose them as it likes. Respondent expressly acknowledges here that its criminal expert, Mr. Paz, "had access to... documents of the criminal investigations after he signed a non-disclosure agreement,"<sup>21</sup> which disclosure, according to Respondent's own argument here, would have violated Mexican Law. Evidently, then, whatever confidentiality rules that Respondent invokes to resist this request are not, in reality, a constraint on its access to, use, or disclosure of such documents. In any case, Procedural Order No. 3 provides that the documents produced in this arbitration will not be made public; and Claimant has further stated, and reiterates herein, that "If any document or categories of documents are confidential under Mexican Law, Claimant and Claimant's counsel offer to enter into a confidentiality agreement with Respondent, whereby they undertake to keep the documentation confidential, only use it for the purposes of this arbitration, and destroy it once the arbitration or related proceedings are over." (page 1 of this request). Finally, Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation. Respondent's objection is, therefore, unjustified.

*Fourth*, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). The request for the complete file is narrowed to a very specific category, [REDACTED] Respondent was first to refer to the investigation in the SOD and, therefore, cannot claim not to understand the content of the request, or know the details of the investigation.

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<sup>21</sup> Respondent's Objections to Claimant's Document Request no. 11.



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	In any case, in the spirit of good faith and efficiency, Claimant agrees to limit its request to being granted on-site access to the file of the investigation, in order to examine and make copies of relevant documents, without the need for Respondent to gather and send all the documents to Claimant.
<b>Tribunal's decision:</b>	The Respondent to produce documents made available and relied on by Mr. Javier Paz Rodríguez to prepare his report.

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<b>Request</b>	<b>9</b>
<b>Document / Category of Documents:</b>	The complete files of the civil proceedings filed against OSA in Mexico that are referred to in paragraph 171 of Respondent's SOD.
<b>Justification:</b>	<p>Claimant asserts that the proximate cause for OSA's insolvency were certain measures adopted by the State, including the Unlawful Sanction. Respondent states that OSA was in a critical financial situation prior to the measures adopted by the State and cites, <i>inter alia</i>, five civil proceedings filed against OSA filed by different claimants before Mexican courts (SOD, ¶ 171). Respondent, however, fails to produce any official document showing the status or outcome of these proceedings.</p> <p>The complete files of the five civil proceedings mentioned by Respondent are relevant and material to test the veracity of Respondent's allegations and assess whether or not the said proceedings affected OSA's financial situation in any way, as Respondent implies. As Claimant is not a party to those civil proceedings, Claimant does not have access to these court records. Access to the records of the civil proceedings will permit the Tribunal to ascertain whether State measures were the proximate cause of OSA's insolvency and, ultimately, the destruction of Claimant's investment.</p> <p>Based on advice by local counsel, we understand that any public process involving a request to the Government to release these documents under Mexican Law would not guarantee their final and complete disclosure and, in any case, could last several months.</p>
<b>Objections:</b>	<p>Contrary to Claimant's assertions, the statements made by Respondent in SOD, ¶ 171 are clearly based on C-166, p.26. Hence, the fact that OSA faced five civil proceedings is already demonstrated by Claimant's exhibit.</p> <p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). Based on C-166 it is evident that the plaintiffs in those proceedings (<i>i.e.</i>, DF Deutsche Forfait AG, ESEASA Construcciones S.A. de C.V., Arellano Ramirez Maria Elena and PNC Bank NA) are unrelated to this arbitration.</p>

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	<p>Claimant does not explain why the lawsuits made by those third parties are connected to the alleged measures taken by the Respondent against Claimant.</p> <p>Second, the Respondent objects on the basis of General Objection 2. There is no legal basis for counsel for the Respondent to compel the courts or the parties to those lawsuits to turn over their files for use in this proceeding.</p> <p>Third, the Respondent objects based on General Objection 4. The Claimant is seeking confidential information of third parties. Fourth, the Respondent objects to the request on the basis that it would be an unreasonable burden under 9(2)(c) of the IBA Rules. The court proceedings referenced in C-166 took place from 2010 to 2013; more than 6 years have elapsed since those proceedings started. The Tribunal also should note that some of the courts involved in the litigation described in C-166 do not exist anymore (such as the 15° Leasing Court of Mexico City).</p> <p>Fifth, the Respondent objects on the basis of lack of specificity (General Objection 5). A request for “complete files of the civil proceedings” is overly broad and vague.</p>
<b>Reply:</b>	<p>While Respondent objects to this request on five boiler-plate grounds, none of which has any basis in fact or law.</p> <p><i>First</i>, it was Respondent who first mentioned these five civil judicial proceedings in the SOD, in an attempt to cast a shadow over OSA’s financial and legal situation: “At the time of submitting the Insolvency Application, the PGR identified that Oceanografía was facing at least 5 cases before civil courts in Mexico City.” (SOD, ¶ 171). Respondent, however, failed to produce any document showing the current status or outcome of these proceedings, which would permit the Tribunal to assess whether the proceedings had any influence on OSA’s finances, as Respondent implied. In contrast, Respondent now claims that “it is evident that the plaintiffs in those proceedings... are unrelated to this arbitration,” claiming to prevent Claimant and the Tribunal from testing the veracity and relevance of Respondent’s assertions in the SOD.</p> <p>One would assume that Respondent would not have included its reference to the five judicial proceedings unless it believed this was relevant information for the Tribunal. Indeed, it seems clear that Respondent made that statement in an attempt to suggest to the Tribunal that OSA was in a poor financial or legal situation, without producing evidence on the current status or outcome of these proceedings—a tactic that should not be</p>

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countenanced. Respondent cannot be allowed to make the statement for tactical advantage, but then deny the relevance of its own statement for the purpose of thwarting Claimant's legitimate document request.

*Second*, the requested documents are in Respondent's possession, custody or control (Claimant's Response to General Objection No. 2). Respondent claims—very illustratively— that “[t]here is no legal basis *for counsel* for the Respondent *to compel* the courts... to turn over their files...” However, there is no need for *counsel* to compel the courts to produce the documents. *Respondent* must produce the documents. According to the international law rules of attribution, Respondent represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent—not counsel—from producing the documents; and, even if that inability existed, this would be a domestic law issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.

*Third*, the objection based on the alleged confidentiality of commercial information is groundless (Claimant's Response to General Objection No. 4). Respondent makes no attempt to specify, in any way, (i) the allegedly confidential documents; (ii) the allegedly confidential information included in the documents; and (iii) the alleged rule or legal obligation that would provide for the confidential nature of that information. Respondent's objection is so vague that Claimant is unable to respond in any meaningful way. Even if it were sufficiently precise—which is not the case—Respondent's objection would be groundless for at least the following reasons: (i) Procedural Order No. 3 provides that any and all documents used in these proceedings will not be made public; (ii) Claimant and Claimant's counsel have offered to sign a non-disclosure agreement in connection with potential confidential information produced by Respondent; (iii) most of the documents requested by Claimant, and data contained therein is “historic” and, would have no current commercial value; and (iv) Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather with improperly shielding access to relevant documentation.

*Fourth*, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). The request for the complete file is narrowed to a very specific category, which is the five judicial proceedings

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	<p>mentioned by Respondent in the SOD. Respondent was first to allude to these five judicial proceedings and, therefore, cannot claim not to understand the content of the request, or know the details of the proceedings. This is a boiler-plate objection, without any basis in fact or law.</p> <p>In any case, and in the interest of good faith, Claimant is willing to limit its request to the documents showing the current status of the five judicial proceedings, so long as they include all court decisions rendered therein.</p>
<b>Tribunal's decision:</b>	<p>The Respondent to produce documents showing current status of the five judicial proceedings.</p>

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**Tribunal’s Decision: Respondent shall produce documents showing status outcome of the five proceedings.**

<b>Request</b>	<b>10</b>
<b>Document / Category of Documents:</b>	<p>The complete file of the administrative proceeding that led to the sanction imposed by the <i>Secretaría de la Función Pública (SFP)</i> on Emilio Lozoya, Director General of Pemex at the time of the measures that culminated in the destruction of Claimant’s investment (the <b>Measures</b>), as well as the complete file of any criminal investigations launched against him by the State in connection with his work at Pemex, including the following:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected in the investigation;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes.</li> </ul>
<b>Justification:</b>	<p>Emilio Lozoya was a close collaborator of Enrique Peña Nieto, the President of Mexico at the time of the Measures. Lozoya headed the International Affairs Office during Peña Nieto’s campaign and the transition team upon his election as President. He was then appointed Director General of Pemex by Peña Nieto and was Pemex’s highest ranking official at the time of the Measures. In 2014, he was reported to have said that he would find ways to award contracts directly to POSH—which he never did (SOC, ¶¶ 191). Upon the arrival of the new government presided by Mr. Andrés Manuel López Obrador, however, Lozoya was sanctioned by the SFP (the same agency that sanctioned OSA) and prevented from holding any public office in Mexico for 10 years. Mexico then launched a criminal investigation against him in connection with his actions at Pemex. Mr. Lozoya reportedly fled the country and is now a fugitive from the Mexican justice system.</p>

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	<p>Claimant has made serious allegations that the Measures were politically dictated from the highest spheres of the Peña Nieto administration in order to sever OSA’s ties with Pemex and the previous administration (SOC, ¶¶ 118 et ss.). As a result, Pemex—managed by Lozoya—had the opportunity, but declined to, award contracts directly to the Subsidiaries. Respondent has denied these allegations but has failed to produce a single official Pemex document in connection with OSA, the Pemex contracts or the Subsidiaries’ vessels, beyond the termination notices.</p> <p>The proceedings that led to the sanction and the criminal investigation against Lozoya, launched as soon as the new President took office, are relevant and material to ascertain the wrongdoings and political maneuvers of the Peña Nieto Administration, and their connection to the Measures. This will permit the Tribunal to assess whether Respondent violated the obligations set forth in the Treaty.</p>
<b>Objections:</b>	<p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). The sanction imposed on Emilio Lozoya is completely unrelated to this arbitration. Based on public media, the investigations against Mr. Emilio Lozoya were initiated due to a failure to disclose assets and the purchase of a fertilizer plant during the time he was the General Director of Pemex. Claimant’s argument that the requested documents are relevant “to ascertain the wrongdoings and political maneuvers of the Peña Nieto Administration, and their connection to the Measures” verifies that the request has nothing to do with the alleged treatment of the Claimant and its Subsidiaries.</p> <p>Second, the Respondent objects on the basis of General Objection 2. There is no legal basis for counsel for the Respondent to compel the <i>Secretaría de la Función Pública</i> to provide information within this proceeding.</p> <p>Third, the Respondent objects on the basis of General Objection 3. There is an obligation applicable to <i>Secretaría de la Función Pública</i> to maintain the confidentiality of documents related to ongoing administrative investigations, including the one of Mr. Emilio Lozoya.</p> <p>Fourth, the Respondent objects based on the lack of specificity (General Objection 5). A request for “the complete file of the administrative proceeding” is overly broad and vague.</p>

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<b>Reply:</b>	<p>While Respondent makes four automatic, boiler-plate objections, none of them has any basis in fact and law.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome. Claimant asserts, and Respondent denies, that the Measures were politically dictated from the highest spheres of the Peña Nieto administration, and that Pemex—managed by Mr. Lozoya—had the opportunity, but declined to, award contracts directly to the Subsidiaries. After the elections, the new administration presided by Andrés Manuel López Obrador launched an investigation into Mr. Lozoya’s wrongdoings as Director General of Pemex during the time of the Measures. Respondent claims that this investigation is unrelated to the Measures, but fails to produce a single document to support this assertion. The requested documents are relevant to determine Pemex’s wrongdoings at the time of the Measures, and the political ties between Mr. Lozoya and the Peña Nieto Administration leading to those Measures.</p> <p><i>Second</i>, the requested documents are in Respondent’s possession, custody or control (Claimant’s Response to General Objection No. 2). Respondent claims—very illustratively— that “[t]here is no legal basis <i>for counsel</i> for the Respondent <i>to compel</i> the courts... to turn over their files...” However, there is no need for counsel to compel the courts to produce the documents. <i>Respondent</i> must produce the documents. According to the international law rules of attribution, Respondent represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent—not counsel—from producing the documents; and, even if that inability existed, this would constitute a domestic law issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.</p> <p><i>Third</i>, the objection based on the ground of confidentiality of investigations is groundless (Claimant’s Response to General Objection No. 3). Respondent’s blanket invocation of Mexican law as a defense to producing documents is inconsistent with the international law maxim that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally</p>



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	<p>wrongful acts. Moreover, it is clear that Respondent <i>does</i> have the power to obtain documents from those investigations and to disclose them as it likes. Respondent expressly acknowledges here that its criminal expert, Mr. Paz, “had access to... documents of the criminal investigations after he signed a non-disclosure agreement,”<sup>22</sup> which disclosure, according to Respondent’s own argument here, would have violated Mexican Law. Evidently, then, whatever confidentiality rules that Respondent invokes to resist this request are not, in reality, a constraint on its access to, use, or disclosure of such documents. Procedural Order No. 3 provides that the documents produced in this arbitration shall not be made public; and Claimant and Claimant’s counsel have offered to enter into a non-disclosure agreement with Respondent, whereby they undertake to keep the documentation confidential, only use it for the purposes of this arbitration, and destroy it once the arbitration or related proceedings are over. Finally, Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation. Respondent’s objection is, therefore, unjustified.</p> <p><i>Fourth</i>, Claimant’s document request does not lack specificity (Claimant’s Response to General Objection No. 5). The request for the complete file is narrowed to very specific categories, which are the administrative proceeding that led to Mr. Lozoya’s sanction, and subsequent criminal investigations launched against him in connection with his work in Pemex. The request further includes a comprehensive list of sample documents to guide and facilitate Respondent’s search and production.</p>
<b>Tribunal’s decision:</b>	Objection upheld. Relevance not established.

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<sup>22</sup> Respondent’s Objections to Claimant’s Document Request no. 11.

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<b>Request</b>	<b>11</b>
<b>Document / Category of Documents:</b>	<p>The complete case file for the criminal investigation labeled “Averiguación Previa UEIORPIFAM/AP/065/2014”, originally assigned to the Organized Crime Unit (<b>OCU</b>) of <i>Procuraduría General de la República</i> (<b>PGR</b>) and later turned over to the Financial Analysis Unit (<b>FAU</b>) of PGR under the label [REDACTED]</p> <p>This request includes, but is not limited to:</p> <ul style="list-style-type: none"><li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li><li>(ii) all memoranda or reports discussing evidence collected in the investigation;</li><li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li><li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes;</li><li>(v) the memorandum or formal document transferring such criminal investigation from OCU to FAU or any other document explaining the reason for that transfer;</li><li>(vi) the memorandum or formal document closing such criminal investigation;</li><li>(vii) the complete Seizure Order (<i>Acuerdo de Aseguramiento</i>) dated 27 February 2014;</li><li>(viii) the extensions of the Seizure Order (<i>ampliaciones del Acuerdo de Aseguramiento</i>) dated March 6, 2014 and March 19, 2014;</li><li>(ix) the unidentified witness statements referred to in footnote no. 251 of SOD;</li></ul>

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	<p>(x) the [REDACTED]</p> <p>(xi) the [REDACTED]</p> <p>(xii) the [REDACTED]</p> <p>(xiii) the [REDACTED]</p> <p>(xiv) the [REDACTED]</p> <p>(xv) the [REDACTED]</p> <p>(xvi) letter [REDACTED] and [REDACTED]</p> <p>(xvii) the Detention Order dated 19 March 2014.</p>
<b>Justification:</b>	Claimant asserts that the Money Laundering Investigation and the subsequent Joint Investigation were arbitrary, disproportionate, unlawful and had no basis in fact or law. As part of this investigation, Mexico took control of OSA through the Seizure Order, and unlawfully detained the Subsidiaries' vessels through the Detention Order. Respondent denies this but produces no single piece of evidence in support of its denial.

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*First*, Respondent claims that “*there was enough evidence* to presume that Oceanografía executives had engaged in unlawful conduct through Oceanografía” (SOD, ¶ 346), and that the criminal investigations would have been in accordance with Mexican Law. Respondent, however, fails to produce a single piece of such evidence in this arbitration.

*Second*, Respondent has given access to the documentation covered by this request to its expert, Mr. Paz. In paragraphs 74 et ss. of his expert report, Mr. Paz expressly mentions alleged pieces of evidence on which the State supposedly based the Seizure Order (e.g., unidentified witness statements, a statement by Banamex’s attorney-in-fact, a document signed by Banamex’s legal representative, a letter issued by PEP’s attorney, etc.) but fails to put that evidence on the record of this arbitration. Mr. Paz also acknowledges that he was given access to “certain documents” but, inexplicably, does not identify or produce such documents. In Annex A of his report, Mr. Paz further acknowledges that Respondent made available “documentation” to him, but refers only to a list of documents produced by Claimant. In sum, Mr. Paz acknowledges having had access to documents from Respondent’s criminal investigations, but fails to identify and produce such documents.

*Third*, Respondent’s case relies entirely on withholding documentation and preventing Claimant’s access thereto. Respondent expressly admits this: “Claimant’s criminal expert analysis contains deficiencies. The reason for this is simple: *neither POSH nor Mr. Ruíz Durán have had, nor can they have access, to the records of the criminal investigations* related to Oceanografía...” (SOD, ¶ 228) and “*POSH’s representatives have not been able to have full access to the files of the criminal investigations*” (SOD, fn. no. 210). Respondent’s expert, Mr. Paz also questions Claimant’s expert conclusions based on his lack of access to the full documents: “the expert of the Claimant having made assertions as a result of not having available the full versions of the OSA attachment or of the expansion of the OSA attachment, and that—in turn—he based his analysis and conclusions on mere extracts thereof” (Expert Report by Mr. Paz, ¶ 228).

The requested documents are essential to assess the unlawfulness, arbitrariness and disproportionateness of Respondent’s actions within the criminal investigations that led to OSA’s seizure and the detention of the Subsidiaries’ vessels. The documents are crucial pieces of evidence to determine whether the State acted with or without factual basis, whether the seizure of the whole company was proportionate and appropriate, and whether Respondent violated the obligations set forth in the Treaty. Respondent is aware of this, and bases its

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	<p>position in this arbitration on Claimant's lack of access to the documentation—while at the same time giving such access unilaterally to its own expert. Granting the requested access to Claimant is, therefore, essential to preserve Claimant's right to the present its case, to rebut Respondent's allegations and to produce the pertinent expert reports thereto.</p>
<b>Objections:</b>	<p>It was the Claimant that introduced the subject of this criminal investigation, and Claimant's purported expert report on criminal law made a number of unwarranted assertions regarding the investigation, requiring the Respondent to answer. As expressly mentioned by Mr. Javier Paz in paragraph 14 of his Expert Report, he had access to limited documents of the criminal investigations after he signed a non-disclosure agreement, given the strictly reserved and confidentiality of such information, as explained above.</p> <p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). Claimant states that "[t]he requested documents are essential to assess the unlawfulness, arbitrariness and disproportionateness of Respondent's actions within the criminal investigations that led to OSA's seizure [...]" And "[t]he documents are crucial pieces of evidence to determine whether the State acted with or without factual basis, whether the seizure of the whole company [OSA] was proportionate and appropriate, and whether Respondent violated the obligations set forth in the Treaty." As discussed in the SOD, Claimant tries to base its claim on measures taken against a Mexican company (OSA) wholly unrelated to it, and lacks standing to make claims on behalf of OSA.</p> <p>Second, the Respondent objects on the basis of General Objection 2. There is no legal basis for counsel for the Respondent to compel the FGR (previously PGR) to turn over its criminal investigation files for use in this proceeding.</p> <p>Third, the Respondent objects on the basis of General Objection 3. There is an obligation of reserve and confidentiality applicable to FGR to not share the documents related to the investigation with persons unrelated to the investigated crimes. Otherwise, any disclosure of this key documentation will put in risk the ongoing investigations.</p> <p>Fourth, the Respondent objects based on the lack of specificity (General Objection 5). A request for "complete case file for the criminal investigation" is overly broad and vague. As discussed above, this request also presents</p>

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	<p>a blatant example of the “popular ploy to circumvent the requirement for a narrow and specific category” by “divid[ing] a request for a broad category of documents into numerous sub-requests for narrow categories of documents.” Marghitola, <i>supra</i>, at 41. The request must be rejected. [Anything works. Super detailed or more general. ANBything lacks specifi</p>
<b>Reply:</b>	<p>While Respondent makes four automatic, boiler-plate objections, none of them has any basis in fact and law.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome. These documents pertain to the investigation on the basis of which Respondent took over the administration of OSA, detained the Subsidiaries’ vessels, and controlled OSA during the insolvency proceeding. The documents from this investigation are crucial pieces of evidence to assess whether Respondent’s Measures were justified or not. Respondent denies that the documents are relevant or material exclusively on the basis that the investigation was directed against OSA, and not POSH or the Subsidiaries. This is groundless. As noted in the Response to General Objection No. 1, and will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain internationally wrongful acts <i>impact on</i> that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess these international wrongful acts. In this case, the documents from the Joint Investigation are crucial to assess whether Mexico’s measures taking control of OSA, detaining the Vessels, and administering OSA during the Insolvency Proceeding were lawful, appropriate and proportionate, or not.</p> <p><i>Second</i>, the requested documents are in Respondent’s possession, custody or control (Claimant’s Response to General Objection No. 2). Respondent claims—very illustratively— that “[t]here is no legal basis <i>for counsel</i> for the Respondent <i>to compel</i> the courts... to turn over their files...” However, there is no need for counsel to compel the courts to produce the documents. <i>Respondent</i> must produce the documents. According to the international law rules of attribution, Respondent represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent—not counsel—from producing the documents; and, even if that inability existed, this would constitute a domestic law issue, and it is well-established that Respondent may not plead its domestic law as a</p>

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	<p>defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.</p> <p><i>Third</i>, the objection based on the ground of confidentiality of investigations is groundless (Claimant's Response to General Objection No. 3). Respondent's blanket invocation of Mexican law as a defense to producing documents is inconsistent with the international law maxim that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. Purported obligations of Mexican individuals or entities under Mexican Law do not apply to the State, as a whole, under international law. Moreover, it is clear that Respondent <i>does</i> have the power to obtain documents from those investigations and to disclose them as it likes. Respondent expressly acknowledges here that its criminal expert, Mr. Paz, "had access to... documents of the criminal investigations after he signed a non-disclosure agreement,"<sup>23</sup> which disclosure, according to Respondent's own argument here, would have violated Mexican Law. Evidently, then, whatever confidentiality rules that Respondent invokes to resist this request are not, in reality, a constraint on its access to, use, or disclosure of such documents. Finally, Claimant and Claimant's counsel have offered to enter into a non-disclosure agreement with Respondent, whereby they undertake to keep the documentation confidential, only use it for the purposes of this arbitration, and destroy it once the arbitration or related proceedings are over. Respondent's objection is, therefore, unjustified.</p> <p><i>Fourth</i>, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). The request for the complete file is narrowed to a very specific category, which is the Joint investigation, and further includes a comprehensive list of sample documents to guide and facilitate Respondent's search and production. This is a boiler-plate objection, without any factual or legal basis.</p>
<b>Tribunal's decision:</b>	The Respondent shall produce the documents made available and relied on by Mr. Javier Paz Rodríguez to prepare his report.

<sup>23</sup> Respondent's Objections to Claimant's Document Request no. 11.

### Claimant’s Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>12</b>
<b>Document / Category of Documents:</b>	<p>The complete case file for the criminal investigation labeled “Averiguación Previa UEIORPIFAM/AP/115/2014” against Mr. Amado Omar Yáñez Osuna (<b>Mr. Yáñez</b>) and others, initiated by PGR on May 5, 2014, for the alleged use of bank credits for purposes other than those for which they were granted. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected in the investigation;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes; and</li> <li>(v) the memorandum or formal document closing each such criminal investigation.</li> </ul>
<b>Justification:</b>	<p>Claimant asserts that the Government did not find evidence of money laundering so it decided to open several other investigations in connection with other alleged crimes, with no basis in fact or law, and which have not resulted in any conviction to date. Respondent contends that the investigations were lawful and based in fact and law, but fails to produce a single piece of evidence supporting this allegation.</p> <p>As stated in Request No. 10 (and incorporated here by reference), Respondent states that there was enough evidence to open the investigations, has provided its own expert with access to the relevant investigative documentation, and bases its position in this arbitration on Claimant’s lack of access to those same documents. The documents are relevant and material to assess whether the criminal investigation was unlawful, arbitrary or disproportionate, whether it was part of a political persecution of OSA, and, ultimately, whether Respondent</p>



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	<p>violated the obligations set forth in the Treaty. Granting the requested access to the documents is essential to preserve Claimant’s right to present its case, and rebut Respondent’s allegations.</p>
<p><b>Objections:</b></p>	<p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). Claimant states that Claimant expressly mentions that “[t]he documents are relevant and material to assess whether the criminal investigation was unlawful, arbitrary or disproportionate, whether it was part of a political persecution of OSA”. Since claimant is trying to obtain information related to OSA, rather than to the measures directly addressed to its Subsidiaries, this request must be rejected.</p> <p>Second, the Respondent objects on the basis of General Objection 2. There is no legal basis for counsel for the Respondent to compel the FGR to turn over its criminal investigation files for use in this proceeding.</p> <p>Third, the Respondent objects on the basis of General Objection 3. There is an obligation of reserve and confidentiality applicable to FGR to not share the documents related to the investigation. Any disclosure of documentation could put at risk ongoing investigations.</p> <p>Fourth, the Respondent objects based on the lack of specificity (General Objection 5). A request for the “complete case file for the criminal investigation” is overly broad and vague.</p>
<p><b>Reply:</b></p>	<p>While Respondent makes four automatic, boiler-plate objections, none of them has any basis in fact and law.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome. These documents pertain to an investigation launched by Respondent once it found no evidence of money laundering within OSA. Claimant asserts that this investigation was baseless while Respondent denies this, but Respondent nevertheless refuses to produce the documents that would assist the Tribunal in resolving this issue. Respondent denies that the documents are relevant or material exclusively on the basis that the investigation was directed against OSA, not POSH or the Subsidiaries. This is groundless. As noted in Claimant’s Response to General Objection No. 1, and will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain internationally wrongful acts <i>impact</i> that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess these international wrongful acts. In this case, the</p>

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documents from the investigation into OSA are relevant and material to determine whether Mexico's measures that led to the destruction of Claimant's investment were lawful or not.

*Second*, the requested documents are in Respondent's possession, custody or control (Claimant's Response to General Objection No. 2). Respondent claims—very illustratively—that “[t]here is no legal basis *for counsel* for the Respondent *to compel* the courts... to turn over their files...” However, there is no need for counsel to compel the courts to produce the documents. Respondent must produce the documents. According to the international law rules of attribution, Respondent represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent—not counsel—from producing the documents; and, even if such an inability existed, this would constitute a domestic law issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.

*Third*, the objection based on the ground of confidentiality of investigations is groundless (Claimant's Response to General Objection No. 3). Respondent's blanket invocation of Mexican law as a defense to producing documents is inconsistent with the international law maxim that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. Moreover, it is clear that Respondent *does* have the power to obtain documents from those investigations and to disclose them as it likes. Respondent expressly acknowledges here that its criminal expert, Mr. Paz, “had access to... documents of the criminal investigations after he signed a non-disclosure agreement,”<sup>24</sup> which disclosure, according to Respondent's own argument here, would have violated Mexican Law. Evidently, then, whatever confidentiality rules that Respondent invokes to resist this request are not, in reality, a constraint on its access to, use, or disclosure of such documents. Finally, Procedural Order No. 3 provides that the documents produced in this arbitration will not be made public; and Claimant and Claimant's counsel have offered to enter into a non-disclosure agreement confidentiality agreement with Respondent, whereby they undertake to keep the documentation confidential, only use it for the purposes of this arbitration,

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<sup>24</sup> Respondent's Objections to Claimant's Document Request no. 11.

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	<p>and destroy it once the arbitration or related proceedings are over. Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation. Respondent's objection is, therefore, unjustified.</p> <p><i>Fourth</i>, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). The request for the complete file is narrowed to a very specific category, which is the Joint investigation, and it further includes a comprehensive list of examples to guide and facilitate Respondent's search and production of the requested documents.</p>
<b>Tribunal's decision:</b>	The Respondent to produce the documents provided to and relied on by its own expert.

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>13</b>
Document / Category of Documents:	<p>The complete case file for Criminal Proceeding 47/2014-C against Mr. Yáñez. According to Respondent's expert on criminal law, the case was filed before <i>Juzgado Décimo Cuarto de Distrito de Procesos Penales Federales del Distrito Federal</i>. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected in the investigation;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes; and</li> <li>(v) the memorandum or formal document closing each such criminal investigation.</li> </ul>
<b>Justification:</b>	<p>Claimant asserts that Mexico did not find any evidence of money laundering, and so it decided to open several other investigations in connection with other alleged crimes, with no basis in fact or law, and which have not resulted in any conviction to date. One of these investigations led to criminal proceeding 47/2014-C. Mexico contends that the investigations and criminal proceedings were lawful and based in fact and law, but fails to produce a single piece of evidence supporting its allegations.</p> <p>As stated in Request No. 10 (and incorporated here by reference), Respondent states that there was enough evidence to open the investigations, has provided its own expert with access to the relevant investigative documentation, and bases its position in this arbitration on Claimant's lack of access to those same documents. The documents are relevant and material to assess whether the criminal investigation and subsequent criminal proceedings were unlawful, arbitrary or disproportionate, whether they were part of a political persecution of OSA, and, ultimately, whether Respondent violated the obligations set forth in the Treaty. Granting the</p>

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	requested access to the documents is essential to preserve Claimant's right to present its case, and rebut Respondent's allegations
<b>Objections:</b>	The Respondent incorporates by reference its objections to Request No. 12. The Criminal Proceeding 47/2014-C against Mr. Yáñez is an ongoing proceeding and therefore remains as a reserved/confidential matter.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 12. In the spirit of good faith and efficiency, Claimant agrees to limit its request to being granted on-site access to the court's docket, in order to examine and make copies of relevant documents, without the need for Respondent to gather and send all the documents to Claimant.
<b>Tribunal's decision:</b>	The Respondent to produce the documentation made available to and relied on by its own expert.

### Claimant's Request for the Production of Documents

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<b>Request</b>	<b>14</b>
<b>Document / Category of Documents:</b>	<p>The complete case file for the criminal investigation labeled “Averiguación Previa UEIORPIFAM/AP/136/2014” against Mr. Martín Díaz (Mr. Díaz), initiated on May 28, 2014, for the alleged use of bank credits for purposes other than those for which they were granted. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected in the investigation;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes; and</li> <li>(v) the memorandum or formal document closing each such criminal investigation.</li> </ul>
<b>Justification:</b>	<p>Claimant asserts that Mexico did not find any evidence of money laundering, and so it decided to open several other investigations in connection with other alleged crimes, with no basis in fact or law, and which have not resulted in any conviction to date. Mexico contends that the investigations were lawful and based in fact and law, but fails to produce a single piece of evidence supporting these statements.</p> <p>As stated in Request No. 10 (and incorporated here by reference), Respondent states that there was enough evidence to open the investigations, has provided its own expert with access to the relevant investigative documentation, and bases its position in this arbitration on Claimant's lack of access to those same documents. The documents are relevant and material to assess whether the criminal investigation was unlawful, arbitrary or disproportionate, whether it was part of a political persecution of OSA, and, ultimately, whether Respondent violated the obligations set forth in the Treaty. Granting the requested access to the documents is essential to preserve Claimant's right to present its case, and rebut Respondent's allegations.</p>

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<b>Objections:</b>	The Respondent incorporates by reference its objections to Request No. 12.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 12.
<b>Tribunal's decision:</b>	The Respondent shall produce the evidence provided to and relied on by its own expert

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<b>Request</b>	<b>15</b>
<b>Document / Category of Documents:</b>	<p>The complete case file for criminal proceeding 51/2014-C against Mr. Díaz. According to Respondent, the case was filed before <i>Juzgado Décimo Cuarto de Distrito de Procesos Penales</i>. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected in the investigation;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes; and</li> <li>(v) the memorandum or formal document closing each such criminal investigation.</li> </ul>
<b>Justification:</b>	<p>Claimant asserts that Mexico did not find any evidence of money laundering, and so it decided to open several other investigations in connection with other alleged crimes, with no basis in fact or law, and which have not resulted in any conviction to date. Mexico contends that the investigations were lawful and based in fact and law, but fails to produce a single piece of evidence supporting these statements. In this particular case, Respondent inexplicably claims not to have had access to the State's own criminal investigation against Mr. Díaz, but produces instead the summary of a resolution dated June 15, 2016 issued by a Mexican court on an <i>Amparo</i> proceeding in connection with Mr. Díaz's criminal case (Exhibit R-044).</p> <p>As stated in Request No. 10 (and incorporated here by reference), Respondent states that there was enough evidence to open the investigations, has provided its own expert with access to the relevant investigative documentation, and bases its position in this arbitration on Claimant's lack of access to those same documents. The documents are relevant and material to assess whether the criminal investigation and subsequent criminal proceedings were unlawful, arbitrary or disproportionate, whether they were part of a political persecution of</p>



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	OSA, and, ultimately, whether Respondent violated the obligations set forth in the Treaty. Granting the requested access to the documents is essential to preserve Claimant's right to present its case, and rebut Respondent's allegations.
<b>Objections:</b>	<p>The Respondent incorporates by reference its objections to Request Nos. 12 and 13.</p> <p>The Respondent also notes that the information submitted with the SOD (Exhibit R-044) is available on the website of <i>Dirección General de Estadística Judicial</i> <a href="https://bit.ly/2kFf4HB">https://bit.ly/2kFf4HB</a>.</p>
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 12. In the spirit of good faith and efficiency, Claimant agrees to limit its request to being granted on-site access to the court's docket, in order to examine and make copies of relevant documents, without the need for Respondent to gather and send all the documents to Claimant.
<b>Tribunal's decision:</b>	The Respondent shall produce the evidence provided to and relied on by its own expert.

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<b>Request</b>	<b>16</b>
<b>Document / Category of Documents:</b>	<p>The complete case file for the criminal investigation labeled “Averiguación Previa UEIORPIFAM/AP/239/2014” against Mr. Yáñez, initiated by PGR on October 17, 2017, for allegedly providing false data on the assets and liabilities of a company to a financial institution. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected in the investigation;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes; and</li> <li>(v) the memorandum or formal document closing each such criminal investigation.</li> </ul>
<b>Justification:</b>	<p>Claimant asserts that Mexico did not find any evidence of money laundering, and so it decided to open several other investigations in connection with other alleged crimes, with no basis in fact or law, and which have not resulted in any conviction to date. Mexico contends that the investigations were lawful and based in fact and law, but fails to produce a single piece of evidence supporting these statements.</p> <p>As stated in Request No. 10 (and incorporated here by reference), Respondent states that there was enough evidence to open the investigations, has provided its own expert with access to the relevant investigative documentation, and bases its position in this arbitration on Claimant’s lack of access to those same documents. The documents are relevant and material to assess whether the criminal investigation was unlawful, arbitrary or disproportionate, whether it was part of a political persecution of OSA, and, ultimately, whether Respondent violated the obligations set forth in the Treaty. Granting the requested access to the documents is essential to preserve Claimant’s right to present its case, and rebut Respondent’s allegations.</p>

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<b>Objections:</b>	The Respondent incorporates by reference its objections to Request No. 12.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 12.
<b>Tribunal's decision:</b>	The Respondent shall produce the documents provided to and relied on by its own expert.

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*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>17</b>
<b>Document / Category of Documents:</b>	<p>The complete case file for Criminal Proceeding 96/2014 against Mr. Yáñez before <i>Juzgado Decimocuarto de Distrito de Procesos Penales Federales en el Distrito Federal (hoy Ciudad de México)</i>. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected in the investigation;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes; and</li> <li>(v) the memorandum or formal document closing each such criminal investigation.</li> </ul>
<b>Justification:</b>	<p>Claimant asserts that Mexico did not find any evidence of money laundering, and so it decided to open several other investigations in connection with other alleged crimes, with no basis in fact or law, and which have not resulted in any conviction to date. One of these investigations led to Criminal Proceeding 96/2014. Mexico contends that the investigations and criminal were lawful and based in fact and law, but fails to produce a single piece of evidence supporting these statements.</p> <p>As stated in Request No. 10 (and incorporated here by reference), Respondent states that there was enough evidence to open the investigations, has provided its own expert with access to the relevant investigative documentation, and bases its position in this arbitration on Claimant's lack of access to those same documents. The documents are relevant and material to assess whether the criminal investigation and subsequent criminal proceedings were unlawful, arbitrary or disproportionate, whether they were part of a political persecution of OSA, and, ultimately, whether Respondent violated the obligations set forth in the Treaty. Granting the requested access to the documents is essential to preserve Claimant's right to present its case, and rebut Respondent's allegations</p>

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<b>Objections:</b>	The Respondent incorporates by reference its objections to Request Nos. 12 and 13.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 12. In the spirit of good faith and efficiency, Claimant agrees to limit its request to being granted on-site access to the court's docket, in order to examine and make copies of relevant documents, without the need for Respondent to gather and send all the documents to Claimant.
<b>Tribunal's decision:</b>	The Respondent shall produce the documents provided to and relied on by its own expert.

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*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>18</b>
<b>Document / Category of Documents:</b>	<p>The complete case file in connection with the criminal complaint filed on April 29, 2014 by <i>Procuraduría Fiscal de la Federación (PFF)</i> against parties affiliated to OSA for the alleged commission of tax fraud, including any investigation carried out in connection with the complaint. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes; and</li> <li>(v) the memorandum or formal document closing each such criminal investigation.</li> </ul>
<b>Justification:</b>	<p>Respondent claims that the State filed a criminal complaint in connection with OSA for alleged tax fraud but fails to produce the complaint itself, any single piece of evidence showing the factual or legal basis of the complaint, or the outcome of such complaint or any investigation launched pursuant thereto.</p> <p>The requested documents are relevant and material to determine the veracity and relevance of Respondent's allegations and ascertain whether the alleged complaint and any resulting investigation are in any way related to the events at issue in this arbitration. Ultimately, they are relevant and material to assess whether Respondent's actions were justified and whether Mexico breached the obligations set forth in the Treaty.</p>
<b>Objections:</b>	<p>The only exhibit used by Respondent regarding the PFF investigation (R-032) was obtained from the Senate Committee's website, which is public.</p> <p>The Respondent incorporates by reference its objections to Request No. 12.</p>

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	In relation to General Objection 3, the Respondent adds that the requested documentation is further protected under the principle of “tax secrecy” ( <i>secreto fiscal</i> ) established by article 69 of the Federal Tax Code, <sup>25</sup> as the investigation concerns possible tax fraud.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 12. As noted in Claimant's Response to General Objection No. 3, Respondent improperly attempts to invoke domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. In this case, Respondent invokes a confidentiality obligation (Art. 69 of the Federal Tax Code) that refers to public officials (“ <i>el personal oficial...</i> ”) under Mexican Law, but that is not applicable to the State, as a whole, under international law.
<b>Tribunal's decision:</b>	Objection partially upheld. The Respondent shall produce the documents listed in (i) and (v).

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<sup>25</sup> Artículo 69. *El personal oficial que intervenga en los diversos trámites relativos a la aplicación de las disposiciones tributarias estará obligado a guardar absoluta reserva en lo concerniente a las declaraciones y datos suministrados por los contribuyentes o por terceros con ellos relacionados, así como los obtenidos en el ejercicio de las facultades de comprobación.*

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<b>Request</b>	<b>19</b>
<b>Document / Category of Documents:</b>	<p>The complete case file for the criminal complaint filed by <i>Instituto del Fondo Nacional de la Vivienda para los Trabajadores (Infonavit)</i> against OSA for the alleged commission of tax fraud, including any investigation carried out in connection with the complaint. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes; and</li> <li>(v) the memorandum or formal document closing each such criminal investigation.</li> </ul>
<b>Justification:</b>	<p>Respondent claims that Infonavit filed a criminal complaint in connection with OSA for alleged tax fraud, but fails to produce the complaint itself, any single piece of evidence showing the factual or legal basis, or the outcome of the complaint or any investigation launched pursuant thereto.</p> <p>The requested documents are relevant and material to determine the veracity and relevance of Respondent's allegations and ascertain whether the alleged complaint and any resulting investigation are in any way related to the events at issue in this arbitration. Ultimately, they are relevant and material to assess whether Respondent's actions were justified and whether Mexico breached the obligations set forth in the Treaty.</p>
<b>Objections:</b>	<p>The only exhibit introduced by Respondent regarding the Infonavit investigation (R-033) was obtained from the Senate Committee's website, which is public.</p> <p>The Respondent incorporates by reference its objections to Request Nos. 12 and 18.</p>



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	<p>In relation to General Objection 3, the Respondent adds that the requested documentation is further protected under the principle of “tax secrecy” (<i>secreto fiscal</i>) established by article 69 of the Federal Tax Code, as the investigation concerns possible tax fraud.</p>
<b>Reply:</b>	<p>Claimant repeats here by reference its Reply spelled out in Request No. 12.</p> <p>As noted in Claimant's Response to General Objection No. 3, Respondent improperly attempts to invoke domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. In this case, Respondent invokes a confidentiality obligation (Art. 69 of the Federal Tax Code) that refers to public officials (“<i>el personal oficial...</i>”) under Mexican Law, but that is not applicable to the State, as a whole, under international law.</p>
<b>Tribunal's decision:</b>	<p>Objection partially upheld. The Respondent shall produce the documents listed in (i) and (v).</p>

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<b>Request</b>	20
<b>Document / Category of Documents:</b>	<p>The complete case file for the criminal complaint filed by <i>Instituto Mexicano del Seguro Social (IMSS)</i>, against OSA for the alleged commission of social security fraud, including any investigation carried out in connection with the complaint. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes; and</li> <li>(v) the memorandum or formal document closing each such criminal investigation.</li> </ul>
<b>Justification:</b>	<p>Respondent claims that the State filed a criminal complaint in connection with OSA for alleged social security fraud, but fails to produce the complaint itself, any single piece of evidence showing the factual or legal basis, or the outcome of the complaint or any investigation launched pursuant thereto.</p> <p>The requested documents are relevant and material to determine the veracity and relevance of Respondent's allegations and ascertain whether the alleged complaint and any resulting investigation are in any way related to the events at issue in this arbitration. Ultimately, they are relevant and material to assess whether Respondent's actions were justified and whether Mexico breached the obligations set forth in the Treaty.</p>
<b>Objections:</b>	<p>The only exhibits used by Respondent regarding the Infonavit investigation (C-166, p. 23-24 and R-033) were submitted by Claimant and obtained from the Senate Committee's website, which is public.</p>

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	The Respondent incorporates by reference its objections to Request No. 12.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 12.
<b>Tribunal's decision:</b>	Objection partially upheld. The Respondent shall produce the documents listed in (i) and (v).

### Claimant’s Request for the Production of Documents

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<b>Request</b>	<b>21</b>
<b>Document / Category of Documents:</b>	All notices received by the Financial Intelligence Unit of the Ministry of Treasury ( <b>UIF</b> , acronym in Spanish) before February 27, 2014, reporting transactions made by OSA that were classified as “vulnerable” or “relevant”.
<b>Justification:</b>	<p>Claimant asserts that the UIF Complaint for money laundering had no basis in fact or law. Respondent states that the “the reality of the UIF Complaint is much more complex” (SOD, ¶ 235) and contends that UIF had reason to believe that OSA had engaged in a highly unusual number of transactions that exceeded the financial models used by UIF (i.e., that such transactions were “vulnerable” or “relevant”). Respondent argues that banks are required to inform UIF of any transactions that exceed certain limits in their risk models for UIF to collect and analyze the relevant information (SOD, ¶ 238). Respondent, however, fails to produce the notices from banks, if any, that supposedly triggered the analysis that eventually led to the UIF Complaint.</p> <p>The requested documents are relevant and material to the issue of whether the UIF Complaint —and therefore all subsequent State actions against OSA, including the Seizure Order and Detention Order— had factual or legal basis and, ultimately, whether Respondent violated the obligations set forth in the Treaty.</p>
<b>Objections:</b>	<p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). Claimant “asserts that the UIF Complaint for money laundering had no basis in fact or law.” As discussed above and in the SOD, Claimant has no standing to make complaints on behalf of OSA. Because Claimant is trying to obtain information related to OSA, rather than to the measures directly addressed to its Subsidiaries, this request must be rejected.</p> <p>Second, the Respondent objects on the basis of General Objection 2. There is no legal basis for counsel for the Respondent to compel the UIF to turn over its criminal investigation files for use in this proceeding.</p> <p>Third, the Respondent objects on the basis of General Objection 3. The information related to the transactions made by OSA are subject of ongoing criminal investigations concerning possible money laundering activities (<i>operaciones con recursos de procedencia ilícita</i>). Therefore, any disclosure of the documentation on which UIF</p>

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	<p>based its criminal complaint may risk the investigations of FGR. Further, the documentation is subject to the confidentiality requirements of article 97, third paragraph, of the Law on Credit Institutions.<sup>26</sup></p> <p>Fourth, the Respondent objects based on General Objection 4. The Claimant is seeking confidential information of OSA and its banks.</p> <p>Fifth, the Respondent objects based on the lack of specificity (General Objection 5). A request for the “All notices received by the Financial Intelligence Unit ... before February 27, 2014 relating to OSA” is overly broad and vague.</p>
<b>Reply:</b>	<p>Respondent's five objections are each without merit.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome. These documents prompted Respondent to launch the investigation that led to Respondent taking over the administration of OSA, detaining the Subsidiaries' vessels, and administering OSA during the insolvency proceedings. The documents are crucial pieces of evidence to assess the basis on which Respondent adopted the Measures and whether they were lawful or not. Respondent fails to mention any of this, denying relevance or materiality of the documents exclusively because the investigation was directed against OSA, and not POSH or the Subsidiaries. This is groundless. As noted in Claimant's Response to General Objection No. 1, and will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain internationally wrongful acts <i>impact</i> that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess these international wrongful acts. In this case, the documents that prompted the Joint Investigation are crucial to assess whether Mexico's measures taking control of OSA, detaining the Vessels, or administering OSA during the insolvency proceeding were lawful, appropriate and proportionate, or not.</p>

<sup>26</sup> Artículo 97.- Las instituciones de crédito deberán presentar la información y documentación que, en el ámbito de sus respectivas competencias, les soliciten la Secretaría de Hacienda y Crédito Público [...] Quien reciba la información a que se refiere este artículo será responsable administrativa y penalmente, en términos de la legislación aplicable, por la difusión a terceros de información confidencial o reservada.

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*Second*, the requested documents are in Respondent's possession, custody or control (Claimant's Response to General Objection No. 2). Respondent claims—very illustratively— that “[t]here is no legal basis *for counsel* for the Respondent *to compel* the courts... to turn over their files...” However, there is no need for counsel to compel the courts to produce the documents. *Respondent* must produce the documents. According to the international law rules of attribution, Respondent represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent—not counsel—from producing the documents; and, even if that inability existed, this would constitute a domestic law issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.

*Third*, the objection based on the ground of confidentiality of investigations is groundless (Claimant's Response to General Objection No. 3). Respondent's blanket invocation of Mexican law as a defense to producing documents is inconsistent with the international law maxim that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. Moreover, it is clear that Respondent *does* have the power to obtain documents from those investigations and to disclose them as it likes. Respondent expressly acknowledges here that its criminal expert, Mr. Paz, “had access to... documents of the criminal investigations after he signed a non-disclosure agreement,”<sup>27</sup> which disclosure, according to Respondent's own argument here, would have violated Mexican Law. Evidently, then, whatever confidentiality rules that Respondent invokes to resist this request are not, in reality, a constraint on its access to, use, or disclosure of such documents. Finally, Procedural Order No. 3 provides that the documents produced in this arbitration shall not be made public; and Claimant and Claimant's counsel have offered to enter into disclosure agreement with Respondent, whereby they undertake to keep the documentation confidential, use it only for the purposes of this arbitration, and destroy it once the arbitration or related proceedings are over. Respondent's objection is, therefore, unjustified.

*Fourth*, the objection based on the alleged confidentiality of commercial information is groundless (Claimant's Response to General Objection No. 4). Respondent makes no attempt to specify, in any way, (i) the allegedly

<sup>27</sup> Respondent's Objections to Claimant's Document Request no. 11.

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	<p>confidential documents; and (ii) the allegedly confidential information included in the documents. Even if sufficiently precise—which it is not—Respondent's objection would be groundless because, as already stated above, Procedural Order No. 3 provides that any and all documents used in these proceedings will not be made public, and Claimant and Claimant's counsel have offered to sign a non-disclosure agreement in connection with potential confidential information produced by Respondent. Finally, Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation</p> <p><i>Fifth</i>, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). Respondent claims that the reference to "all notices" received by UIF would be too broad, but ignores the facts that the request is narrowed both with a specific time limit ("before February 27, 2014") and a specific topic (notices "reporting transactions made by OSA that were classified as "vulnerable" or "relevant"). The request is specific, narrowly tailored, and easy to comply with. That narrow set of documents is necessary for the Tribunal to be able to assess whether the UIF had sufficient grounds to act, and whether the Money Laundering Investigation was justified or not.</p> <p>In any case, in the spirit of good faith and to facilitate Respondent's search, Claimant is willing to provide a shorter timeline, requesting relevant documents between August 12, 2012, date of the establishment of the joint venture, and February 27, 2014, date of the complaint filed by the UIF.</p>
<b>Tribunal's decision:</b>	The Respondent to produce the final documents showing the factual basis to seize OSA.

### Claimant's Request for the Production of Documents

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<b>Request</b>	<b>22</b>
<b>Document / Category of Documents:</b>	<p>All UIF's internal documents, including drafts, notes, memorandums and others, dated prior to February 27, 2014, that were prepared in connection with OSA's notices of acts or transactions related to vulnerable activities, including:</p> <ul style="list-style-type: none"> <li>(i) reports and analyses of OSA's transactions reported by banks;</li> <li>(ii) reports and analyses of other OSA's transactions subject to UIF review; and</li> <li>(iii) internal recommendations leading to, and the decision to file, the UIF Complaint.</li> </ul>
<b>Justification:</b>	<p>Claimant states that the UIF Complaint—which, in turn, triggered the Seizure Order and Detention Order—is solely based on a list of offshore transactions by and to OSA, and does not specify the kind of alleged illegal activity in which OSA or its shareholders supposedly were engaging. Respondent contends that UIF had reason to believe that OSA had engaged in a highly unusual number of transactions that exceeded the financial models used by UIF (SOD, ¶ 235) but, again, fails to produce any document in support of these allegations.</p> <p>The requested documents are relevant and material to the issue of whether the UIF Complaint—and therefore all subsequent State actions against OSA—had any legal or factual basis. This will permit the Tribunal to assess whether Respondent violated the obligations set forth in the Treaty.</p>
<b>Objections:</b>	The Respondent incorporates by reference its objections to Request No. 21.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 21.
<b>Tribunal's decision:</b>	The Respondent to produce the final documents showing the factual basis to seize OSA.



### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>23</b>
<b>Document / Category of Documents:</b>	All communications, including emails, reports, minutes of meetings and briefing notes, by and between UIF and PGR regarding OSA and the ongoing investigations.
<b>Justification:</b>	<p>Claimant states that (i) UIF Complaint is solely based on a list of offshore transactions by and to OSA; that (ii) the PGR ordered the seizure of OSA on the day following the UIF Complaint; and that (iii) at that time, the PGR did not even have a copy of the Banamex Complaint.</p> <p>Respondent contends that the evidentiary standard applicable to the UIF Complaint is lower than the standard applicable to the PGR, and that UIF was only required to provide indicia on the possible commission of a crime (<i>see</i> SOD, ¶ 242). Respondent, however, fails to elaborate on the indicia claimed in this case or produce any evidence thereof. Respondent also fails to explain the coincidence of the timing of UIF and PGR's actions against OSA.</p> <p>The requested documents are relevant and material to the issue of whether the PGR had any factual basis to order the complete seizure of OSA and whether this course of action was lawful, reasonable and proportionate. It will also establish whether PGR's actions were predetermined in collaboration with UIF even prior to the filing of the UIF complaint, and the duration of the UIF/PGR collaboration and planning against OSA. This will permit the Tribunal to assess whether Respondent violated the obligations set forth in the Treaty.</p>
<b>Objections:</b>	The Respondent incorporates by reference its objections to Request No. 21.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 21.
<b>Tribunal's decision:</b>	The Respondent to produce the final documents showing the factual basis to seize OSA.

### Claimant’s Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>24</b>
<b>Document / Category of Documents:</b>	<p>Internal correspondence, reports and /or briefing notes exchanged between PGR and either or both the Deputy Attorney Specialized in Organized Crime Investigation (<i>Subprocurador Especializado en Investigación de Delincuencia Organizada</i>) and the Attorney General (<i>Procurador General de la República</i>) regarding any and all criminal investigations against OSA and its shareholders, including:</p> <ul style="list-style-type: none"> <li>(i) “Averiguación Previa UEIORPIFAM/065/2014”;</li> <li>(ii) “Averiguación Previa AP/PGR/UEAF/012/2018”;</li> <li>(iii) “Averiguación Previa UEIORPIFAM/AP/115/2014”;</li> <li>(iv) “Averiguación Previa UEIORPIFAM/AP/136/2014”, and</li> <li>(v) “Averiguación Previa UEIORPIFAM/AP/239/2014”.</li> </ul>
<b>Justification:</b>	<p>Claimant has asserted—and Respondent does not deny—that the Organized Crime Unit (OCU) found no signs of organized crime in its investigation against OSA and therefore had to turn the investigation over to a different unit at PGR, due to OCU’s lack of jurisdiction to conduct an investigation absent signs of organized crime. Respondent merely states that the PGR investigations are still “ongoing.”</p> <p>The requested documents are relevant and material to the issue of whether Mexico had the legal and factual basis to pursue criminal investigations against OSA and its shareholders—and particularly, to issue the Seizure Order and the Detention Order. The requested documents will further permit the Tribunal to ascertain how the public prosecutors and state agencies interacted in the case, whether there were political motivations behind it and, ultimately, whether Respondent violated the obligations set forth in the Treaty.</p>
<b>Objections:</b>	The Respondent incorporates by reference its objections to Request No. 21.

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<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 21.
<b>Tribunal's decision:</b>	Objection upheld. The Request is overly broad.

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>25</b>
<b>Document / Category of Documents:</b>	<p>Complete files of the administrative proceedings (<i>Procedimiento Administrativo Sancionador</i>) conducted by SPF against OSA that led to the Unlawful Sanction, which prevented OSA from entering into new contracts with any public entity, including Pemex, including:</p> <ul style="list-style-type: none"><li>(i) Any and all records of [REDACTED]</li><li>(ii) Any and all communications by and between the Internal Control Body (<i>Órgano Interno de Control, OIC</i>) of Pemex/PEP and SPF regarding the administrative proceeding that led to the Unlawful Sanction;</li><li>(iii) Any and all internal documents of OIC regarding the administrative proceeding that led to the Unlawful Sanction;</li><li>(iv) Any and all internal documents of SFP regarding the administrative proceeding that led to the Unlawful Sanction;</li><li>(v) Resolution to initiate the proceedings and notice to OSA;</li><li>(vi) OSA's statement of defense in the administrative proceedings.</li></ul> <p>Claimant understand these administrative proceedings include, but are not limited to the complete files with the following reference numbers:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

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	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<b>Justification:</b>	<p>Claimant asserts that the Unlawful Sanction was illegal and contrary to Mexican Law, and was later revoked by Mexican courts. In the interim, however, the Unlawful Sanction irreparably damaged OSA's financial situation. Respondent argues that the administrative proceedings before the SFP were initiated as a result of OSA's contractual breaches, implicitly contending that the Unlawful Sanction would have been warranted, but Respondent fails to produce any documentation establishing the bases for or results of these administrative proceedings.</p> <p>The requested documents are relevant and material to the issue of whether Mexico had any legal or factual basis to issue the Unlawful Sanction against OSA, which damaged its finances irreparably and led to its demise. Ultimately, this will permit the Tribunal to assess whether Respondent violated the obligations set forth in the Treaty and whether these violations caused the destruction of Claimant's investment.</p> <p>Based on advice by local counsel, we understand that any public process involving a request to the Government to release these documents under Mexican Law would not guarantee their final and complete disclosure and, in any case, could last several months.</p>
<b>Objections:</b>	<p>First, The Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). The review of OSA does not relate to any measure taken with respect to the Claimant or its</p>

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	<p>Subsidiaries. This request concerns documentation of a company that is not part of this arbitration, namely OSA. Further, Claimant does not how these documents could show “that OSA’s finances were irreparably damaged.”</p> <p>Second, the Respondent objects on the basis of General Objection 2. There is no legal basis for counsel for the Respondent to compel the <i>Secretaría de la Función Pública</i> to turn over its investigation files for use in this proceeding.</p> <p>Third, the Respondent objects on the basis of General Objection 3. The files of the administrative investigation are confidential.</p> <p>Fourth, the Respondent objects on the basis of General Objection 4. Article 82 of the Law on Industrial Property prohibits the disclosure of financial situation, economic/accounting data and technical/financial data which, if granted, could put the OSA at a disadvantage vis-à-vis its competitors. That information is protected under Articles 113 (II) of the LFTAIP. Accordingly, Pemex OIC is obliged to maintain this protection in accordance with Articles 113 (III) of the LFTAIP and 116 last paragraph of the LGTAIP.</p> <p>Fifth, the Respondent objects based on the lack of specificity (General Objection 5). A request for “Complete files of the administrative proceedings” is overly broad and vague.</p>
<b>Reply:</b>	<p>Respondent’s five objections are each without merit.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome. Respondent denies that the documents are relevant or material exclusively on the basis that the administrative proceeding concerned OSA, and not POSH or the Subsidiaries. This is groundless. As noted in Claimant’s Response to General Objection No. 1, and will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain internationally wrongful acts <i>impact</i> that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess these international wrongful acts. In this case, the documents from the Administrative Proceeding that led to the Unlawful Sanction—the first of the sequence of</p>

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Measures adopted by the Mexican Government—are crucial to assess whether the Measures were lawful, appropriate, and proportionate, or not.

*Second*, the requested documents are in Respondent's possession, custody or control (Claimant's Response to General Objection No. 2). Respondent claims—very illustratively— that “[t]here is no legal basis *for counsel* for the Respondent *to compel* the courts... to turn over their files...” However, there is no need for counsel to compel the courts to produce the documents. *Respondent* must produce the documents. According to the international law rules of attribution, Respondent represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent—not counsel—from producing the documents; and, even if that inability existed, this would constitute a domestic law issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.

*Third*, the objection based on the ground of confidentiality of investigations is groundless (Claimant's Response to General Objection No. 3). Respondent's blanket invocation of Mexican law as a defense to producing documents is inconsistent with the international law maxim that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. Moreover, it is clear that Respondent *does* have the power to obtain documents from those investigations and to disclose them as it likes. Respondent expressly acknowledges here that its criminal expert, Mr. Paz, “had access to... documents of the criminal investigations after he signed a non-disclosure agreement,”<sup>28</sup> which disclosure, according to Respondent's own argument here, would have violated Mexican Law. Evidently, then, whatever confidentiality rules that Respondent invokes to resist this request are not, in reality, a constraint on its access to, use, or disclosure of such documents. Finally, Procedural Order No. 3 provides that the documents produced in this arbitration will not be made public, Claimant and Claimant's counsel have offered to enter into a confidentiality agreement with Respondent, whereby they undertake to keep

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<sup>28</sup> Respondent's Objections to Claimant's Document Request no. 11.

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	<p>the documentation confidential, use it only for the purposes of this arbitration, and destroy it once the arbitration or related proceedings are over. Respondent's objection is, therefore, unjustified.</p> <p><i>Fourth</i>, the objection based on the alleged confidentiality of commercial information is groundless (Claimant's Response to General Objection No. 4). Respondent invokes Mexican Law again as means to prevent disclosure of relevant evidence of its international wrongful acts. Respondent's objection is further groundless because, as already stated above, Procedural Order No. 3 provides that any and all documents used in these proceedings shall not be made public; Claimant and Claimant's counsel have offered to sign a non-disclosure agreement in connection with potential confidential information produced by Respondent; and the information is "historic," and outdated (prior to February 2014, date of the Unlawful Sanction), which has no current commercial value, nor does it provide any commercial advantage. Finally, Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation</p> <p><i>Fifth</i>, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). Respondent claims that the reference to the "complete file" would be too broad but fails to note that the request is narrowed to a specific topic—the proceedings that led to the Unlawful Sanction—and is further illustrated by an extensive list of such documents, to provide clarity and guidance in Respondent's search. In addition, Claimant has included the reference numbers of the specific files. The request is specific, narrowly tailored and the requested documents are easy to identify.</p>
<b>Tribunal's decision:</b>	Objection upheld. The "unlawful sanction" was reversed by the courts.



### Claimant's Request for the Production of Documents

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<b>Request</b>	26
<b>Document / Category of Documents:</b>	The complete case file of <i>amparo en revisión</i> 153/2015 and <i>juicio de amparo</i> 211/2014-III related to the Unlawful Sanction, which resulted in the Judgement of the 14th District Court of Veracruz ( <i>Juez Decimocuarto de Distrito en el Estado de Veracruz</i> ) dated 4 November 2014, and the Judgement of the Court of Appeals for the 10th Circuit ( <i>Tribunal Colegiado del Décimo Circuito de Veracruz</i> ) dated 4 June 2015.
<b>Justification:</b>	<p>Claimant asserts that the Unlawful Sanction was illegal and contrary to Mexican Law, and was later revoked by Mexican courts. In the interim, however, the Unlawful Sanction damaged OSA's financial situation irreparably. Respondent argues that the administrative proceedings before the SFP were initiated as a result of OSA's contractual breaches implicitly contending that the Unlawful Sanction would have been warranted.</p> <p>The requested documents are relevant and material to the issue of whether Mexico had any legal or factual basis to issue the Unlawful Sanction against OSA, which damaged its finances irreparably and led to its demise, thereby testing the veracity of Respondent's assertions. Claimant is not a party to these court cases, and does not have access to the court files. Respondent has full access to the case files. Ultimately, this will permit the Tribunal to assess whether Respondent violated the obligations set forth in the Treaty and whether these violations caused the destruction of Claimant's investment.</p> <p>Based on advice by local counsel, we understand that any public process involving a request to the Government to release these documents under Mexican Law would not guarantee their final and complete disclosure and, in any case, could last several months.</p>
<b>Objections:</b>	<p>First, The Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). The court proceedings at issue did not involve Claimant or the Subsidiaries.</p> <p>Second, the Respondent objects to the request on the ground that it is an unreasonable burden pursuant to 9(2)(c) of the IBA Rules. The request is for the files of an <i>amparo</i> proceeding concluded more than 5 years ago, and the Claimant has already submitted C-128, which is the final judgment issued on the <i>juicio de amparo</i> 211/2014-III,</p>

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	<p>initiated by OSA, who is not a party in this proceeding. Third, the Respondent objects based on the lack of specificity (General Objection 5). A request for the “complete case file” is overly broad and vague.</p>
<b>Reply:</b>	<p>Respondent's objections are each without merit.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome. Respondent denies that the documents are relevant or material exclusively on the basis that the <i>amparo</i> proceedings concerned OSA, and not POSH or the Subsidiaries. This is groundless. As noted in Claimant's Response to General Objection No. 1, and will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain internationally wrongful acts <i>impact</i> that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess these international wrongful acts. In this case, the documents from the <i>amparo</i> proceedings against the Unlawful Sanction, are relevant and material to the issue of whether Mexico had any legal or factual basis to issue the Unlawful Sanction, which damaged OSA's finances irreparably and led to its demise, destroying Claimant's investment.</p> <p><i>Second</i>, Respondent argues that the search for the documents would be unreasonably burdensome because the proceedings “concluded more than 5 years ago,” and Claimant has already produced the judgment that put an end to those proceedings. This is groundless. The request includes the reference numbers of the proceedings, making it easy to identify and locate the documents, simply by checking the court docket. The date of the proceedings does not render the search any more burdensome. Respondent has made requests for documents that go beyond a 5 year period. Finally, just as the judgments rendered in these proceedings, which have been produced by Claimant, are relevant and material to the case, so are the pleadings and exhibits filed by the parties in these proceedings, to which Claimant does not have access (and hence makes this request).</p> <p><i>Third</i>, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). Respondent claims that the reference to the “complete file” would be too broad, but fails to note that the request is perfectly identifiable because Claimant has provided the reference number of the court docket. Claimant is requesting access to the pleadings filed by the parties, together with the filed evidence on which those pleadings were based.</p>

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	In any case, in the spirit of good faith and efficiency, Claimant agrees to limit its request to being granted on-site access to the court docket of the <i>amparo</i> proceedings, in order to examine and make copies of relevant documents, without the need for Respondent to gather and send all the documents to Claimant.
<b>Tribunal's decision:</b>	Objection upheld. The "unlawful sanction" was reversed by the courts.

### Claimant’s Request for the Production of Documents

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<b>Request</b>	27
<b>Document / Category of Documents:</b>	<p>The complete case file for Pemex’s investigation into the Banamex factoring facility, including but not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) [REDACTED]</li> <li>(iii) any and all records of [REDACTED]</li> <li>(iv) all memoranda or reports discussing evidence collected;</li> <li>(v) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for financial fraud or any other crime;</li> <li>(vi) the memorandum or formal document closing this investigation.</li> </ul>
<b>Justification:</b>	<p>Respondent claims that after SPF issued the Unlawful Sanction, Pemex (with Citibank) launched an investigation into OSA’s factoring facility, allegedly finding several wrongdoings (SOD, ¶¶ 216-218). This investigation led to the Banamex Complaint. Respondent, however, fails to identify who was responsible for the alleged wrongdoings (Banamex, Pemex or OSA) or to produce a single piece of substantive evidence in connection with the investigation (exhibiting just two reports by the <i>Comisión Nacional Bancaria y de Valores (CNBV)</i> and the Securities and Exchange Commission (<b>SEC</b>), which only mention the investigation in passing). As far as Claimant knows, OSA was never sanctioned in connection with Banamex’s factoring facility—only Banamex was sanctioned.</p> <p>The documents are relevant and material to ascertain the investigation conducted by Pemex, the “wrongdoings” that may have been found, and the persons responsible for them, thereby testing the veracity of Respondent’s</p>

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	assertions. This will permit the Tribunal to assess whether Respondent's criminal investigations were justified and whether they violated the obligations set forth in the Treaty.
<b>Objections:</b>	The Respondent incorporates by reference the objections set out in response to Request No. 25. In relation to General Objection 4, Article 113 of the LFTAIP establishes the principle of bank secrecy ( <i>secreto bancario</i> ), which protects private and personal data under the domain of governmental agencies, such as CNBV.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 25. As noted in Claimant's Responses to General Objections Nos. 3 and 4, Respondent improperly attempts to invoke domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.
<b>Tribunal's decision:</b>	The Respondent to produce final documents showing which party was sanctioned in the investigation of the Banamex factoring facility

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<b>Request</b>	<b>28</b>
<b>Document / Category of Documents:</b>	<p>The complete case file for the investigation by CNBV into Banamex in connection to the factoring facility granted to OSA (the <b>CNBV Investigation</b>). This request includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>(i) the complaint, statement, report, or memorandum that was the basis for opening any such investigation;</li> <li>(ii) all memoranda or reports discussing evidence collected;</li> <li>(iii) all memoranda or reports analyzing whether the evidence collected met the applicable evidentiary standard for any other crime;</li> <li>(iv) all memoranda or reports reflecting the reasons for recommending or not recommending the prosecution of any alleged crimes; and</li> <li>(v) the memorandum or formal document closing each such criminal investigation.</li> </ul>
<b>Justification:</b>	<p>Respondent argues CNBV conducted an investigation against Banamex and imposed penalties on the bank (SOD, ¶¶ 221-222). Respondent only produces a three-page summary of the investigation that CNBV sent to the Senate Committee, but fails to produce any substantive documents from the actual investigation or to describe its current status, the specific sanctions imposed, who was responsible at Banamex, and the relevance, if any, to the claims filed in this arbitration.</p> <p>The documents are relevant and material to understand the extent of the investigation conducted by CNBV, the sanctions that were imposed, the persons found responsible, and its relationship and relevance, if any, to this arbitration. This will permit the Tribunal to assess whether Respondent's actions were justified or not, and whether Respondent violated the obligations set forth in the Treaty.</p>
<b>Objections:</b>	<p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). As mentioned by the Respondent in paragraph 221 of the SoD, the CNBV investigation was related to the</p>

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	<p>financial factoring between Banamex and OSA and Banamex's internal proceedings on anti-money laundering. This actions were addressed to Banamex. Claimant itself says it does not know "the relevance, if any, to the claims filed in this arbitration." That alone is a sufficient basis to reject the request.</p> <p>Second, the Respondent objects on the basis of General Objection 2. There is no legal basis for counsel for the Respondent to compel the CNBV to turn over its investigation files for use in this proceeding.</p> <p>Third, the Respondent objects on the basis of General Objection 3. The information related to the investigation of Banamex (the complete case file) are confidential pursuant to the requirements of article 97, third paragraph, of the Law on Credit Institutions. Information on sanctions against Banamex, pursuant article 109 Bis 8 of the Law on Credit Institutions<sup>29</sup> can be consulted on the following website: <a href="https://sanciones.cnbv.gob.mx/">https://sanciones.cnbv.gob.mx/</a></p> <p>Fourth, the Respondent objects based on General Objection 4. The Claimant is seeking confidential information of Banamex and OSA.</p> <p>Fifth, the Respondent objects based on the lack of specificity (General Objection 5). A request for the "complete case file for the investigation" is overly broad and vague.</p>
<b>Reply:</b>	Respondent's five objections are each without merit.

<sup>29</sup> Artículo 109 Bis 8.- Para tutelar el ejercicio del derecho de acceso a la información pública gubernamental, las Comisiones Nacionales Bancaria y de Valores y para la Protección y Defensa de los Usuarios de Servicios Financieros, así como el Instituto para la Protección al Ahorro Bancario, ajustándose a los lineamientos que aprueben sus respectivas Juntas de Gobierno, deberán hacer del conocimiento del público en general, a través de su portal de Internet, las sanciones que al efecto impongan por infracciones a esta Ley o a las disposiciones que emanen de ella, para lo cual deberán señalar:

I. El nombre, denominación o razón social del infractor;

II. El precepto infringido, el tipo de sanción impuesta, monto o plazo, según corresponda y la conducta infractora, y

III. El estado que guarda la resolución, indicando si se encuentra firme o bien, si es susceptible de ser impugnada y en este último caso si se ha interpuesto algún medio de defensa y su tipo, cuando se tenga conocimiento de tal circunstancia por haber sido debidamente notificada por autoridad competente.

[...]

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*First*, the documents are relevant to the arbitration and material to its outcome. Respondent denies that the documents are relevant or material exclusively on the basis that the investigation by CNBV involved Banamex, not POSH or the Subsidiaries. This is groundless. As noted in Claimant's Response to General Objection No. 1, and will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain internationally wrongful acts *impact* that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess these international wrongful acts. In this case, the documents from CNBV's investigation into Banamex are relevant and material to understand the extent of the investigation, the sanctions that were imposed, the persons who were found responsible, and the relationship between the investigation and OSA, and OSA's financial situation prior to the Measures. The Tribunal will recall that this investigation prompted the Government to launch criminal investigations into OSA, which in turn damaged Claimant's investments.

Moreover, it was Respondent who first mentioned the CNBV investigation (SOD, ¶¶ 221-222). One would assume that Respondent would not have included this reference unless it believed that the investigation was relevant information for the Tribunal. It seems clear that Respondent made that statement in an attempt to disparage Claimant and suggest to the Tribunal that Claimant is suspected or guilty of other illegal acts, without producing evidence or even allegations to that effect—a tactic that should not be countenanced. Respondent cannot now be allowed to make the statement for tactical advantage, but then deny the relevance of its own statement for the purpose of thwarting Claimant's legitimate document request.

*Second*, the requested documents are in Respondent's possession, custody or control (Claimant's Response to General Objection No. 2). Respondent claims—very illustratively— that “[t]here is no legal basis *for counsel* for the Respondent *to compel* the courts... to turn over their files...” There is no need for counsel to compel the courts to produce the documents. *Respondent* must produce the documents. According to the international law rules of attribution, Respondent represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent—not counsel—from producing the documents; and, even if that inability existed, this would constitute a domestic law



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issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts.

*Third*, the objection based on the ground of confidentiality of investigations is groundless (Claimant's Response to General Objection No. 3). Respondent's blanket invocation of Mexican law as a defense to producing documents is inconsistent with the international law maxim that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. Moreover, it is clear that Respondent *does* have the power to obtain documents from those investigations and to disclose them as it likes. Respondent expressly acknowledges here that its criminal expert, Mr. Paz, "had access to... documents of the criminal investigations after he signed a non-disclosure agreement,"<sup>30</sup> which disclosure, according to Respondent's own argument here, would have violated Mexican Law. Evidently, then, whatever confidentiality rules that Respondent invokes to resist this request are not, in reality, a constraint on its access to, use, or disclosure of such documents. Finally, Procedural Order No. 3 provides that the documents produced in this arbitration shall not be made public, and Claimant and Claimant's counsel have offered to enter into a confidentiality agreement with Respondent, undertaking to keep the documentation confidential, use it only for the purposes of this arbitration, and destroy it once the arbitration or related proceedings are over. Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation. Respondent's objection is, therefore, unjustified.

*Fourth*, the objection based on the alleged confidentiality of commercial information is groundless (Claimant's Response to General Objection No. 4). Respondent invokes Mexican Law again as means to prevent disclosure of relevant evidence of its international wrongful acts. Respondent's objection is further groundless because, as already stated above, Procedural Order No. 3 provides that any and all documents used in these proceedings shall not be made public; and Claimant and Claimant's counsel have offered to sign a non-disclosure agreement in connection with potential confidential information produced by Respondent.

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<sup>30</sup> Respondent's Objections to Claimant's Document Request no. 11.

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	<p><i>Fifth</i>, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). Respondent claims that the reference to the "complete file" would be too broad but fails to note that the request is narrowed to a specific topic—the investigation by CNBV—and is further illustrated by an extensive list of such documents, to provide clarity and guidance in Respondent's search. Furthermore, it was Respondent who first mentioned this investigation, so the Tribunal can assume that Respondent knows the documents that are in the file. The request is specific, narrowly tailored and the requested documents are easy to identify.</p>
<b>Tribunal's decision:</b>	Objection partially upheld. The Respondent shall produce the documents listed in (i) and (v).

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### D) INSOLVENCY PROCEEDINGS

<b>Request</b>	<b>29</b>
<b>Document / Category of Documents:</b>	<p>A copy of the complete file of OSA's Insolvency Proceedings, including:</p> <ul style="list-style-type: none"> <li>(i) the complete files of related judicial proceedings in which OSA challenged the imposition of contractual penalties by Pemex.</li> <li>(ii) the complete files, including pleadings filed by the parties, of the <i>Amparo en Revisión</i> filed by GOSH (<i>expediente 45/2015</i>) and by Banco Invex, S.A., Institución de Banca Múltiple, Invex Grupo Financiero (<i>revisión 96/2015</i>).</li> </ul>
<b>Justification:</b>	<p>Claimant has asserted that the State adopted several measures within OSA's Insolvency Proceedings that were unlawful, unreasonable, arbitrary and disproportionate, and resulted in the destruction of Claimant's investment in Mexico. These measures include the Deviation Order, the imposition of contractual penalties, SAE's management of OSA, and failure to terminate or rescind OSA's contracts with Pemex, thereby blocking the possibility that Pemex awarded new contracts directly to the Subsidiaries. Claimant further asserts that, within the Insolvency Proceedings, Mexico acknowledged that the Unlawful Sanction was the proximate cause of OSA's insolvency. Respondent contends that all measures were lawful, reasonable and proportionate, but fails to produce documentation supporting these allegations.</p> <p>Respondent only produces documentation pertaining to the Insolvency Proceedings, or other related legal proceedings, when it believes the documents support its allegations. For example, Respondent produces several judicial decisions and writs, regarding proceedings initiated by Invex and others challenging the Deviation Order (R-62 to R-70). These documents do not support Respondent's position, as will be addressed in the Reply, but they do illustrate that Respondent carefully cherry-picks which documents to produce in the arbitration. Respondent, instead, does not produce any document on SAE's management of OSA, the current status of the legal proceedings in which the contractual penalties imposed by Pemex were challenged, or other relevant areas</p>

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	<p>for the case. Judging by the very limited documentation it has produced in this arbitration, Respondent seems more concerned by preventing Claimant from accessing relevant documentation, than by proving its own case.</p> <p>The requested documents are material and relevant to ascertain whether Mexico's actions within the Insolvency Proceeding were lawful, reasonable and proportionate, and whether they contributed to OSA's demise and the destruction of Claimant's investment. This will permit the Tribunal to assess whether Respondent violated the obligations set forth in the Treaty, causing damages to Claimant.</p> <p>The Subsidiaries are no longer a party to, nor do they have access to, OSA's Insolvency Proceedings. Respondent does have access to the court files and other documents within Respondent's own judicial system. Based on advice by local counsel, we understand that any public process involving a request to the Government to release these documents under Mexican Law would not guarantee their final and complete disclosure and, in any case, could last several months.</p>
<b>Objections:</b>	<p>The Subsidiaries were part of OSA's bankruptcy proceeding until 3 August 2018, date until the Subsidiaries withdrew to their creditor rights in the proceeding. This means that Claimant had full access to the complete file of OSA's Insolvency Proceedings at least until that date. In other words, Claimant should have a copy of the required information.</p> <p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). Claimant is aware that at least 183 companies participated in OSA's Insolvency Proceedings.<sup>31</sup> It is irrelevant and immaterial to this arbitration to see the submissions of all these parties in the insolvency proceedings.</p> <p>Second, the Respondent objects to the request on the ground that it is an unreasonable burden pursuant to 9(2)(c) of the IBA Rules. The entire court docket of OSA's Insolvency Proceeding comprises many thousands of pages. Regarding the judicial proceedings related to OSA's challenges to the imposition of contractual penalties by Pemex, the Respondent would like to clarify that those proceeding are not part of the insolvency proceedings but</p>

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<sup>31</sup> C-165, pp. 36-40.

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	<p>rather were administrative proceedings before the Administrative Federal Tribunal. It also would be an unreasonable burden for the Respondent to search for all the challenges made by OSA against Pemex' penalties.</p> <p>Third, the Respondent objects based on the lack of specificity (General Objection 5). A request for the "complete file of OSA's Insolvency Proceedings" is overly broad and vague.</p> <p>Finally, in relation to the files of <i>Amparo en Revisión</i> filed by GOSH (<i>expediente 45/2015</i>) and by Invex (<i>revisión 96/2015</i>), Respondent notes that those challenges were filed by companies under the control of Claimant and by its former trustee ("<i>fiduciario</i>"). It is reasonable to believe that Claimant already has the requested information. Nevertheless, in the spirit of good faith the Respondent is providing copies of these challenges.</p>
<b>Reply:</b>	<p>The Subsidiaries were a party to the Insolvency Proceeding only until August 3, 2018. The Subsidiaries, however, did not, and do not have a copy of any and all documents in the court's docket, nor do they have a copy of any document filed or issued after that date, regarding, for example, the challenges to the successive settlement agreements reached with the creditors. In any case, in the spirit of good faith and efficiency, Claimant agrees to limit its request to being granted on-site access to the court docket of the Insolvency Proceeding and the court docket of the challenges to the contractual penalties, in order to examine and make copies of relevant documents, without the need for Respondent to gather and send all the documents to Claimant.</p> <p>In any case, Respondent's objections are groundless.</p> <p><i>First</i>, the requested documents are relevant to the case and material to its outcome. Several of the Measures upon which the claim is based were adopted within the Insolvency Proceeding. The documents requesting, justifying, or otherwise discussing those Measures are, therefore, relevant and material to assess the lawfulness, appropriateness and proportionality of the Measures.</p> <p><i>Second</i>, the request is not unreasonably burdensome. However, as noted above, Claimant agrees in good faith to limit its request to having on-site access to the court's dockets.</p> <p><i>Third</i>, the request does not lack specificity. The request for the complete file targets specific proceedings (Insolvency Proceedings and the challenges to the contractual penalties), which are easily identifiable.</p>

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	<p>Respondent is very much aware that Claimant is requesting access to the “file” that is contained in the courts’ docket, since it acknowledges that “<i>the entire court docket</i> of OSA’s Insolvency Proceeding comprises many thousands of pages...” and should have no difficulties locating or giving Claimant access to those dockets.</p>
<b>Tribunal’s decision:</b>	<p>The Tribunal notes that the Respondent has agreed to provide copies of the challenges listed in (ii). The Tribunal also notes that the Claimants’ Subsidiaries were party in the insolvency proceedings until August 3, 2018. Even if they may not have all the documents before that date the Subsidiaries should have the documents pertaining to themselves. Relevance of documents beyond August 3, 2018 has not been sufficiently established.</p>

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<b>Request</b>	<b>30</b>
<b>Document / Category of Documents:</b>	<p>A copy of OSA's financial records, including general or partial financial statements (prepared monthly/quarterly/yearly, as the case may be), spreadsheets, bank account statements or other documents, showing money coming in and out of the company.</p> <p>Temporal scope: from 2011—when POSH initiated its commercial relationship with OSA—to date.</p>
<b>Justification:</b>	<p>Claimant has stated that, by February 2014, its venture with OSA and future projections were solid (SOD, ¶¶ 103 et ss.). Mexico denies it, alleging that OSA was already insolvent by 2013. Despite having access to OSA's financial records in the insolvency proceeding, Mexico has failed to produce a single financial statement or spreadsheet showing OSA's financial situation and expectations over that period (it only produces one document, R-20, prepared after the Measures, when OSA was under SAE's administration).</p> <p>The requested documents will permit the Tribunal to ascertain OSA's financial situation during its business venture with POSH and the Subsidiaries, the viability of its business, and SAE's administration of OSA during the insolvency proceeding. These documents will also allow the Tribunal to assess whether Respondent's actions violated the obligations set forth in the Treaty and caused the destruction of Claimant's investment.</p> <p>POSH and the Subsidiaries are no longer a party to, and do not have access, to OSA's insolvency proceedings. Respondent does have access to the court files and other documents within Respondent's own judicial system. Based on advice by local counsel, we understand that any public process involving a request to the Government to release these documents under Mexican Law would not guarantee their final and complete disclosure and, in any case, could last several months.</p>
<b>Objections:</b>	<p>During OSA's Insolvency Proceedings the management and administration of the company was guarded by the <i>Conciliador</i> and <i>Síndico</i> who had the responsibility to provide periodic reports about the status of the administration of the company. Claimant had access to those reports.</p>

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	<p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). The Claimant has no standing to complain on behalf of OSA. Moreover, the Claimant requests documentation dated from before SAE took over the administration of OSA.</p> <p>Second, the Respondent objects to the request on the basis that the information belongs to a company not under its control, as stated in General Objection 2. SAE is no longer in charge of OSA's administration and the requested information is private information of a private company that is not part of this arbitration.</p> <p>Third, the Respondent objects to the request on the grounds that the requested information is confidential commercial information as explained in General Objection 4. It is obvious that documents such as financial, spreadsheets, bank account statements are confidential information belonging to OSA. Moreover, OSA's financial records during insolvency proceedings are protected as confidential under Mexican Law (<i>see</i> Article 113 LFTAIP).</p> <p>Fourth, the Respondent objects to the request on the grounds that it is an unreasonable burden in accordance with 9(2)(c) of the IBA Rules. The Claimant's demand for all financial records of a very large company would require voluminous documentation. Also, Claimant does not explain why it is requesting documents from before the three-year limitations period.</p> <p>Fifth, the Respondent objects based on the lack of specificity (General Objection 5). A request for "financial records" is overly broad and vague.</p>
<p><b>Reply:</b></p>	<p>Respondent's five objections are each groundless.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome. Claimant asserts that the Measures irreparably damaged OSA's finances, leading to its demise and destroying Claimant's investment. Respondent asserts, in contrast, that OSA was insolvent prior to the Measures. Respondent denies that the documents are relevant or material exclusively on the basis that the information would concern OSA, not POSH or the Subsidiaries. This is groundless. As noted in Claimant's Response to General Objection No. 1, and will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain internationally wrongful acts <i>impact</i> that investor and its investment, regardless of who the intended addressee</p>



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of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess these international wrongful acts. In this case, the OSA's financial records will permit the Tribunal to ascertain OSA's true financial situation during its business venture with POSH and the Subsidiaries, the viability of its business, and the facts of SAE's administration of OSA (including with respect to Claimant's property and contracts) during the insolvency proceeding.

*Second*, Respondent argues that the request documents are not within Respondent's control, since SAE no longer administers OSA. This is not credible. SAE administered OSA for several years, and it likely kept internal records of OSA's financial situation, and a copy of OSA's financial statements. It is not credible that SAE would have destroyed all of its records and files from the administration of OSA, which only ended in June, 2017. The most glaring evidence of Respondent's unsubtle strategy is that, while arguing for purposes of document production that it does not have access to certain records, Respondent has already demonstrated that it has access to the very same records by using documents obtained therefrom as exhibits to the SOD, when it believes they serve its interests—e.g., Respondent has produced OSA's financial statements prepared after the Measures, on January 14, 2015 (Exhibit R-20).

*Third*, the objection based on the alleged confidentiality of commercial information is groundless (Claimant's Response to General Objection No. 4). Respondent invokes Mexican Law again as means to prevent disclosure of relevant evidence of its international wrongful acts. Respondent's objection is further groundless because Procedural Order No. 3 provides that any and all documents used in these proceedings shall not be made public; Claimant and Claimant's counsel have offered to sign a non-disclosure agreement in connection with potential confidential information produced by Respondent; and Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation

*Fourth*, the request is not unreasonably burdensome. Respondent argues that the request involves "very voluminous documentation," while also arguing that it does not have access to the very same documentation. Leaving aside this revealing contradiction, the fact that the documentation may be voluminous does not render the task *unreasonably burdensome*, particularly given the extraordinary weight that Respondent itself gives to

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	<p>OSA's financial situation prior to the Measures. Finally, the three-year statute of limitations provided for in the Treaty bears no relationship whatsoever with the alleged burden of searching and locating the relevant documents.</p> <p><i>Fifth</i>, Claimant's document request does not lack specificity (Response to General Objection No. 5). Respondent claims that the reference to "financial records" would be too broad but fails to note that the request is narrowed to a specific time-period, and that Claimant includes a extensive list of representative documents to guide and facilitate Respondent's search ("including general or partial financial statements (prepared monthly/quarterly/yearly, as the case may be), spreadsheets, bank account statements or other documents, showing money coming in and out of the company"). The request is specific and the requested documents are easy to identify.</p>
<b>Tribunal's decision:</b>	<p>The Respondent to produce OSA's financial statements during the period of SAE's administration.</p>

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<b>Request</b>	<b>31</b>
<b>Document / Category of Documents:</b>	(i) A copy of SAE's bank account statements during OSA's insolvency, where SAE received the payments on behalf of OSA, and (ii) SAE's minutes, reports, memoranda or other type of internal or external document, in which SAE accounts for the payments so received and explains how the funds were used.
<b>Justification:</b>	<p>Claimant asserts that, after the declaration of insolvency, (i) the court ordered that all payments owed to OSA by Pemex be paid to SAE instead, at SAE's bank account (Exhibits C-173 and C-177), and that (ii) SAE mismanaged these funds. Respondent admits that "SAE requested [and obtained] that any sum of money owed to Oceanografía be deposited in SAE's own bank account" (SOD, ¶ 98) but denies any wrongdoing by SAE. Respondent, however, has failed to produce SAE's bank statements showing payments received on behalf of OSA, or any report in which SAE accounts for the payments received or explains how the funds were used.</p> <p>These documents are highly relevant to ascertain SAE's management of OSA and determine whether any wrongdoing or mismanagement of the funds took place. This will permit the Tribunal to assess whether Respondent's actions violated the obligations set forth in the Treaty and contributed to OSA's demise and the destruction of Claimant's investment.</p>
<b>Objections:</b>	The Respondent incorporates by reference the objections set out in response to Requests Nos. 29 and 30.
<b>Reply:</b>	Claimant repeats here by reference its Replies spelled out in Requests Nos. 29 and 30.
<b>Tribunal's decision:</b>	The Respondent to produce SAE's bank statements showing during OSA's insolvency, PEMEX payments received by SAE on behalf of OSA.

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<b>Request</b>	<b>32</b>
<b>Document / Category of Documents:</b>	The complete file of any and all investigations initiated by the Government against SAE in connection with OSA, whether conducted by the “Area de Quejas” of SAE’s own “Órgano Interno de Control,” or any other Government entity.
<b>Justification:</b>	<p>Claimant asserts that SAE’s administration of OSA was wrongful and in violation of its fiduciary duties (SOC, ¶ 389). Respondent denies this, but noticeably fails to mention whether it has launched any type of investigation into SAE’s actions as OSA’s administrator, visitor, conciliator or trustee, and fails to produce any document in connection therewith. However, the Mexican press has reported that these investigations do exist and are ongoing.</p> <p>The documents related to these investigations are relevant and material to ascertain whether SAE’s actions were wrongful, violated the obligations set forth in the Treaty, and whether they contributed to OSA’s demise and the destruction of Claimant’s investment.</p>
<b>Objections:</b>	<p>Claimant’s request does not specify in what manner there could an administrative proceeding in connection with OSA.</p> <p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1).</p> <p>Second, the Respondent objects based on the lack of specificity (General Objection 5). A request for “any and all investigations initiated by the Government against SAE in connection with OSA” is overly broad and vague.</p>
<b>Reply:</b>	<p>Tellingly, Respondent does not deny the existence of Government investigations into SAE in connection with its administration of OSA. Claimant learned of such investigations in the press, and Respondent’s statements in this arbitration confirm their existence.</p> <p>Moreover, Respondent’s objections are groundless for the following reasons.</p>

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*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

	<p><i>First</i>, the requested documents are relevant to this arbitration and material to its outcome. Claimant has asserted that SAE's administration of OSA was wrongful and in violation of its fiduciary duties, contributing to OSA's demise. Respondent denies this in this arbitration, but at the same time Respondent itself has launched an investigation precisely into SAE's potential wrongdoings in its administration of OSA. The documents pertaining to this investigation of SAE's administration of OSA are entirely on point to resolve the issue in dispute.</p> <p><i>Second</i>, the request does not lack specificity (Claimant's Response to General Objection No. 5). The request is tailored to investigations conducted by the Government in connection with SAE's administration of OSA, and is further narrowed by pointing to the organ that may have conducted this type of investigations, such as the "Area de Quejas" of SAE's own "Órgano Interno de Control." It is apparent that Respondent is fully aware of the investigation Claimant is referring to, does not deny its existence, and is merely attempting to shield access to relevant documentation based on purely formal and groundless arguments.</p>
<b>Tribunal's decision:</b>	Objection upheld. The Request is overly broad.

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>33</b>
<b>Document / Category of Documents:</b>	<p>All internal correspondence, notes, minutes of meetings, drafts, reports or memoranda prepared by Pemex (including their managers, directors and employees) in connection with the OSA-Pemex contracts for the Subsidiaries' vessels (the <b>Contracts</b>), including the cancellation, rescission, extension, renewal of these contracts, or the awarding of new contracts to the Subsidiaries' vessels.</p> <p>Temporal scope: from April 2014 (date of the insolvency request) to August 2015, when all GOSH's vessels had been sold to third parties as repayment for the loan to POSH.</p>
<b>Justification:</b>	<p>Claimant asserts that Pemex was concerned about the potential effect of OSA's insolvency on its production levels and was inclined to terminate the contracts with OSA and award new contracts for the same services directly to the Subsidiaries. Claimant also asserts that this possibility was blocked by SAE, which requested the extension of the Contracts (SOC, ¶¶ 189). Respondent denies these assertions but fails to produce any document prepared by Pemex in support of its denial.</p> <p>These documents are relevant and material to ascertain whether there was a possibility of entering into new contracts with Pemex, in order to safeguard its operations, and whether this possibility was blocked by the State. This will permit the Tribunal to assess whether Respondent's actions violated the obligations set forth in the Treaty and contributed to the destruction of Claimant's investment.</p>
<b>Objections:</b>	<p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1).</p> <p>Second, the Respondent objects on the basis of General Objection 2. There is no legal basis for counsel for the Respondent to compel Pemex to turn over its internal records for use in this proceeding.</p> <p>Third, the Respondent objects on the basis of General Objection 4. The request is for confidential business information of Pemex concerning its relationship with OSA, both of which are unrelated to Claimant.</p>

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

	<p>Fourth, the Respondent objects to the request on the basis that it would be an unreasonable burden under 9(2)(c) of the IBA Rules. Among other things, Claimant fails to specify the names and positions the persons who may have had these communications regarding the “cancellation, rescission, extension, renewal of these contracts, or the awarding of new contracts to the Subsidiaries’ vessels.” Also, Pemex has executed thousands of contracts with third parties and there is no practical manner in which to pinpoint the documents requested.</p> <p>Fifth, the Respondent objects based on the lack of specificity (General Objection 5). A request for “All internal correspondence, notes, minutes of meetings, drafts, reports or memoranda” is overly broad and vague.</p>
<b>Reply:</b>	<p>Respondent’s five objections are each groundless.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome. Respondent denies that the documents are relevant or material exclusively on the basis that that information would concern Pemex and OSA, not POSH or the Subsidiaries. This is groundless. As noted in Claimant’s Response to General Objection No. 1, and will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain internationally wrongful acts <i>impact</i> that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess these international wrongful acts. In this case, the documentation regarding the OSA-Pemex contracts regarding Claimant’s Subsidiaries’ vessels will permit the Tribunal to ascertain whether the Subsidiaries could have entered into new contracts with Pemex in order to safeguard its operations, and whether this possibility was blocked by the State. Ultimately, the documents are relevant and material to assess whether the Respondent violated the obligations set forth in the Treaty.</p> <p><i>Second</i>, the requested documents are in Respondent’s possession, custody or control (Claimant’s Response to General Objection No. 2). Respondent claims—very illustratively— that “[t]here is no legal basis <i>for counsel</i> for the Respondent <i>to compel</i> the courts... to turn over their files...” There is no need for counsel to compel the courts to produce the documents. <i>Respondent</i> must produce the documents. According to the international law rules of attribution, Respondent represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent—not counsel—from producing the documents; and, even if that inability existed, this would constitute a domestic law</p>

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. The most glaring evidence of Respondent's unsubtle strategy is that, while arguing here for purposes of document production that it does not have access to certain records, Respondent has already demonstrated its access to the very same records by using documents obtained therefrom as exhibits to the SOD, when it believes they serve its interests—e.g., Respondent has filed as exhibits documents obtained from Pemex's records (Exhibits R-71 to R-78).

*Third*, the objection based on the alleged confidentiality of commercial information is groundless (Claimant's Response to General Objection No. 4). Respondent invokes Mexican Law again as means to prevent disclosure of relevant evidence of its international wrongful acts. Respondent's objection is further groundless because (i) Procedural Order No. 3 provides that any and all documents used in these proceedings shall not be made public; (ii) Claimant and Claimant's counsel have offered to sign a non-disclosure agreement in connection with potential confidential information produced by Respondent; (iii) the requested information is "historic" and outdated (prior to August 2015), has no current commercial value, and does not provide any commercial advantage; and (iv) Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation.

*Fourth*, the request is not unreasonably burdensome. Respondent argues that "Claimant fails to specify the names and positions the persons who may have had these communications..." This is groundless for several reasons. Respondent—not Claimant—is in a position to know the names and positions of the relevant managers, directors or employees in Pemex and SAE who handled the Contracts with OSA. That is why Claimant has attempted to narrow the topic as much as possible ("in connection with the Contracts, including the cancellation, rescission, extension, renewal of these contracts, or awarding new contracts for the Subsidiaries' vessels."). Moreover, Respondent's objection is indeed surprising, given that Respondent itself has made blanket requests for "internal documents" and "records of communication" from Claimant without ever specifying "the names and positions the persons" who may have prepared these documents or sent these communications.

*Fifth*, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). Claimant's document request covers a very specific topic ("the OSA-Pemex contracts for the Subsidiaries' vessels..., including the cancellation, rescission, extension, renewal of these contracts, or the awarding of new



### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

	contracts to the Subsidiaries' vessels"), and includes a extensive list of sample-type of documents to guide and facilitate Respondent's search, which is also limited to a brief period of months (April 2014 (date of the insolvency request) to August 2015). The request is specific and narrowly tailored to cover a very specific topic over a brief period of time.
<b>Tribunal's decision:</b>	Objection partially upheld. The Respondent shall produce only those final documents on which it relies to deny the assertion that PEMEX had the intention to contract directly with the Subsidiaries.

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>34</b>
<b>Document / Category of Documents:</b>	<p>All correspondence, internal notes, minutes of meetings, drafts, reports or memoranda prepared by SAE (including their managers, directors and employees) in connection with the Contracts, including the cancellation, rescission, extension, renewal of these contracts, or awarding new contracts for the Subsidiaries' vessels.</p> <p>Temporal scope: from April 2014 (date of the insolvency request) to August 2015, where all GOSH's vessels had been sold to third parties to pay the loan to POSH.</p>
<b>Justification:</b>	<p>Claimant asserts that Pemex was concerned about the potential effect of OSA's insolvency on its production levels and was inclined to terminate the contracts with OSA and award new contracts for the same services directly to the Subsidiaries. Claimant also asserts that this possibility was blocked by SAE, which requested the extension of the Contracts (SOC, ¶¶ 189). Respondent denies these assertions but fails to produce any document by SAE in support of its denial.</p> <p>These documents are relevant and material to ascertain whether Pemex intended to award contracts to the Subsidiaries directly in order to safeguard its operations, and whether this possibility was blocked by SAE. This will permit the Tribunal to assess whether Respondent violated the obligations set forth in the Treaty and contributed to the destruction of Claimant's investment.</p>
<b>Objections:</b>	<p>As explained in SOD, ¶¶ 389 et ss. and exhibits R-057, R-058 and C-192, SAE did not request the cancellation, rescission or extension of OSA-PEP Contracts. It was instead OSA who made this request (R-057, R-058) and the Insolvency Judge (C-192) required the <i>Conciliador</i> to provide information in relation to the viability of the contracts still in force (see R-050).</p> <p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). The Claimant has no standing to complain about the modification or cancellation of contracts between OSA and Pemex.</p> <p>Second, the Respondent objects to the request on the grounds that the requested information is confidential commercial information as explained in General Objection 4. The information about OSA-Pemex contracts is</p>

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

	<p>confidential to those two companies. Moreover, OSA's records during insolvency proceedings are protected as confidential under Mexican Law (see Article 116 LGTAIP).</p> <p>Third, the Respondent objects to the request on the grounds that it is an unreasonable burden in accordance with 9(2)(c) of the IBA Rules. It would be an enormous undertaking to review all of the SAE's files to try to identify the requested documents.</p> <p>Fourth, the Respondent objects based on the lack of specificity (General Objection 5). A request for "All correspondence, internal notes, minutes of meetings, drafts, reports or memoranda" is overly broad and vague.</p>
<b>Reply:</b>	<p>Whether it was SAE or OSA who requested the cancellation of the contracts is entirely irrelevant for the purposes of this document request. SAE was administering OSA at the time, and Claimant is requesting SAE's internal documents discussing the cancellation of the Contracts, the existence of which has not been denied by Respondent.</p> <p>In any case, Respondent's four objections are groundless.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome. Respondent denies that SAE's internal documents discussing the Contracts are relevant or material exclusively on the basis that these documents would relate to OSA, not POSH or the Subsidiaries. This is groundless. As noted in Claimant's Response to General Objection No. 1, and will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain internationally wrongful acts <i>impact</i> that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess these international wrongful acts. In this case, SAE's internal documentation regarding the OSA-Pemex Contracts for the Subsidiaries' vessels will permit the Tribunal to ascertain whether the Subsidiaries could have entered into new contracts with Pemex in order to safeguard their operations in Mexico, and whether the State blocked this possibility. Ultimately, the documents are relevant and material to assess whether the Respondent violated the obligations set forth in the Treaty.</p>

### Claimant's Request for the Production of Documents

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	<p><i>Second</i>, the objection based on the alleged confidentiality of commercial information is groundless (Claimant's Response to General Objection No. 4). Respondent invokes Mexican Law again as means to prevent disclosure of relevant evidence of its international wrongful acts. Moreover, Respondent's objection is also groundless because (i) Procedural Order No. 3 provides that any and all documents used in these proceedings will not be made public; (ii) Claimant and Claimant's counsel have offered to sign a non-disclosure agreement in connection with potential confidential information produced by Respondent; (iii) the requested information is "historic" and outdated (prior to August 2015), has no current commercial value, and does not provide any commercial advantage; and (iv) Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation</p> <p><i>Third</i>, the request is not unreasonably burdensome. Respondent makes no attempt to justify why "it would be an enormous undertaking to review all of the SAE's files to try to identify the requested documents." It is clear that Respondent would not have to review <i>all of SAE's files</i>, but only those files in connection with OSA and the Contracts for the Subsidiaries' vessels, over a brief period of months (from April 2014 (date of the insolvency request) to August 2015).</p> <p><i>Fourth</i>, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). Claimant's document request cover a very specific topic ("the OSA-Pemex contracts for the Subsidiaries' vessels..., including the cancellation, rescission, extension, renewal of these contracts, or the awarding of new contracts to the Subsidiaries' vessels"), and includes an extensive list of sample-type of documents to guide and facilitate Respondent's search over a brief period of months (April 2014 (date of the insolvency request) to August 2015). The request is specific and narrowly tailored to cover a very specific topic over a brief period of time.</p>
<b>Tribunal's decision:</b>	Objection partially upheld. The Respondent shall produce only those final documents on which it relies to deny the assertion that SAE blocked the possibility of PEMEX contracting directly with the Subsidiaries.

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	35
<b>Document / Category of Documents:</b>	<p>All correspondence and communications—including mail or email—between Pemex and SAE, including their managers, directors and employees, in connection with the Contracts, including the cancellation, rescission, extension, renewal of these contracts, or awarding new contracts for the Subsidiaries' vessels.</p> <p>Temporal scope: from April 2014 (date of the insolvency request) to August 2015, where all GOSH's vessels had been sold to third parties to repay the loan to POSH.</p>
<b>Justification:</b>	<p>Claimant asserts that Pemex was concerned about the potential effect of OSA's insolvency on its production levels and was inclined to terminate the contracts with OSA and award new contracts for the same services directly to the Subsidiaries. Claimant also asserts that this possibility was blocked by SAE, which requested the extension of the Contracts (SOC, ¶¶ 189 et ss.). Respondent denies these assertions but fails to produce any communication between Pemex and SAE in support of its denial, despite having access thereto.</p> <p>Claimant is aware that Pemex and SAE were in constant communication at the time of the Measures and each entity frequently directed Claimant to engage in communication with the other one (Exhibit C-130). These documents are relevant and material to ascertain whether Pemex intended to award contracts to the Subsidiaries directly in order to safeguard its operations, whether SAE blocked that possibility, and whether there was a common agreement or understanding between them. This will permit the Tribunal to assess whether Respondent violated the obligations set forth in the Treaty and contributed to the destruction of Claimant's investment.</p>
<b>Objections:</b>	<p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1).</p> <p>Second, the Respondent objects on the basis of General Objection 2. There is no legal basis for counsel for the Respondent to compel Pemex to turn over its internal records for use in this proceeding.</p> <p>Third, the Respondent objects on the basis of General Objection 4. The request is for confidential business information of Pemex.</p>

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

	<p>Fourth, the Respondent objects to the request on the basis that it would be an unreasonable burden under 9(2)(c) of the IBA Rules. Among other things, Claimant fails to specify the names and positions the persons who may have had these communications regarding the “cancellation, rescission, extension, renewal of these contracts, or the awarding of new contracts to the Subsidiaries’ vessels.”</p> <p>Fifth, the Respondent objects based on the lack of specificity (General Objection 5). A request for “All correspondence and communications—including mail or email—between Pemex and SAE, including their managers, directors and employees, in connection with the Contracts” is overly broad and vague.</p>
<b>Reply:</b>	<p>Respondent’s five objections are each groundless.</p> <p><i>First</i>, the documents are relevant to the arbitration and material to its outcome Respondent denies that communications between SAE and Pemex discussing the Contracts are relevant or material exclusively on the basis that these communications would relate to OSA, not POSH or the Subsidiaries s. This is groundless. As noted in Claimant’s Response to General Objection No. 1, and will be further explained in the Reply, an investor has legal standing to file a claim under international law when certain internationally wrongful acts <i>impact</i> that investor and its investment, regardless of who the intended addressee of the act was, or whether there were more parties involved. Information from non-disputing parties may therefore be relevant and material to assess these international wrongful acts. In this case, the SAE’s correspondence and communications regarding the OSA-Pemex Contracts for the Subsidiaries’ vessels will permit the Tribunal to ascertain whether the Subsidiaries could have entered into new contracts with Pemex in order to safeguard its operations in Mexico, and whether the State blocked this possibility. Ultimately, the documents are relevant and material to assess whether the Respondent violated the obligations set forth in the Treaty.</p> <p><i>Second</i>, the requested documents are in Respondent’s possession, custody or control (Claimant’s Response to General Objection No. 2). Respondent claims—very illustratively— that “[t]here is no legal basis <i>for counsel</i> for the Respondent <i>to compel</i> the courts... to turn over their files...” However, there is no need for counsel to compel the courts to produce the documents. <i>Respondent</i> must produce the documents. According to the international law rules of attribution, Respondent represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents</p>

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

Respondent—not counsel—from producing the documents; and, even if that inability existed, this would constitute a domestic law issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. The most glaring evidence of Respondent's unsubtle strategy is that, while arguing for purposes of document production that it does not have access to certain records, Respondent has already demonstrated that it has access to the very same records by using documents obtained therefrom as exhibits to the SOD, when it believes they serve its interests—e.g., Respondent has filed documents obtained from Pemex's records (Exhibits R-71 to R-78).

*Third*, the objection based on the alleged confidentiality of commercial information is groundless (Claimant's Response to General Objection No. 4). Respondent invokes Mexican Law again as means to prevent disclosure of relevant evidence of its international wrongful acts. Moreover, Respondent's objection is also groundless because (i) Procedural Order No. 3 provides that any and all documents used in these proceedings will not be made public; (ii) Claimant and Claimant's counsel have offered to sign a non-disclosure agreement in connection with potential confidential information produced by Respondent; (iii) the requested information is "historic" and outdated (prior to August 2015), has no current commercial value, and does not provide any commercial advantage; and (iv) Respondent has not offered to produce the documents after redacting the alleged confidential information that would be included therein, which illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation

*Fourth*, the request is not unreasonably burdensome. Respondent argues that "Claimant fails to specify the names and positions the persons who may have had these communications." This is groundless for several reasons. Respondent—not Claimant—is in a position to know the names and positions of the relevant managers, directors or employees in Pemex and SAE who handled the Contracts with OSA. That is why Claimant has attempted to narrow the topic as much as possible ("in connection with the Contracts, including the cancellation, rescission, extension, renewal of these contracts, or awarding new contracts for the Subsidiaries' vessels."). Moreover, Respondent's objection is indeed surprising, given that Respondent itself has made blanket requests for "internal documents" and "records of communication" from Claimant without ever specifying "the names and positions the persons" who may have prepared these documents or sent these communications.

### Claimant's Request for the Production of Documents

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	<p><i>Fifth</i>, Claimant's document request does not lack specificity (Claimant's Response to General Objection No. 5). Claimant's document request cover a very specific topic ("the OSA-Pemex contracts for the Subsidiaries' vessels..., including the cancellation, rescission, extension, renewal of these contracts, or the awarding of new contracts to the Subsidiaries' vessels"), and includes a extensive list of sample-type of documents to guide and facilitate Respondent's search over a brief period of months (April 2014 (date of the insolvency request) to August 2015). The request is specific and narrowly tailored to cover a very specific topic over a brief period of time.</p>
<b>Tribunal's decision:</b>	<p>Objection rejected. The request is within very specific time limits. The documents to be produced shall be limited to correspondence from institution to institution between PEMEX and SAE and related to the Contracts.</p>



### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

#### E) DAMAGES

<b>Request</b>	<b>36</b>
<b>Document / Category of Documents:</b>	<p>Notes, spreadsheets, reports, memoranda or other documents showing PEP's or Pemex's history of contracting OSV suppliers, including number of fleet, type of vessel, name of vessel, age of vessel, contracting company, charter rates, and contract length.</p> <p>Temporal scope: from 2008 (at least 5 years prior to the valuation date of 16 May 2014) to date.</p>
<b>Justification:</b>	<p>Claimant's damages expert, Versant Partners, have adopted an ex-ante approach to the calculation of damages and take into account information available on the Valuation Date (May 16, 2014). Respondent's experts, Mr. Jose Alberro of Cornerstone Research and Messr. Miguel Peleteiro and Arturo del Castillo of Duff &amp; Phelps take into account information that was only available subsequently.</p> <p>The documents requested are relevant and material to review and verify the calculations made by Respondent's experts. This will permit the tribunal to more accurately ascertain the damages suffered by Claimant.</p>
<b>Objections:</b>	<p>First, the Respondent objects to the request on the grounds of lack of relevance and materiality (General Objection 1). Pemex's history of contracting with other suppliers from 2008 to 2014 has no possible relationship to the claim.</p> <p>Second, the Respondent objects on the basis of General Objection 2. There is no legal basis for counsel for the Respondent to compel Pemex or PEP to turn over their internal records for use in this proceeding.</p> <p>Third, the Respondent objects on the basis of General Objection 4. The request is for confidential business information of Pemex and PEP, both of which are unrelated to Claimant. POM, Claimant's subsidiary, is still</p>

### Claimant’s Request for the Production of Documents

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	<p>participating in the Mexican offshore market. The request seeks documentation that might contain commercial and confidential information of competitors that could give Claimant a competitive advantage.</p> <p>Fourth, the Respondent objects to the request on the basis that it would be an unreasonable burden under 9(2)(c) of the IBA Rules. Among other things, it would be an enormous undertaking to review all of PEP’s and Pemex’s files to try to identify the requested documents. Also, Pemex and PEP have executed numerous contracts with OSV suppliers and there is no practical manner in which to pinpoint the documents requested.</p> <p>Fifth, the Respondent objects based on the lack of specificity (General Objection 5). A request for “Notes, spreadsheets, reports, memoranda or other documents” is overly broad and vague.</p>
<b>Reply:</b>	<p>Respondent’s five objections are each groundless.</p> <p><i>First</i>, the requested documents are relevant to the case and material to its outcome. In fact, these documents have become relevant as a result of the ex-post approach to the calculation of damages adopted by Respondent’s experts, in contrast with the ex-ante approach adopted by Claimant’s experts. Review of these documents is essential to verify, and potentially rebut, the calculations made by Respondent’s experts. This will permit the Tribunal to more accurately ascertain the damages suffered by Claimant.</p> <p><i>Second</i>, the requested documents are in Respondent’s possession, custody or control (Claimant’s Response to General Objection No. 2). Respondent claims—very illustratively— that “[t]here is no legal basis <i>for counsel</i> for the Respondent <i>to compel</i> the courts... to turn over their files...” However, there is no need for counsel to compel the courts to produce the documents. <i>Respondent</i> must produce the documents. According to the international law rules of attribution, Respondent represents and must respond to claims based on the actions of any organ of the national, state or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. No legal inability prevents Respondent—not counsel—from producing the documents; and, even if that inability existed, this would be a domestic law issue, and it is well-established that Respondent may not plead its domestic law as a defense to internationally wrongful acts, or as a means to shield access to evidence of such internationally wrongful acts. The most glaring evidence of Respondent’s unsubtle strategy is that, while arguing for purposes of document production that it does not have access to certain records, Respondent has already demonstrated that it has access</p>

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

	<p>to the very same records by using documents obtained therefrom as exhibits to the SOD, when it believes they serve its interests—e.g., Respondent has filed documents obtained from Pemex's records (Exhibits R-71 to R-78).</p> <p><i>Third</i>, Respondent's objection on the ground of confidential commercial information is groundless for several reasons (Claimant's Response to General Objection No. 4): (i) Procedural Order No. 3 provides that any and all documents used in these proceedings will not be made public; (ii) Claimant and Claimant's counsel have offered to sign a non-disclosure agreement in connection with potential confidential information produced by Respondent; and (iii) Respondent asserts that the documents "<i>might</i> contain commercial and confidential information" but has not offered to produce the documents after redacting the alleged confidential information that would be included therein. This illustrates that Respondent is not concerned about confidentiality issues, but rather improperly shielding access to relevant documentation. In any case, in the spirit of good faith, Claimant is open to review partially anonymized versions of the documents, or to discuss reasonable redactions thereon with Respondent.</p> <p><i>Fourth</i>, Respondent argues that the search for the documents would be unreasonably burdensome because the reference to "Notes, spreadsheets, reports, memoranda or other documents" would be overly broad and vague." This is groundless. Claimant includes these references as examples of the types of documents likely to be responsive, to guide and facilitate the search and production of documents by Respondents. Claimant also includes a specific scope to narrow the search: "PEP's or Pemex's history of contracting OSV suppliers, including number of fleet, type of vessel, name of vessel, age of vessel, contracting company, charter rates, and contract length." The request is specific, and the documents are easy to identify.</p>
<b>Tribunal's decision:</b>	The Respondent to produce documents relied on by its own consultants.

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>37</b>
<b>Document / Category of Documents:</b>	Notes, spreadsheets, reports, memoranda or other documents showing PEP/Pemex's utilization rates of OSVs by specific rigs served, vessel type, and contracting company. Temporal scope: from 2011 (date on which POSH's vessels started to contract with PEP) to date.
<b>Justification:</b>	Respondent's expert Mr. Jose Alberro of Cornerstone Research states that global utilization rates decreased since 2014, based on the expert report prepared by Duff & Phelps. To estimate GOSH's utilization rate, Mr. Alberro relies on these global utilization rates, instead of local rates,  The documents requested are relevant and material to the calculation of damages, since they will allow Claimant's experts to review the information on utilization rates specific to PEP/Pemex, instead of global utilization rates. This will permit the Tribunal to more accurately ascertain the damages suffered by Claimant.
<b>Objections:</b>	The Respondent incorporates by reference its objections to Request No. 36.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 36. In the spirit of good faith, Claimant is open to review partially anonymized versions of the documents, or to discuss reasonable redactions thereon with Respondent.
<b>Tribunal's decision:</b>	The Respondent to produce final documents showing local utilization rates redacted as appropriate.

### Claimant's Request for the Production of Documents

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<b>Request</b>	<b>38</b>
<b>Document / Category of Documents:</b>	Demand analyses, internal communications, and market surveys prepared by PEP/Pemex for planning its expected OSV requirements and use. Temporal scope: from 2011 (date on which POSH's vessels started to contract with PEP) to date.
<b>Justification:</b>	Respondent's expert Mr. Jose Alberro of Cornerstone Research states that prior to the Measures, Pemex was downsizing its operations, but fails to produce any documents supporting that Pemex was downsizing its OSV fleet. The documents requested are relevant and material to the calculation of damages and they will allow Claimant's experts and the Tribunal to test the veracity of the statements made by Respondent's expert, and will permit the Tribunal to more accurately ascertain the damages suffered by Claimant.
<b>Objections:</b>	The Respondent incorporates by reference the objections set out in response to Request No. 36.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 36. In any case, in the spirit of good faith, Claimant is open to review partially anonymized versions of the contracts, or to discuss reasonable redactions thereon with Respondent.
<b>Tribunal's decision:</b>	The Respondent to produce documents, redacted as appropriate, on which its own consultants relied to state that PEMEX was downsizing its operations

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>39</b>
<b>Document / Category of Documents:</b>	<p>Internal communications, progress reports, budget plans or similar documents prepared by PEP or Pemex related to the modifications of Claimant's vessels per PEP's/Pemex's specifications and work requirements.</p> <p>Temporal scope: from 2011 (date on which POSH's vessels started to contract with PEP) to date.</p>
<b>Justification:</b>	<p>Claimant asserts that POSH and the Subsidiaries had to make substantial modifications in the vessels per Pemex specification (SOC, ¶¶ 69, 88), which gave them a competitive advantage to be awarded new contracts. Respondent denies this, but fails to explain how PEP or Pemex takes into consideration the modifications performed on the vessels to meet their own specifications.</p> <p>The requested documents are relevant and material to ascertain how Pemex/PEP take into account the modification and alteration of the vessels to meet their own specifications, and how these modifications affect the chances of renewal of contracts, or obtaining new contracts.</p>
<b>Objections:</b>	<p>The Respondent incorporates by reference the objections set out in response to Request No. 36.</p> <p>In addition, whereas the "Claimant asserts that POSH and the Subsidiaries had to make substantial modifications in the vessels per Pemex specification," the Claimant neglects to mention that it did not have any contractual relationship with Pemex, and that OSA requested Claimant to make the modifications to the vessels. Subsequent modifications to the vessels remained under the control of Claimant in order to maintain its contractual relationship with OSA.</p> <p>The public tenders (<i>licitaciones públicas</i>) issued by Pemex and won by OSA would have contained the technical specifications of the vessels. Hence, all companies would have known the required characteristics of the vessels in order to charter them to OSA.</p>
<b>Reply:</b>	<p>Claimant repeats here by reference its Reply spelled out in Request No. 36. In addition, Claimant thoroughly explained the contractual structure of the Pemex-OSA-POSH operations in the SOC. Respondent does not deny here the existence of the requested documents, which are relevant and material to ascertain how Pemex/PEP take</p>

**Claimant's Request for the Production of Documents**

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

	into account the modification and alteration of the vessels to meet their own specifications, and how these modifications affect the chances of renewal of contracts, or obtaining new contracts.
<b>Tribunal's decision:</b>	Objection upheld. The Request is overly broad.

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>40</b>
<b>Document / Category of Documents:</b>	Internal communications, requisites, procurement policies or similar documents prepared and used by PEP/Pemex discussing how vessel specifications affect PEP/Pemex's selection of OSV suppliers. Temporal scope: from 2008 (at least 5 years prior to the valuation date of 16 May 2014) to date.
<b>Justification:</b>	Respondent's industry expert Duff & Phelps states that "Pemex hires by means of public tenders, the purpose of which is to redefine conditions, prices, timing and requisites, among other considerations, to become part of new projects, market conditions or even changes in the government and the consequent new investment and public expenditure policies." (Duff & Phelps Expert Report, ¶ 104) Respondent's expert, however, does not address how vessel specifications affect PEP/Pemex's selection of OSV suppliers.  The requested documents are relevant and material to the issue of how PEP/Pemex takes into account vessel specifications in its procurement process and how these affect the chances for renewal or obtaining new contracts, thereby testing the veracity of the statements made by Respondent's expert, and permitting the Tribunal to more accurately ascertain the damages suffered by Claimant.
<b>Objections:</b>	The Respondent incorporates by reference its objections to Request No. 36.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 36.
<b>Tribunal's decision:</b>	Objection upheld. Request is overly broad.



### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>41</b>
<b>Document / Category of Documents:</b>	Notes, drafts, reports, memoranda or other type of documents prepared by Pemex/PEP, showing projections of new projects for the exploration of production of oil and gas, and capital expenditures associated thereto, that would affect the demand for OSVs in Mexico.  Temporal scope: from 2011 (date on which POSH's vessels started to contract with PEP/Pemex) to date.
<b>Justification:</b>	Respondent's expert Dr. Jose Alberro states that, prior to the measures, Pemex was downsizing its operations, but fails to produce documents showing Pemex's planned investments and expectations throughout the period. The requested documents are relevant and material to the calculation of damages, will allow Claimant's experts to test the veracity of the allegations made by Respondent's expert, and permit the Tribunal to more accurately ascertain the damages suffered by Claimant.
<b>Objections:</b>	The Respondent incorporates by reference the objections set out in response to Request No. 36.
<b>Reply:</b>	Claimant repeats here by reference its Reply spelled out in Request No. 36.
<b>Tribunal's decision:</b>	The Respondent to produce documents relied on by its own consultants.

### Claimant’s Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

<b>Request</b>	<b>42</b>
<b>Document / Category of Documents:</b>	<p>Information and documentation supporting the calculations made by Respondent’s expert, Mr. Alberro, including:</p> <ul style="list-style-type: none"> <li>(i) Models that Support Dr. Alberro’s Calculations in their native format. Dr. Alberro presents the impact of certain adjustments he makes to Versant’s calculations. However, he does not produce supporting documentation or appendixes demonstrating how he arrived at his conclusion. For instance, in paragraph 52, Mr. Alberro states: “<i>That decreases the net present value of the FCFF for the contracts the Claimant could have signed and executed with PEP, but for the alleged breaches, by \$61.7 million.</i>” Mr. Alberro also presents similar statements in paragraphs 70, 73, 74, 91, 92, 93, 94, and 95.</li> <li>(ii) Models that Support Mr. Alberro’s Calculation of PFSM’s WACC in their native format. In paragraph 95, Mr. Alberro states: “<i>The use of a 13.58 percent WACC to discount the FCFF of PFSM yields a value of \$0.5 million.</i>” Mr. Alberro does not produce any support for how he calculated the 13.58 percent for PFSM. Mr. Alberro calculates a WACC for GOSH of 14.30 percent, shown in Table 9 of his report, without producing the models that support his conclusions.</li> <li>(iii) Models that Support Mr. Alberro’s Calculation of the Company Specific Premium of 3.00 Percent in their native format. In paragraphs 87, 88, and 90 of his report, Mr. Alberro discusses and then applies a company specific premium of 3.00 percent to GOSH’s WACC calculation. Mr. Alberro does not produce any support for how he arrived at 3.00 percent.</li> </ul>
<b>Justification:</b>	<p>Versant Partners has informed Claimant that Mr. Jose Alberro of Cornerstone Research, fails to produce certain supporting documentation with his damages report, which is indispensable to review and verify his calculations and, if necessary, rebut his conclusions.</p> <p>The documentation requested is relevant and material to review, verify and respond to the conclusions set forth in Respondent’s expert report on damages. This will permit the Tribunal to more accurately ascertain the damages suffered by Claimant.</p>

### Claimant's Request for the Production of Documents

*PACC Offshore Services Holdings LTD v. United Mexican States (ICSID Case No. UNCT/18/5)*

	Claimant has sent an email to Respondent requesting this information and reserving its right to make a formal request via the document production phase of the proceedings. Should Respondent fail to produce the documentation voluntarily, Claimant formally requests that the Tribunal orders Respondent to do so.
<b>Objections:</b>	This information was already provided by Mr. Alberro and uploaded to ICSID's Box (available in the folder named <i>Documentos solicitados</i> ).
<b>Reply:</b>	While reserving its right to query the completeness or contents of the materials supplied, Claimant does not request an order from the Tribunal at this time.
<b>Tribunal's decision:</b>	N/A [no decision requested].

PACC Offshore Services Holdings Ltd v. the United Mexican States  
(ICSID Case No. UNCT/18/5)

Mexico's request for production of documents

**I. Introduction**

This request for production of documents is submitted pursuant to section 18 and Annex 2 of the Procedural Order No. 1 (PO 1) dated 28 November 2018, and in accordance with the communication dated 23 August 2019 sent by the Secretary of the Tribunal.

Section III of this request for documents (RFD) is divided into five subsections, each dealing with a specific issue. Many of the sections include a general justification for the documents covered therein which should be read together with the justification offered for each specific request for documents or category of documents.

This RFD seeks documents in possession or control of the Claimant or any associated third parties, such as the Subsidiaries, lawyers, representatives, accountants or notaries, who may be in possession of the requested documents due to their current or previous professional business relationship with the Claimant.

Finally, nothing in this request for production of documents shall be interpreted as an admission of any kind on the part of the Respondent.

**Claimant's comment:** In no case will an agreement by Claimant to search for documents constitute any agreement with, or admission by Claimant as to the relevance of, or the stated justification for, any of Respondent's document requests.

**II. Definitions**

In this request for documents:

<b>Claimant</b>	Refers to PACC Offshore Services Holdings Ltd.
<b>Document</b>	Means 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.
<b>Internal documents</b>	Means any Document, such as notes, minutes, memoranda, opinions and reports, prepared by Claimant senior management, directors, shareholders or any third party at their behest (e.g., external advisors/consultants).
<b>LIE</b>	Refers to <i>Ley de Inversión Extranjera</i> or Foreign Investment Law.

<b>“Records of communications” or “communications”</b>	means records of inquiries, discussions, conferences, conversations, negotiations, agreements, meetings, interviews, telephone conversations, letters correspondence, notes, telegrams, facsimiles, electronic mail (email), memoranda, documents, writings, or other forms of communications, including but not limited to both oral and written communications.
<b>SoC</b>	Refers to the Statement of Claim filed on 20 March 2019.
<b>Subsidiaries</b>	Refers to GOSH; SMP; POSH Honesto; POSH Hermosa; PFSM and SEMCO I y SEMCO IV.
<b>Vessels</b>	Refers to Caballo Argento, Caballo Babieca, Caballo Copenhagen, Caballo Don Casiano, Caballo Monoceros, Caballo Rodrigo DPJ and Caballo Grano de Oro.

### III. Document Requests

### IV. Respondent's Reply to the Claimant's Objections

#### General Reply 1: Documents subject to privilege

Respondent acknowledges Claimant's agreement to conduct a reasonable search for responsive documents concerning several requests. However, the Claimant does not fully agree to produce the requested documents (*see* requests 1-11, 16, 17, 25-29, 31, 33, 35-38, and 41-45) on the grounds that some of the documents may be privileged.

Respondent submits that in seeking to exclude certain documents from production on the grounds of privilege or legal impediment under IBA Rules Article 9(2)(b), Claimant bears the burden of proving that the exclusion applies. In order to meet its burden, Claimant must (i) identify the documents subject to privilege; (ii) identify the legal basis for its objection of privilege or legal impediment, and; (iii) provide enough information about the withheld documents to enable Respondent and the Tribunal to assess the validity of the objection under Article 9(2)(b) of the IBA Rules. Under Procedural Order No. 3, neither the parties nor the Tribunal may make available to the public documents that contain information that one of the parties has clearly identified as confidential or privileged (subparagraph *iii*). However, Claimant, in blanket fashion, states that the production of documents will be made "to the extent that they are not privileged." This does not satisfy the requirements under Article 9(2)(b).

Respondent further observes that the parties have not previously agreed on rules governing the exclusion of documents from document production based on privilege. Neither the Mexico-Singapore BIT nor the UNCITRAL Rules provide any guidance on this issue. In accordance with the Commentary on the Revised Text of the 2010 IBA Rules it falls to the Tribunal to make a determination on the applicable rules (*see* p. 25).

Respondent is concerned that requests relating to documents prepared by Claimant's lawyers or consultants (*see, e.g.*, 1, 2, 16, 17, 28, 31, and 33) may be withheld under a general assertion that "they are [] privileged." The Commentary, on p. 25, suggests that the need to protect fairness and equality among the parties may arise when approaches to privilege differ among relevant jurisdictions.

Mexico's statutory provision on professional secrecy (*secreto profesional*) provides that "all professionals are obliged to strictly keep the secrecy of the matters entrusted to them by their clients, except for the mandatory reports established by the respective laws."<sup>1</sup> The

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<sup>1</sup> Regulatory Law of Article 5 of the Constitution, Related to Professional Practices in Mexico City (Ley Reglamentaria del artículo 5° Constitucional, Relativo al Ejercicio de las Profesiones en el Distrito Federal), art. 36 ("Todo profesionista estará obligado a guardar estrictamente el secreto de los asuntos que se le confíen por sus clientes, salvo los informes que obligatoriamente establezcan las leyes respectivas").

Footnote continued on next page

Singaporean Evidence Act protects legal advice, such as “any communication made to [the attorney] in the course and for the purpose of his employment as such legal counsel,” “the contents or condition of any document with which he has become acquainted in the course and for the purpose of his employment as such legal counsel,” and “any legal advice given by him to the entity, or to any officer or employee of the entity, in the course and for the purpose of such employment.”<sup>2</sup> Furthermore, it appears that under the common law of Singapore, a litigation privilege seeks to protect the confidentiality of litigation strategy and preparation. Hence, if the Tribunal applies different standards on the matters of privilege, it could affect the balance and equality of treatment of the Parties.<sup>3</sup>

In particular, Respondent considers it paramount to its defense that the Claimant produces the requested documents because Claimant’s arguments rest on key decisions that cannot be properly assessed without insight into contextual documents. Respondent does not ask for documents prepared in the context of this arbitration; instead the requests seek relevant materials prepared in the context of Claimant’s purported investment. For example, Claimant asserts in its Statement of Claim that (i) the POSH investment was legal; (ii) that POSH sought to meet Pemex’s needs; (iii) that POSH learned that Pemex awarded long-term contracts to Mexican-flagged vessels owned by Mexican companies; (iv) that the corporate structure of the investment was to be under the ultimate control of POSH<sup>4</sup>; (v) that POSH had several meetings with potential partners; and (vi) that the objective of the so-called Irrevocable Trust was to secure the bridge loan to GOSH. Additionally, Claimant relied on information from witness statements of POSH’s CEO (Captain General Seow), Deputy CEO (Lee Keng-Lin) and the Mexican representative for the Subsidiaries (Jose Luis Montalvo). Thus, under Article 9(3)(d) of the IBA Rules, Claimant waived protections of privilege or legal impediment by making disclosures and affirmatively using the requested documents.

## **General Reply 2: Documents that are not under the control of the Respondent**

According to Claimant, by operation of general principles of international law, Respondent is in possession, custody or control of all documents held by governmental agencies, state-owned, and state-controlled entities because Mexico represents and must respond to claims of any organ of the national or local government, or agents thereof. In response, Respondent observes that its legal representative does not have unfettered power to obtain any and all documents from any and all departments, branches, and levels of the Mexican state. As Respondent noted in the General Objections to the Claimant’s request for documents, Respondent is legally unable to compel state

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<sup>2</sup> Evidence Act, section 128A, Communications with legal counsel.

<sup>3</sup> - Commentary on the IBA Rules, at 25 (“Although the standard to be applied is left to the discretion of the arbitral tribunal, it is desirable that the tribunal take account of the elements set forth in Article 9.3, in particular if the parties are subject to different legal or ethical rules.”).

<sup>4</sup> E.g. ¶ 59 -64

organs to provide information for use in these proceedings. In order to avoid unnecessary repetition, Respondent incorporates by reference Objection 2 (Requests for information from other agencies and state enterprises not under control) in this reply.

Respondent further notes that under the principle of good faith, it will produce Claimant's requests that are under its control where Claimant was the party that created the documents requested, *e.g.*, the complete file of the Mexican National Registry of Foreign Investment for GOSH (Claimant's Request No. 2).

### **General Reply 3: Production is not unreasonably burdensome**

Respondent submits that in order to ascertain whether a request is overly burdensome, the Tribunal must weigh the time and cost involved in producing the requested documents against the importance of the assertion to be supported. Respondent's requests do not impose an unreasonable burden on Claimant because the documents sought would have been prepared and kept in the ordinary course of Claimant's business.

#### **A. Business plans / due diligence documents**

##### General justification

The Claimant alleges that although its initial contact was a long time partner of one of POSH's sister companies, POSH was approached by Oceanografía S.A. de C.V. (OSA) and decided to partner with OSA.

The Claimant does not provide evidence about its business decisions to partner with OSA in relation to OSA's financial, operational and reputational stability. It limits itself to mentioning only the date on which OSA was founded, the size of the company and its apparent contractual relationship with Pemex.

The documents requested under this section are relevant and material for the outcome of the case, because they are necessary to determine whether the Claimant undertook the necessary due diligence before commencing its business project with OSA in the offshore industry in Mexico.

Similarly, another element that Respondent regards as an indication of the lack of due diligence by the Claimant is the omission of POSH or/and the Subsidiaries to take any action against Oceanografía in relation to audit of the contracts 421002814 (Caballo



Monoceros), 421002813 (Don Casiano), 421002812 (Caballo Scarto) and 421002811 (Caballo Conpehagen)<sup>5</sup> performed by Pemex Exploración y Producción Internal Body Control.

<b>Request No.</b>	1.
<b>Document / Category of Documents:</b>	Documents prepared by the Claimant, its subsidiaries or their lawyers or consultants containing an assessment, analysis, opinion or discussion of the regulatory framework governing the Claimant’s investment in Mexico, including any such documents addressing the following: <ul style="list-style-type: none"> <li>a) the <i>Ley de Inversión Extranjera</i> (LIE) restrictions in the charter and offshore industries in Mexico;</li> <li>b) the Constitutional Energy Reform of 2013.</li> </ul>
<b>Justifications:</b>	<p>The Claimant asserts that it and its subsidiaries complied with the LIE.<sup>6</sup> The Respondent’s position is that the Claimant knowingly evaded the LIE. It is necessary to review any analyses of the LIE made by the Claimant or on its behalf at the time it established the subsidiaries.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent reasonably believes that the documents exist and are in the possession, custody or control of the Claimants as should have been prepared as part of the due diligence prior to their investment in Mexico.</p>
<b>Objections:</b>	<p>Claimant objects to the request because it is overbroad and searching for responsive documents would impose an unreasonable burden on Claimant. (See IBA Rules, Articles 3(3)(a)(i), 3(3)(a)(ii), 3(7), 9(2)(c), and 3(3)(c)(i)). Respondent’s justification for this request is that “it [would] be necessary to review any <u>analyses of the LIE</u> made by Claimant” but instead Respondent requests any “document... containing... [<u>any</u>] <u>discussion of the regulatory framework governing the Claimant’s investment.</u>” The scope of the request is not even consistent with Respondent’s justification therefor. Moreover, there is no relevant time-period, and no other way to narrow or to construct reasonable search parameters that would encompass these broad, overarching terms.</p> <p>Without waiving this objection, Claimant would agree to carry a reasonable search for, and produce, internal documents or communications containing analysis of the LIE between 2011 (beginning of the Investment) and</p>

<sup>5</sup> SoD, ¶ 201

<sup>6</sup> Statement of Claim, ¶ 244.

	February 2014 (beginning of the Measures), to the extent that they are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	<p>Claimant objects on the grounds that the request is insufficiently narrow. Respondent respectfully disagrees. The documents prepared by Claimant, relating to the regulatory framework of the purported investment are a specific and narrow category of documents. The lack of temporal specifics presents no bar to the request as Respondent does not know the exact periods in which POSH made the pertinent studies.</p> <p>In relation to Claimant's potential assertion of privilege, please refer to General Reply 1.</p>
<b>Tribunal's decision:</b>	The Claimant shall search and produce documents containing analyses of the LIE within the period 2011-February 2014.

<b>Request No.</b>	2.
<b>Document / Category of Documents:</b>	<p>Internal documents containing any of the following analysis prepared in connection with the Claimant’s decision to invest in México:</p> <ul style="list-style-type: none"> <li>a) POSH and the Subsidiaries’ business plan and any amendment to it;</li> <li>b) POSH and the Subsidiaries’ business plan related to OSA;</li> <li>c) financial projections (in Excel if available);</li> <li>d) economic viability analysis (e.g., net present value) (in Excel if available);</li> <li>e) market/industry analysis;</li> <li>f) risk analysis;</li> <li>g) competition analysis;</li> <li>h) any other supporting documents for the original business plan</li> </ul>
<b>Justifications:</b>	<p>At paragraphs 51 of the SoC, the Claimant states that “At the end of 2010, POSH decided to respond to PEMEX’s need for foreign capital to recover its production levels and develop its expansion project with new vessels”.</p> <p>At paragraph 52 the Claimant further states that “[...] POSH soon learned that PEMEX awarded long-term contracts to Mexican-flagged vessels owned by Mexican companies with which it had long-standing relationships. For POSH to successfully participate in the PEMEX tenders, and benefit from a long-term investment in the Mexican offshore industry, it would need to establish a Mexican entity.”</p> <p>The Respondent submits that the requested documents are relevant to the case and material to its outcome. The requested documents are needed to determine whether and how the Claimant assessed entering the Mexican offshore market, including the reasons for executing bareboat charters with OSA.</p> <p>The requested documents are relevant to the case and material to its outcome. They are needed to evaluate and corroborate or contradict the claim for damages and to assess the Claimant’s assertions about the original scope of the intended operations in the Mexico. They are also needed to determine and assess the validity of the Claimant’s expectations regarding, <i>inter alia</i>, the alleged “three pillars of its investment” meaning: availability of vessels, contracts with OSA, and OSA’s ability to contract with Pemex.<sup>7</sup></p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p>

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<sup>7</sup> Statement of Claim, ¶ 103.

	The Respondent reasonably believes that the documents exist and are in the possession, custody or control of the Claimant because they would have been necessary to make an informed decision on whether to invest in the intended project in Mexico.
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for the requested documents, and to produce them, to the extent that they are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	In relation to Claimant's potential assertion of privilege over certain documents, please refer to General Reply 1.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement.

<b>Request No.</b>	3.
<b>Document / Category of Documents:</b>	Internal documents containing any due diligence (or any document with an equivalent analysis) about the risks of doing business with OSA, Martín Díaz Álvarez, Amado Yáñez Osuna, the Rodríguez Borgio brothers or any person or company related to these individuals. This request refers to documents prepared between 1 January 2010 and 1 March 2014.
<b>Justifications:</b>	The Respondent submits that the Claimant should have performed reasonable due diligence on its potential Mexican business partner, including the primary investors in that partner, before deciding to enter to the Mexican offshore market.  The requested documents are not in the possession, custody or control of the Respondent.  The Respondent reasonably believes that the documents exist and are in the possession, custody or control of the Claimant because they would have been necessary to make an informed decision on whether to have a contractual relationship with OSA and its key investors, Messrs. Yáñez-Osuna, Alvarez and Rodríguez Borgio.
<b>Objections:</b>	Claimant objects to this request because it is excessively broad ( <i>see</i> IBA Rules, Articles 3(3)(a)(i), 3(3)(a)(ii), and 3(7)), and the documents sought are not relevant and material to this arbitration or its outcome. ( <i>See</i> IBA Rules, Articles 3(3)(b) and 9(2)(a)).  Respondent contends that the requested documents are necessary to assess the due diligence performed by POSH on OSA or its shareholders “before deciding to enter to the Mexican offshore market.” POSH began contemplating this decision at the <i>end of 2010</i> (SOC, ¶ 51), and finally implemented it in <i>August 2011</i> , when POSH incorporated the joint venture (SOC, ¶ 59). Any relevant due diligence on OSA or its shareholders, or discussion about the risks of doing business with OSA, therefore, would have been performed in this eight-month period. Respondent’s request, however, extends over a four-year period, between “1 January 2010 and 1 March 2014.” Because Respondent’s request is overly broad, it would be unreasonably burdensome for Claimant to search for and produce documents responsive to this request.  Without waiving this objection, Claimant would agree to carry a reasonable search for, and produce, documents containing due diligence (or documents containing equivalent analysis) on OSA or its shareholders <i>between the end of 2010 and August 2011</i> , to the extent that they are non-privileged, and in Claimant’s possession, custody, or control.
<b>Reply:</b>	The Respondent agrees to limit the temporal scope of its requests to the period between 1 January 2010 and August 2011. In relation to Claimant’s potential assertion of privilege, please refer to General Reply 1.

<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement and the Respondent's agreement to limit the temporal scope of its request to January 1, 2010- August 2011.
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<b>Request No.</b>	4.
<b>Document / Category of Documents:</b>	<p>Internal documents and records of communications between POSH's senior managers, directors, shareholders and/or external advisors, discussing the risks of doing business with OSA, Martín Díaz Álvarez, Amado Yáñez Osuna, the Rodríguez Borgio brothers or any person or company related to these individuals.</p> <p>This request refers to documents prepared between 1 January 2010 and 1 March 2014.</p>
<b>Justifications:</b>	<p>Same justification as in previous request.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the documents exist and are in the possession, custody or control of the Claimant because it is reasonable to assume that any company would have performed a due diligence of risks related to doing business with people and companies with bankruptcy problems and who have faced criminal accusations.</p>
<b>Objections:</b>	<p>This request is duplicative of Request No. 4. Claimant repeats here by reference its objections as spelled out in answer to Request No. 4.</p> <p>Without waiving this objection, Claimant would agree to carry a reasonable search for, and produce, internal documents containing discussions on the risks of doing business with OSA or its shareholders <i>between the end of 2010 and August 2011</i>, to the extent that they are non-privileged and in Claimant's possession, custody, or control.</p>
<b>Reply:</b>	<p>The Respondent believes the Claimant intended to say that this request is duplicative of Request No. 3. Request No. 4 is indeed closely related to Request No. 3 but it is in no way duplicative. Most notably, Request No. 4 includes "records of communications" which are not included in Request No. 3.</p> <p>In relation to Claimant's potential assertion of privilege, please refer to General Reply 1.</p>
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement as corrected by the Respondent.

<b>Request No.</b>	5.
<b>Document / Category of Documents:</b>	Internal documents and records of communications related to the audits performed by the <i>Órgano Interno de Control</i> of PEP to the contracts 421002814 (Caballo Monoceros), 421002813 (Don Casiano), 421002812 (Caballo Scarto) and 421002811 (Caballo Conpehagen) that OSA concluded with PEP.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The Respondent intends to argue that the Claimant did not take the proper measures to control the risks associated with OSA, although it was in the position to consider them. The Respondent contends that the Subsidiaries had early knowledge of the lack of compliance that OSA had before Pemex Exploración y Producción.</p> <p>The Respondent is not in possession of the requested documents.</p> <p>The Respondent believes that the requested Documents exist since the audit revised all the information related to the contracts and how OSA complied with them.</p>
<b>Objections:</b>	Claimant notes that no internal documents or records of communications related to audits performed by PEP that led to the Unlawful Sanction will exist, since “POSH learned about the Unlawful Sanction in the press” (SOC, ¶ 113). Accordingly, it would be wasteful and unfairly burdensome to require Claimant to carry out searches for such documents that do not exist. Nevertheless, without waiving this objection, if, contrary to Claimant’s information and belief about their non-existence, any such documents are discovered during the course of other document production searches, Claimant will produce them to Respondent.
<b>Reply:</b>	Respondent appreciates Claimant’s efforts to search for the documents requested and respectfully asks the Tribunal to order Claimant to confirm the existence of the documents and, if applicable, to produce them not later than 27 November 2019 (deadline for production of disputed documents).
<b>Tribunal’s decision:</b>	The Tribunal notes that the Claimant will produce the documents found in its search.



## **B. Business opportunities in the Mexican offshore market**

### General justification

The Claimant alleges that the Respondent frustrated any possibility of doing business with other Mexican entities in order to charter the Subsidiaries' Vessels in the Mexican offshore market.<sup>8</sup>

The SoC and certain exhibits glosses over the details and timing of these supposedly extensive negotiations and avoids any discussion about the outcome of these negotiations.<sup>9</sup> Moreover, based on Mr. Lee Keng Lin's testimony POSH "engaged in substantial discussions for long term agreements with two Mexican operators— [REDACTED]. Both operators ultimately declined to enter into an agreement with us in light of our prior association with OSA".<sup>10</sup> However, no further detail has been submitted in the arbitration related to these negotiations. Similarly, the Claimant has disclosed that there were negotiations going on with [REDACTED] but no details were provided.

The documents requested under this section are relevant and material for the outcome of the case, because they are necessary to determine whether the Claimant's decision to do business with OSA and its investors frustrated the Claimants' alternative business opportunities.

<b>Request No.</b>	6.
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<sup>8</sup> Statement of Claim, ¶ 227.

<sup>9</sup> C-63, C-209 and C-237.

<sup>10</sup> Lee Keng Lin witness statement, ¶ 40.

<sup>11</sup> C-209, p. 4.

<sup>12</sup> C-63, p. 4.

<sup>13</sup> C-237, p. 2.

<b>Document / Category of Documents:</b>	Internal documents and record of communications discussing or memorializing any proposals and counter-proposals exchanged by POSH and/or its Subsidiaries with ██████████ after 1 January 2014, regarding the possibility to charter the Vessels.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to the negotiations with other Mexican companies who had a contractual relationship with Pemex.</p>
<b>Objections:</b>	<p>Claimant objects to this request because it is overbroad—contains no time limit at all—and it would impose an unreasonable burden on Claimant to search for responsive documents. (<i>See</i> IBA Rules, Articles 3(3)(a)(i), 3(3)(a)(ii), 3(7), 9(2)(c), and 3(3)(c)(i)). Claimant has established in the Statement of Claim that by August 20, 2015, all of the Subsidiaries’ vessels had been sold to third parties (SOC, ¶ 230). Therefore, any relevant effort to re-charter the vessels would have been made prior to August 20, 2015.</p> <p>Without waiving this objection, Claimant agrees to conduct a reasonable search for, and produce, any of the requested documents <i>between January 1, 2014 and August 20, 2015</i>, to the extent that they are non-privileged and in Claimant’s possession, custody, or control.</p>
<b>Reply:</b>	<p>The Respondent does not agree to limit the request as proposed by the Claimant (i.e., from 1 January 2014 to 20 August 2015). As explained by Respondent in SoD ¶¶ 494, 501 and 502, Claimant continues to provide services in the Mexican offshore industry using POM and the vessels belong to other POSH’s subsidiaries. It is quite probable that Claimant’s negotiations had a longer period than 20 August 2015, Respondent contests (SoD ¶504) that POSH SKUA and POSH concluded a charter in February 2016 and in September 2017 POSH Honesto was chartered by POM. Thus, Claimant remains in full control of the information requested –in fact Mr. Montalvo stated that he remained POSH’s nominee and proxy in Mexico.<sup>14</sup> In any case this request could be limited up to 1 January 2019.</p> <p>The request is not unreasonably burdensome as Respondent explained in General Reply 3.</p> <p>In relation to the potential claim of privilege, please refer to General Reply 1.</p>

<sup>14</sup> Mr. Montalvo’s witness statement ¶64

<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement and shall extend the search to the date of the notice of arbitration.
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<b>Request No.</b>	7.
<b>Document / Category of Documents:</b>	Internal documents and record of communications discussing or memorializing any proposals and counter-proposals exchanged by POSH and/or its Subsidiaries and [REDACTED] after 1 January 2014 regarding the possibility to charter the Vessels.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to the negotiations with other Mexican companies who had a contractual relationship with Pemex.</p>
<b>Objections:</b>	<p>Claimant repeats here by reference its objections as spelled out in answer to Request No. 6.</p> <p>Without waiving this objection, Claimant agrees to conduct a reasonable search for, and produce, any of the requested documents <i>between January 1, 2014 and August 20, 2015</i>, to the extent that they are non-privileged and in Claimant's possession, custody, or control.</p>
<b>Reply:</b>	Respondent incorporates by reference its reply to Request No. 6.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement and shall extend the search to the date of the notice of arbitration.

<b>Request No.</b>	8.
<b>Document / Category of Documents:</b>	Internal documents and record of communications discussing or memorializing any proposals and counter-proposals exchanged by POSH and/or its Subsidiaries and [REDACTED] after 1 January 2014 regarding the possibility to charter the Vessels.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to the negotiations with other Mexican companies who had a contractual relationship with Pemex.</p>
<b>Objections:</b>	<p>Claimant repeats here by reference its objections as spelled out in answer to Request No. 6.</p> <p>Without waiving this objection, Claimant agrees to conduct a reasonable search for, and produce, any of the requested documents <i>between January 1, 2014 and August 20, 2015</i>, to the extent that they are non-privileged and in Claimant's possession, custody, or control.</p>
<b>Reply:</b>	Respondent incorporates by reference its reply to Request No. 6.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement and shall extend the search to the date of the notice of arbitration.

<b>Request No.</b>	9.
<b>Document / Category of Documents:</b>	Internal documents and record of communications discussing or memorializing any proposals and counter-proposals exchanged by POSH and/or its Subsidiaries and [REDACTED] after 1 January 2014 regarding the possibility to charter the Vessels.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to the negotiations with other Mexican companies who had a contractual relationship with Pemex.</p>
<b>Objections:</b>	<p>Claimant repeats here by reference its objections as spelled out in answer to Request No. 6.</p> <p>Without waiving this objection, Claimant agrees to conduct a reasonable search for, and produce, any of the requested documents <i>between January 1, 2014 and August 20, 2015</i>, to the extent that they are non-privileged and in Claimant's possession, custody, or control.</p>
<b>Reply:</b>	Respondent incorporates by reference its reply to Request No. 6.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement and shall extend the search to the date of the notice of arbitration.

<b>Request No.</b>	10.
<b>Document / Category of Documents:</b>	Internal documents and records of communications discussing or memorializing any proposals and counter-proposals exchanged by POSH and/or its Subsidiaries and [REDACTED] after 1 January 2014 regarding the possibility to charter the Vessels.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimants because they would have been prepared and kept in the ordinary course of business given the importance attributed to the negotiations with other Mexican companies who had a contractual relationship with Pemex.</p>
<b>Objections:</b>	<p>Claimant repeats here by reference its objections as spelled out in answer to Request No. 6.</p> <p>Without waiving this objection, Claimant agrees to conduct a reasonable search for, and produce, any of the requested documents <i>between January 1, 2014 and August 20, 2015</i>, to the extent that they are non-privileged and in Claimant's possession, custody, or control.</p>
<b>Reply:</b>	Respondent incorporates by reference its reply to Request No. 6.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement and shall extend the search to the date of the notice of arbitration.

<b>Request No.</b>	11.
<b>Document / Category of Documents:</b>	Internal documents and records of communications discussing or memorializing any proposals and counter-proposals exchanged by POSH and/or its Subsidiaries (or any person or entity acting on its behalf) and any other Mexican company after 1 January 2014 regarding the possibility of leasing or charter the Vessels in the Mexican offshore market.
<b>Justifications:</b>	<i>See</i> general justification.
<b>Objections:</b>	Claimant repeats here by reference its objections as spelled out in answer to Request No. 6.  Without waiving this objection, Claimant agrees to conduct a reasonable search for, and produce, any of the requested documents <i>between January 1, 2014 and August 20, 2015</i> , to the extent that they are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	Respondent incorporates by reference its reply to Request No. 6.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement and shall extend the search to the date of the notice of arbitration.



<b>Request No.</b>	12.
<b>Document / Category of Documents:</b>	Internal documents, records of communications and documents filed before Pemex regarding the participation of the Subsidiaries in public tenders of Pemex.
<b>Justifications:</b>	<p>See general justification.</p> <p>At paragraphs 51 of the SoC, the Claimant states that “POSH’s Subsidiaries submitted the Rodrigo (owned by HONESTO) and the Argento (owned by GOSH) for new tenders with PEMEX. Neither was awarded the contract”.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimant because they would have been prepared and kept in the ordinary course of business.</p>
<b>Objections:</b>	<p>Claimant objects to this request for the following reasons.</p> <p><i>First</i>, by definition, Respondent is in possession, custody, or control of any and all documentation filed before Respondent’s own State-owned oil and gas entity, Pemex, and any of its subsidiaries. This is consistent with the international law rules of attribution, under which Mexico represents and must respond to claims based on the actions of any organ of the national or local government, or agents thereof; and any document in the possession of the state or state-controlled entities is deemed to be in the possession of the State. Respondent has already demonstrated its access to Pemex’s documents by using as exhibits documents prepared by Pemex or its affiliates (e.g., Exhibits R-71 to R-78) when Respondent believes that they suit its interests.</p> <p><i>Second</i>, the requested documents are not relevant to the case or material to its outcome. (<i>See</i> IBA Rules, Article 3(3)(b)). Respondent’s justification for this request is that “at paragraph 11 of the SOC, the Claimant states that POSH’s Subsidiaries submitted the Rodrigo (owned by HONESTO) and the Argento (owned by GOSH) for new tenders with PEMEX. Neither was awarded the contract”. Respondent does not deny these facts, nor has it identified any contrary evidence in connection with them. Respondent, therefore, fails to illustrate what the debated issue between the parties would be, and how the requested documents would assist the tribunal in resolving it.</p> <p><i>Third</i>, the request is overbroad and it would impose an unreasonable burden on Claimant to search for responsive documents. (<i>See</i> IBA Rules, Articles 3(3)(a)(i), 3(3)(a)(ii), 3(7), 9(2)(c), and 3(3)(c)(i)). In the justification,</p>

	<p>Respondent mentions the submission of two specific vessels for Pemex tenders, but then makes a sweeping request for “[any and all] internal documents, records of communications or documents filed before Pemex regarding the participation in [any and all] public tender[s].” The request also contains no time limit at all. By framing the request in this manner, there is no way to construct reasonable search parameters that will encompass its broad, overarching scope without also collecting voluminous unresponsive documents that would be unreasonably expensive and time-consuming to review.</p>
<b>Reply:</b>	<p>Respondent replies to the first objection by reference to General Reply 2 for documents that are not under the control of Respondent.</p> <p>For the second objection, Respondent maintains that Pemex did not act arbitrarily against POSH when Honesto and GOSH allegedly participated in public tenders for Pemex. Respondent clearly stated that this was a disputed issue in its SoD ¶¶ 498-501. Probing the legality of Pemex’s action in such tenders will demonstrate that only Claimant’s own actions were responsible for this business outcome.</p> <p>This request is clear and specific enough to produce the documents as explained in the justification. Finally, Respondent replies in reference to General Reply 3 that the time and cost of producing these documents are not disproportionate in the context of establishing that Claimant was not prejudiced in its efforts to participate in public tenders.</p>
<b>Tribunal’s decision:</b>	<p>The Claimant shall produce documents showing the participation in PEMEX public tenders of POSH’s Subsidiaries in respect of the Rodrigo (owned by HONESTO) and the Argento (owned by GOSH).</p>

<b>Request No.</b>	13.
<b>Document / Category of Documents:</b>	Internal documents and any bareboat charter executed between POSH Honesto with PACC Offshore México, S.A. de C.V. (POM).
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>Based on information available at the Registry of the General Direction of Merchant Marine of the Communications and Transport Ministry (<i>Registro de Marina Mercante</i>), the Respondent is aware that the vessel Rodrigo DPJ (POSH Honesto) has been chartered to PACC Offshore México, S.A. de C.V., apparently since 1 October 2017.<sup>15</sup></p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimant because they should have been prepared and kept in the ordinary course of business.</p>
<b>Objections:</b>	<p>Claimant objects to this request on the ground that the documents sought are not relevant or material to the outcome of this arbitration. (<i>See</i> IBA Rules, Articles 3(3)(b) and 9(2)(a)).</p> <p>Claimant has established that, in 2012-2013, POSH made several investments in Mexico, through several companies that entered into bareboat charters with OSA, including Honesto. As part of these investments, all of which were directly associated with OSA, POSH granted a loan to Honesto to purchase the vessel Rodrigo (SOC, ¶ 87), which was then bareboat chartered to OSA (SOC, ¶ 89). However, because of the Measures adopted by Respondent, Honesto defaulted on the loan, and Honesto's shareholders agreed to sell the Rodrigo and use the proceeds to repay the loan to POSH. As a result, Claimant's investment was destroyed and, <i>on March 2, 2015</i> the Rodrigo was sold to Adara Ltd. (Exhibit C-226). Thereafter, Honesto had no income, no vessel, and no contract with OSA (SOC, ¶ 331).</p>

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<sup>15</sup> *See* R-081.

	<p>Any subsequent purchase of any vessel by Honesto, or any subsequent contracts entered into by Honesto with any third party, would be part of a different investment, which would require different financing, and would be entirely unrelated to OSA or the Measures, irrelevant to this arbitration, and immaterial to its outcome.</p> <p>Respondent fails to explain otherwise, but nevertheless requests documents regarding <i>any</i> bareboat charter entered into by Honesto and POM, while citing only a charter <i>in October 1, 2017</i>, three years after the beginning of the Measures, and two years after the destruction of the investment (i.e. when the Rodrigo was sold to Adara Ltd. in March 2015) This 2017 bareboat charter agreement is unrelated to OSA, the Measures, or the facts that form the basis of this arbitration. Respondent does not explain otherwise.</p> <p>The requested documents are, therefore, irrelevant to the case and immaterial to its outcome. They have no bearing on whether Mexico violated the obligations set forth in the Treaty, the damages suffered by Claimant, or its mitigating efforts, since they memorialize events taking place three years after the Measures, and the destruction of Claimant’s investment. The request is also overbroad, because while the justification mentions only the irrelevant October 2017 charter, the request would cover “any” bareboat charter, without any time limitation.</p>
<p><b>Reply:</b></p>	<p>This request is relevant to the case because, first, it would show that Mexico did not prevent Claimant from conducting other business in Mexico related to the offshore services industry.</p> <p>Second, it will clarify how Claimant conducted its business with respect to the Vessels after the alleged “destruction of the investment.” Claimant is requesting damages for future losses. While Claimant requests full compensation for the fees due under the Vessels’ charters, Respondent has explained that the oil prices resulted in a reduction in the fees due, and that the contracts were not renewed automatically. Respondent has further explained the resulting change in the calculation of future losses. The documents requested are relevant in demonstrating this change in circumstances (SoD ¶¶731-32).</p> <p>Finally, the documents will also provide evidence of the differences between the Claimant’s charters with OSA and the new charters that were concluded with POM. Thus, it will provide a reference for comparing business partners. It will show that Claimant’s losses were linked to its relationship with a bad business partner.</p>
<p><b>Tribunal’s decision:</b></p>	<p>The Claimant shall produce documents limited to the bareboat charter of October 1, 2017.</p>

<b>Request No.</b>	14.
<b>Document / Category of Documents:</b>	Internal documents and any bareboat charter executed between POSH SKUA, S.A. de C.V. and POM.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>Based on information available at the Registry of the General Direction of Merchant Marine of the Communications and Transport Ministry (<i>Registro de Marina Mercante</i>), the Respondent is aware that the vessel POSH Gentil, formerly known as Caballo Copenhagen has been chartered to PACC Offshore México, S.A. de C.V., apparently since 1 August 2017.<sup>16</sup></p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimant because they would have been prepared and kept in the ordinary course of business.</p>
<b>Objections:</b>	<p>Claimant objects to this request on the following grounds.</p> <p><i>First</i>, the documents sought are not relevant or material to the outcome of this arbitration. (<i>See</i> IBA Rules, Articles 3(3)(b) and 9(2)(a)).</p> <p>Claimant has established that, in 2012-2013, POSH made several investments in Mexico, through several Subsidiaries that entered into bareboat charters with OSA. All of these investments were directly associated with OSA. And, as a result of the Measures adopted by the Mexican Government in 2014, these investments were destroyed—the Subsidiaries had no income, no vessels, and no contracts with OSA.</p> <p>Respondent requests documentation regarding a different company, POSH SKUA, S.A. de C.V. (<b>POSH SKUA</b>), and any bareboat charter entered into by this company <i>in August 2017</i>. POSH SKUA is not one of the Subsidiaries, has no involvement whatsoever in this arbitration and no relationship whatsoever with OSA, or the Measures that destroyed Claimant’s investment. Respondent does not deny this. The requested documents, therefore, are irrelevant to the case and immaterial to its outcome. They have no bearing on whether Mexico violated the obligations set</p>

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<sup>16</sup> See R-082.

	<p>forth in the Treaty, the damages suffered by Claimant, or its mitigating efforts, since they memorialize events associated with a third party—having no role in this arbitration—which took place three years after the Measures and the destruction of Claimant’s investment.</p> <p><i>Second</i>, the request is overbroad and it would impose an unreasonable burden on Claimant to search for responsive documents. (See IBA Rules, Articles 3(3)(a)(i), 3(3)(a)(ii), 3(7), 9(2)(c), and 3(3)(c)(i)). In the justification, Respondent only cites a bareboat charter dated August 1, 2017, but nevertheless makes a sweeping request, with no time limit at all, for <u>any</u> bareboat charter entered into by POSH SKUA and POM. By framing the request in this manner, there is no way to construct reasonable search parameters that will encompass its broad, overarching scope without also collecting voluminous unresponsive documents that would be unreasonably expensive and time-consuming to review.</p>
<b>Reply:</b>	Respondent incorporates by reference the objections set out in reply to Request No. 13. This objection also fails to address Respondent’s defense that Respondent did not prevent Claimant from conducting other business in Mexico related to the offshore services industry.
<b>Tribunal’s decision:</b>	The Tribunal upholds the objection. The company concerned is not one of the Subsidiaries related to the dispute.

<b>Request No.</b>	15.
<b>Document / Category of Documents:</b>	Internal documents and records of communications between POSH’s senior managers, directors, shareholders and/or external advisors, discussing the decision of ██████████ to no longer participate in GOSH.
<b>Justifications:</b>	<p>At paragraphs 58 of the SoC, the Claimant states, that “Eventually, ██████████ decided to withdraw from the joint venture [GOSH]”. The Respondent understands that initially ██████████ actively participated in POSH’s venture in Mexico. However, no further detail is given regarding the decision of ██████████ to withdraw his participation in GOSH.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimant because they would have been prepared and kept in the ordinary course of business.</p>
<b>Objections:</b>	<p>Claimant objects to this request on the ground that the documents sought are not relevant or material to the outcome of this arbitration. (<i>See</i> IBA Rules, Articles 3(3)(b) and 9(2)(a)).</p> <p>Claimant mentions ██████████ in three paragraphs of the SOC (SOC, ¶¶ 53, 57 and 58) to explain that he was initially interested in participating in the joint venture with OSA, but later declined to do so. ██████████ has no connection whatsoever with the Subsidiaries, OSA, the Measures, or the claims asserted in this arbitration. Respondent does not dispute this, but nevertheless requests information regarding ██████████’s decision not to participate in the joint venture. There is no issue in dispute between the Parties regarding ██████████. This is a mere fishing expedition by Respondent, and cannot serve as a justification for a document production request.</p>
<b>Reply:</b>	<p>This request is directly related to Respondent’s arguments that POSH made poor business decisions with its Mexican partners. Claimant affirms that ██████████, and Respondent believes that ██████████ had doubts about conducting business with OSA. It is material to the case to understand how and why ██████████ ended the original commercial relationship, as it is quite probable that ██████████ concluded that the risks associated with OSA were too high. Whether POSH disregarded ██████████’s opinions or deliberately ignored them is important evidence because Claimant should not be able to attribute responsibility to Respondent for Claimant’s own bad business decisions.</p> <p>This is not a fishing expedition; instead Respondent seeks to meet its burden of proof.</p>

<b>Tribunal's decision:</b>	The Tribunal upholds the objection. The request is not convincingly justified.
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## C. Domestic court proceedings

### General Justification

The Claimants contend that upon the issuance of the Precautionary Measure (incorrectly named the “Diversion Order”), POSH, GOSH and Invex filed *amparo* complaints against it, “which were ultimately dismissed for formal reasons, without a decision on the merits”.<sup>17</sup>

The Claimant has argued that “the facts show that the Detention Order, which specifically targeted the assets owned by POSH and the Subsidiaries, was unlawful, arbitrary and contrary to Mexican Law”.<sup>18</sup> Hence, it is reasonable to believe that either POSH and/or the Subsidiaries filed *amparo* proceedings or other domestic legal challenges against the alleged “Detention Order” that Mexico’s refers in its Statement of Defense as “Provisional Attachment” (“*Aseguramiento Provisional*”).<sup>19</sup>

The documents sought by the Respondent in this section are relevant to the case and material to its outcome because they will establish that: (i) the Detention Order was temporal and issued to preserve OSA’s commercial operations and evidence of OSA’s possible criminal conduct (ii) the Subsidiaries and Invex vigorously challenged the Precautionary Measure and other decisions issued by the Bankruptcy Judge; (iii) the appeals and *amparo* proceedings filed by the Subsidiaries and Invex were resolved on the merits in accordance with the due process and the fundamental rights of legality and access to justice and (iv) the Mexican courts solved the appeals and *amparo* concluding that the Precautionary Measure and the decisions issued by the Bankruptcy Judge were legal and constitutional.

The Claimant has submitted a claim for a judicial and creeping expropriation (*see*, for example, SoC, ¶¶ 323 *et seq*). However, the SoC does not explain in detail the domestic challenges initiated by the Subsidiaries and Invex nor the possible challenges against the Provisional Attachment.<sup>20</sup>

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<sup>17</sup> SoC, ¶ 170.

<sup>18</sup> SoC, ¶ 145.

<sup>19</sup> SoD, ¶ 346

<sup>20</sup> On February 27, 2014 the PGR ordered the Provisional Attachment of OSA. On March 6 and 19, 2014, the Provisional Attachment was extended at the request of the SAE.

A full understanding of POSH's legal strategy to seek the dismissal of the Precautionary Measure and the Provisional Attachment before domestic courts requires knowledge of all legal challenges filed by the Claimant (*e.g.*, whether if the Subsidiaries or Invex filed additional appeals other than those insufficiently referred to in the SoC or other forms of legal challenges).

The documents are relevant to the case and material to its outcome as they are necessary to the defense of the alleged creeping and judicial expropriation claim of POSH.

<b>Request No.</b>	16.
<b>Document / Category of Documents:</b>	<p>Internal documents and records of communications between POSH and/or the Subsidiaries’ senior management, directors, shareholders and/or external advisors discussing or analyzing any of the following:</p> <ul style="list-style-type: none"> <li>a. Legal challenges against the Precautionary Measure;</li> <li>b. Legal challenges against the Provisional Attachment;</li> <li>c. Legal challenges against the Recognition Sentence that established the amount of credit recognized to the Subsidiaries.</li> <li>d. Any other legal challenge filed by POSH or the Subsidiaries</li> </ul>
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent reasonably believes that the requested documents exist and are in the possession, custody or control of the Claimant because they would have been prepared and kept in the ordinary course of business given the importance attributed to the events surrounding the Bankruptcy proceeding of OSA.</p>
<b>Objections:</b>	<p>Claimant objects to this request on the ground that the documents sought are not relevant or material to the outcome of this arbitration. (<i>See</i> IBA Rules, Articles 3(3)(b) and 9(2)(a)).</p> <p>Respondent states that “A full understanding of POSH’s legal strategy to seek the dismissal of the Precautionary Measure and the Provisional Attachment before domestic courts requires knowledge of <i>all legal challenges filed by the Claimant</i> (e.g., whether if the Subsidiaries or Invex filed additional appeals other than those insufficiently referred to in the SoC or other forms of legal challenges).” But Respondent’s request is not consistent with Respondent’s own justification: Respondent does not request a copy of these legal challenges, but requests instead Claimant’s internal documents and communications <i>analyzing the legal challenges</i>, without attempting to explain why these documents would be relevant to this arbitration or material to its outcome. They are not.</p> <p>Even if POSH’s legal strategy was of any relevance to this arbitration—it is not—POSH would undoubtedly have articulated it in the pleadings filed before the Mexican courts, which are in Respondent’s possession, custody, or</p>

	<p>control. POSH’s internal documents or communications discussing that legal strategy would be redundant, irrelevant, and most likely privileged.</p> <p>Furthermore, it would be wasteful and unfairly burdensome to oblige Claimant to search for, review, and then catalog such documents when the great majority, if not all of them, will be privileged and therefore would not be produced to Respondent in any event.</p>
<b>Reply:</b>	<p>There is a clear connection between Respondent’s request and the alleged “expropriation through judicial measures and seizures” alleged by Claimant. Hence, this request is relevant and material to the case. If Respondent is granted the documents sought by this request, Respondent would be able to argue the pertinent defenses of the alleged creeping and judicial expropriation claim.</p> <p>To the extent that the Claimant’s objection is based on the alleged inaccuracy in Respondent’s statement that the requested documents are not copies of legal filings but requests for internal documents and communications, Respondent respectfully submits that Mexico had no way to know (i) whether all the documents falling within this request have been identified,<sup>21</sup> or (ii) whether Claimant filed other legal challenges.</p> <p>Regarding Respondent’s supposed control over all organs of the Mexican state, Respondent submits that this objection is erroneous as explained in General Reply 2. Respondent respectfully requests the Tribunal to order Claimant to confirm whether there are any documents, especially dockets that would fall within this request.</p> <p>As for the claim of privilege, please refer to General Reply 1.</p>
<b>Tribunal’s decision:</b>	<p>The objection is partially rejected without regard to the question of Respondent’s control over all organs of the Mexican state. The Claimant shall produce copy of all legal challenges filed by the Claimant or the Subsidiaries.</p>

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<sup>21</sup> Amparo proceedings 450/2014, 638/2014, 424/2014, 449/2014, 844/2014, and the related amparo appeals (“*recursos de revision*”), as well as appeals 651/2014, 636/2014, 644/2014, 643/2014, 645/2014, 650/2014 and the related *amparos* against the sentences of these appeals (*amparos directos*).

<b>Request No.</b>	17.
<b>Document / Category of Documents:</b>	Copy of any appeal or legal challenge ( <i>e.g.</i> , <i>amparos</i> ) against the Provisional Attachment of OSA presented by POSH, the Subsidiaries or Invex.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in possession custody or control of the Claimants because would have been prepared and kept in the ordinary course of business given the importance attributed to the events surrounding the preparation of the documents.</p>
<b>Objections:</b>	<p>Claimant objects to this request because Respondent has not shown that it does not have possession, custody or control over “any appeal or legal challenge” filed before Mexican courts. (<i>See</i> Article 3(3)(c) of the IBA Rules). By definition, Respondent is in possession, custody, or control of any and all documents filed by POSH, the Subsidiaries or any third party before Respondent’s own courts. This is consistent with the international law rules of attribution, under which Mexico represents and must respond to claims based on the actions of any organ of the national or local government, or agents thereof; and any document in the possession of the State or state-controlled agencies or entities is deemed to be in the possession of the State. Respondent has already demonstrated its access to documents that were filed before its own courts by using court filings as exhibits (<i>e.g.</i>, Exhibits R-50, R-53, R-54, R-55, R-57, R-58) when Respondent believes they serve its interests.</p>
<b>Reply:</b>	Respondent incorporates by reference reply to Request No. 16. This objection also fails to address Respondent’s defense against the alleged creeping and judicial expropriation.
<b>Tribunal’s decision:</b>	See decision on request 16.

<b>Request No.</b>	18.
<b>Document / Category of Documents:</b>	<p>Internal documents and records of communications regarding any legal proceeding seeking the challenge of any other decision issued by the Bankruptcy Judge (for example the precautionary measure to continue the validity of OSA’s contract with PEP) and the acts taken by the Servicio de Administración y Enajenación de Bienes (SAE as administrator, visitor, conciliator and trustee).</p> <p>This request excludes internal documents and records of communications related to <i>amparo</i> proceedings 450/2014, 638/2014, 424/2014, 449/2014, 844/2014, and the related <i>amparo</i> appeals (“<i>recursos de revision</i>”), as well as appeals 651/2014, 636/2014, 644/2014, 643/2014, 645/2014, 650/2014 and the related <i>amparos</i> against the sentences of these appeals (<i>amparos directos</i>).</p>
<b>Justifications:</b>	<p>See general justification.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimant because it is reasonable to assume that POSH, the Subsidiaries and Invex’s legal strategy encompassed other legal proceedings to seek the challenge of the Precautionary Measure and other decisions issued by the Bankruptcy Judge related to them and SAE’s acts.</p>
<b>Objections:</b>	<p>Claimant objects to this request on the ground that the documents sought are not relevant or material to the outcome of this arbitration. (<i>See</i> IBA Rules, Articles 3(3)(b) and 9(2)(a)).</p> <p>In the general justification section, Respondent states that “A full understanding of POSH’s legal strategy to seek the dismissal of the Precautionary Measure and the Provisional Attachment before domestic courts requires knowledge of <i>all legal challenges filed by the Claimant</i> (e.g., whether if the Subsidiaries or Invex filed additional appeals other than those insufficiently referred to in the SoC or other forms of legal challenges).” But Respondent’s request is not consistent with Respondent’s own justification. Respondent does not request a copy of these legal challenges here, but instead requests internal documents and communications <i>regarding any legal proceeding</i>, without providing a single reason why these documents would be relevant to this arbitration or material to its outcome. They are not.</p> <p>Even if POSH’s legal strategy was of any relevance to this arbitration—it is not—POSH would undoubtedly have articulated it in the pleadings filed before Mexican courts, which are in Respondent’s possession, custody, or control.</p>

	<p>POSH's internal documents or communications discussing that legal strategy would be redundant, irrelevant, and most likely privileged.</p> <p>Furthermore, it would be wasteful and unfairly burdensome to oblige Claimant to search for, review, and then catalog such documents when the great majority, if not all of them, will be privileged and therefore would not be produced to Respondent in any event.</p>
<b>Reply:</b>	<p>Respondent incorporates by reference the reply to Request No. 16. This objection also fails to address Respondent's defense against the alleged creeping and judicial expropriation.</p> <p>Furthermore, Respondent seeks to demonstrate that SAE's actions and the insolvency proceedings were lawful by assessing Claimant's challenges against them. It is relevant and material to the case to know exactly which challenges made by Claimant expose the purported wrongdoings by SAE and the Insolvency Court.</p> <p>As for the potential claim of privilege, please refer to General Reply 1.</p>
<b>Tribunal's decision:</b>	<p>The objection is upheld. The request has not been adequately justified.</p>

<b>Request No.</b>	19.
<b>Document / Category of Documents:</b>	Any submission filed by POSH or the Subsidiaries before PGR in order to demonstrate the legal ownership of the Vessels, including any annex attached to the submissions filed by GOSH before PGR on 28 March 2014, 29 April 2014 and 7 May 2014.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>In paragraph 140, the Claimant states that “The Subsidiaries filed two further briefs with the PGR requesting the release of the vessels”. However, these briefs were only submitted by GOSH (<i>see</i> C-145, C-146 and C-147). Mexico believes that additional briefs were filed by the Subsidiaries before PGR.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimant because it is reasonable to assume that the Subsidiaries (i.e., GOSH, POSH Honesto, POSH Hermosa and SEMCO IV) would have pursued the lift of the Provisional Attachment on the Vessels.</p>
<b>Objections:</b>	Claimant objects to this request because, by definition, Respondent is in possession, custody, or control of all the documentation filed by POSH, the Subsidiaries, or any third party before Respondent’s own <i>Procuraduría General de la República</i> , which is a state entity (IBA Rules, Article 3(3)(c)(i)). This is consistent with the international law rules of attribution, under which Mexico represents and must respond to claims based on the actions of any organ of the national or local government, or agents thereof; and any document in the possession of the State or state-controlled agencies or entities is deemed to be in the possession of the State. Respondent has already demonstrated its access to documents on the PGR’s record by using them as exhibits (e.g., Exhibits R-33, R-42, R-51, and R-52) when Respondent believes they serve its interests.
<b>Reply:</b>	<p>Respondent replies to this objection based on General Reply 2 concerning documents that are not under the control of Respondent. Additionally, the exhibits cited by Claimant are not documents related to the submissions filed by POSH or the Subsidiaries before PGR in order to demonstrate the legal ownership of the Vessels. R-33 is a general report presented to the Senate by the PGR. R-51 and R-52 are notifications made to SAE by the PGR. And R-33 is document #16 presented by Claimant’s criminal expert.</p> <p>Claimant is the legitimate party to produce these documents.</p>



<b>Tribunal's decision:</b>	The objection is upheld because the documents requested should be in possession of the Respondent
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<b>Request No.</b>	20.
<b>Document / Category of Documents:</b>	Any submission filed by POSH or the Subsidiaries before PGR in order to demonstrate the legal ownership of the Vessels, including any annex attached to the submissions and the annexes attached to the communications of GOSH filed before PGR.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the requested documents exist and are in the possession, custody or control of the Claimant because it is reasonable to assume that the Subsidiaries (i.e., GOSH, POSH Honesto, POSH Hermosa and SEMCO IV) would have pursued the lift of the Provisional Attachment on the Vessels.</p>
<b>Objections:</b>	This request is duplicative of Request No. 19. Claimant repeats here by reference its objections as spelled out in answer to Request No. 19.
<b>Reply:</b>	Respondent withdraws this requests as it is duplicative to Request 19.
<b>Tribunal's decision:</b>	The Tribunal notes the withdrawal of this request.

## D. OSA's debt restructuring and contractual breaches

### General justification

The Respondent believes that since January 2013, POSH and OSA negotiated the debts of OSA. This negotiation would have been materialized in a debt restructuring based on the following:

- Through the amendments to the Charters concluded on 1 February 2013, GOSH and the Subsidiaries agreed that OSA would direct funds to a trust.
- In April 2013, GOSH and OSA concluded new charters that promised that within five days after the signing of the Charter it would assign the debt collection rights under any contract signed for the operation of the Vessels to a trust.
- On 1 July 2013, the Management Contract concluded by PFSM and OSA stipulated that payments in favor of PFSM would be made by a trust.
- On 9 August 2013, POSH, GOSH, OSA and Invex concluded the Invex Trust.
- On October 1, 2013, the Autofin Trust was created.
- On 20 November 2013, OSA's debt collection rights granted by certain Pemex-OSA Contracts were assigned to the Invex Trust.

The documents filed by the Claimant are not clear on the obligations adopted by OSA in the debt restructuring. Indeed, some documentation provided by Claimant demonstrates that an agreement was executed by POSH and OSA on 1<sup>st</sup> July 2013 "derived from the negligence on OSA's duties under the Charter Contracts of 2012 and Charter Contracts of 2013" without further explanation.<sup>22</sup>

In the same vein, the Claimant omits any description to any procedure, corporate policy or any relevant information related to the decisions made to modify and extend the Vessels' charters.

In addition to this, neither the SoC nor the Claimant's exhibits explain the role of POSH, the Subsidiaries and the Vessels in the Autofin Trust.

The Respondent intends to argue that OSA constantly breached its contractual obligations and therefore the debt restructuring was agreed. However, since OSA did not perform its duties, the Claimant initiated legal actions against OSA. As an example, SEMCO

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<sup>22</sup> See C146, p. 9.

Salvage (IV) Pte. Ltd. (SEMCO IV) initiated a commercial arbitration against OSA. However, no further information has been provided by Claimant on this issue.

<b>Request No.</b>	21.
<b>Document / Category of Documents:</b>	<p>Internal documents containing any assessment, analysis, opinion, discussion or communication between senior management, directors, shareholders and/or external advisors of POSH and/or the Subsidiaries discussing any of the following:</p> <ul style="list-style-type: none"> <li>• The performance of OSA under the Charters;</li> <li>• The pending payments of OSA arising from the Charters;</li> <li>• The extension on the validity or modification of the charters;</li> <li>• The performance of Messrs. Amado Yáñez and Martín Díaz as members of GOSH’s Board of Directors (<i>Consejo de Administración</i>)</li> </ul> <p>This request refers to documents prepared between 18 September 2011 (date on which the first Charter (Don Casiano) was concluded) and 31 May 2014.</p>
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>In paragraph 90, Claimant states that “POSH feared that OSA would not follow the industry’s best practices in maintaining the vessels, and that this could result in damage to them”. In fact, this situation happened. Indeed, once OSA’s bankruptcy proceeding started, POSH Hermosa and POSH Honesto submitted their credit recognition request before the Bankruptcy Judge claiming, <i>inter alia</i>, repairs, maintenance services and salaries to crew members of the vessels.<sup>23</sup></p> <p>The Respondent is not in possession of the requested documents.</p>

<sup>23</sup> See Statement of Defence, ¶¶ 81 and 82.

	<p>The Respondent believes that the requested document exists and is in the possession, custody or control of the Claimant because it is reasonable to assume that OSA’s contractual and payment breaches were an important issue to the Claimant.</p>
<b>Objections:</b>	<p>Claimant objects to this request because it is overbroad and searching for responsive documents would impose an unreasonable burden on Claimant. (See IBA Rules, Articles 3(3)(a)(i), 3(3)(a)(ii), 3(7), 9(2)(c), and 3(3)(c)(i)). Respondent makes a sweeping request for documents addressing topics as vague as “the performance of OSA” or “the performance of Messrs. Amado Yáñez and Martín Díaz as members of GOSH’s Board of Directors,” the meaning of which is elusive. As phrased, Respondent conceivably requests any and all internal documents or communications concerning OSA or its shareholders. By framing the request this way, Respondent provides no way to construct reasonable search parameters that will encompass its broad, overarching request without also collecting voluminous unresponsive documents that would be unreasonably expensive and time-consuming to review.</p>
<b>Reply:</b>	<p>Respondent respectfully asks that this request extend from 1 March 2012 (around the period in which GOSH changed its shareholding structure) to May 2014. Also, to clarify, Respondent used “performance” to refer to how well OSA performed under the charters, <i>i.e.</i>, its compliance with the contracts, and how well Messrs. Amado Yáñez and Martín Díaz acted as members of GOSH’s Board of Directors, <i>i.e.</i>, the manner they were complying with their duties.</p> <p>Respondent refers to General Reply 3, as the time and cost of producing these documents are proportionate to the need of showing that OSA’s constant contractual breaches led to the debt restructuring. The documents will also show how the Board of Directors reached this decision.</p> <p>In an effort to narrow the scope of this request, the Respondent refers to clause 6 of annex VP-98, which establishes the address and emails of the interested parties. Thus, Respondent suggests that the inquiry by Claimant concerning “communication between senior management, directors, shareholders” be focused on the communications made to and from the addresses and emails spelled out on page 7 of annex VP-98. Further, please refer to the reply relating to Request No. 24.</p>
<b>Tribunal’s decision:</b>	<p>Subject to legal professional privilege, the Claimant shall produce communications dated between March 1, 2012 and May 2014 to and from the addresses listed on page 7 of Annex 98 to the Versant Partners Report.</p>

<b>Request No.</b>	22.
<b>Document / Category of Documents:</b>	Records of communications between POSH and/or its Subsidiaries and OSA and OSA's shareholders ( <i>i.e.</i> , Messrs. Yáñez, Martín Díaz and/or the Rodríguez Borgio brothers) discussing any of the following: <ul style="list-style-type: none"> <li>• The performance of OSA under the Charters;</li> <li>• The pending payments of OSA arising from the Charters;</li> <li>• The performance of Messrs. Amado Yáñez and Martín Díaz as members of GOSH's Board of Directors (<i>Consejo de Administración</i>)</li> </ul>
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The Claimant has not submitted this information but has submitted select communications sent by POSH and/or the Subsidiaries to OSA such as the following:</p> <ul style="list-style-type: none"> <li>• GOSH's letter sent on 8 May 2014 to OSA (R-197);</li> <li>• POSH Honesto's letter sent on 10 February 2014 (C-160);</li> <li>• POSH Hermosa's letter sent on 10 February 2014 (C-161);</li> <li>• SEMCO IV's letter sent on 12 February 2014 (C-196).</li> </ul> <p>The Respondent is not in possession of the requested documents.</p> <p>The Respondent believes that the requested Documents exist considering the aforementioned documents. In other words, Mexico considers that additional communications were sent to OSA due to its regular contractual breaches and it is assumed that OSA would have replied to these communications considering that Messrs. Yáñez and Díaz were part of GOSH's Board of Directors.</p> <p>Also, the documents would have been prepared and kept in the ordinary course of business.</p>
<b>Objections:</b>	Claimant objects to this request because it is overbroad and searching for responsive documents would impose an unreasonable burden on Claimant. ( <i>See</i> IBA Rules, Articles 3(3)(a)(i), 3(3)(a)(ii), 3(7), 9(2)(c), and 3(3)(c)(i)). Respondent makes a sweeping request for documents addressing topics as vague as "the performance of OSA" or "the performance of Messrs. Amado Yáñez and Martín Díaz as members of GOSH's Board of Directors," the

	<p>meaning of which is elusive. As phrased, Respondent conceivably requests any and all internal documents or communications vaguely mentioning OSA or its shareholders, which could be deemed to be addressing their “performance.” Similarly, no attempt has been made to specify any time-period for the search. By framing the request this way, Respondent provides no way to construct reasonable search parameters that will encompass its broad, overarching request without also collecting voluminous unresponsive documents that would be unreasonably expensive and time-consuming to review.</p>
<b>Reply:</b>	<p>Respondent incorporates by reference its reply to Request No. 21, including the time frame.</p> <p>In an effort to narrow the scope of this request, the Respondent refers to clause 6 of annex VP-98, which establishes the address and emails of the interested parties. Thus, Respondent suggests that the inquiry by Claimant be focused on the communications made to and from the addresses and emails spelled out on page 7 of VP-98. Further, please refer to the reply relating to Request No. 24.</p>
<b>Tribunal’s decision:</b>	<p>Subject to legal professional privilege, the Claimant shall produce communications dated between March 1, 2012 and May 2014 to and from the addresses listed on page 7 of Annex 98 to the Versant Partners Report.</p>

<b>Request No.</b>	23.
<b>Document / Category of Documents:</b>	<p>Internal documents, minutes, notes or memoranda containing any assessment, analysis, opinion, discussion or communication between senior management, directors, shareholders and/or external advisors discussing any of the following discussing any of the following:</p> <ul style="list-style-type: none"> <li>• The performance of OSA under the Charters;</li> <li>• The pending payments of OSA arising from the Charters and</li> <li>• The performance of Messrs. Amado Yáñez and Martín Díaz as members of GOSH's Board of Directors (<i>Consejo de Administración</i>)</li> </ul>
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The Claimant and the Respondent have already submitted different internal documents in which they described the performance of OSA under the Charters and its constant breaches, such as the following:</p> <ul style="list-style-type: none"> <li>• Minute of a meeting of POSH's Board of Directors held on 18 August 2011 (C-040);</li> <li>• Memorandum from Gerald Seow to POSH Board of Directors dated 14 February 2012 (0-41);</li> <li>• Memorandum from Gerald Seow to POSH Board of Directors dated 8 May 2012 (0-42);</li> <li>• Minute of meeting held by OSA and POSH on 28 November 2013 (R-013);</li> </ul> <p>The Respondent is not in possession of the requested documents.</p> <p>The Respondent believes that the requested Documents exist since they would have been prepared and kept in the ordinary course of business.</p>
<b>Objections:</b>	<p>Claimant objects to this request because it is vague and overbroad, and searching for responsive documents would impose an unreasonable burden on Claimant. (<i>See</i> IBA Rules, Articles 3(3)(a)(i), 3(3)(a)(ii), 3(7), 9(2)(c), and 3(3)(c)(i)). Respondent mentions documents or communications exchanged, <i>inter alia</i>, by directors or shareholders, without specifying the company(ies) to which it is referring. Respondent further makes a sweeping request for</p>



	documents addressing topics as vague as “the performance of OSA” or “the performance of Messrs. Amado Yáñez and Martín Díaz as members of GOSH’s Board of Directors,” the meaning of which is elusive. As phrased, Respondent conceivably requests any and all internal documents or communication vaguely mentioning OSA or its shareholders—in any way—as they could be deemed to be addressing their “performance.” Similarly, no attempt has been made to specify any time-period for the search. By framing the request this way, Respondent provides no way to construct reasonable search parameters that will encompass its broad, overarching request without also collecting voluminous unresponsive documents that would be unreasonably expensive and time-consuming to review.
<b>Reply:</b>	Respondent incorporates by reference reply to Request No. 21, including the time frame.  In an effort to narrow the scope of this request, the Respondent refers to clause 6 of annex VP-98, which establishes the address and emails of the interested parties. Thus, Respondent suggests that the inquiry by Claimant concerning “communication between senior management, directors, shareholders and/or external advisors” be focused on the communications made to and from the addresses and emails spelled out on page 7 of VP-98. Further, please refer to reply to Request No. 24.
<b>Tribunal’s decision:</b>	Subject to legal professional privilege, the Claimant shall produce communications dated between March 1, 2012 and May 2014 to and from the addresses listed on page 7 of Annex 98 to the Versant Partners Report.

<b>Request No.</b>	24.
<b>Document / Category of Documents:</b>	The concluded version of the agreement executed by OSA and POSH, executed on 1 <sup>st</sup> July 2013 and referred in C-146.
<b>Justifications:</b>	<p>See general justification.</p> <p>The Respondent is not in possession of the requested document.</p> <p>The Respondent believes that the requested Document exists and is in the Claimant's possession because it is clearly referred in exhibit C-146 as "<i>convenio de arreglo</i>".</p>
<b>Objections:</b>	Claimant objects to this request on the ground that the requested document is already in Respondent's possession, custody, or control (IBA Rules, Article 3(3)(c)(i)). The requested document was produced by Mr. José Luis Montalvo before the PGR, as annex 40 of its submission to prove the Subsidiaries' ownership of the vessels (p. 9, Exhibit C-146). By definition, Respondent is in possession, custody, or control of all the documentation filed by POSH, the Subsidiaries or any third party before Respondent's own <i>Procuraduría General de la República</i> , which is a state entity (IBA Rules, Article 3(3)(c)(i)). This is consistent with the international law rules of attribution, under which Mexico represents and must respond to claims based on the actions of any organ of the national or local government, or agents thereof; and any document in the possession of the State or state-controlled agencies or entities is deemed to be in the possession of the State. Respondent has already demonstrated its access to documents on the PGR's record by using them as exhibits (e.g., Exhibits R-33, R-42, R-51, and R-52) when Respondent believes they serve its interests.
<b>Reply:</b>	<p>It has recently come to the Respondent's attention that annex VP-98 to the Versant Report may be the document sought under this request. Respondent respectfully requests the Claimant to confirm that VP-98 is the 1 July 2013 agreement and that the version filed as VP-98 includes all annexes and/or attachments thereto. If said file is missing annexes and or attachments, please provide a copy.</p> <p>To the extent that VP-98 is a different document, Respondent replies to this objection as explained in General Reply 2 and incorporates by reference its reply to Request No. 19.</p>
<b>Tribunal's decision:</b>	The Tribunal notes that the document requested was filed with Respondent's PGR. This notwithstanding the Claimant shall confirm whether VP-98 is the July 1, 2013 Agreement, including annexes or attachments.

<b>Request No.</b>	25.
<b>Document / Category of Documents:</b>	Copies of the termination letters of GOSH's Charters (or equivalent documents) delivered to OSA. The Respondent believes that these termination letters were delivered to OSA in May 2014.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>Based on Mr. Montalvo's witness statement on 16 May 2014, POSH withdrew the vessels from the GOSH Charters.<sup>24</sup> Due to this, it's reasonable to believe that a termination letter or equivalent document was sent to OSA to legally terminate the contractual relationship between both companies (<i>i.e.</i>, GOSH and OSA).</p> <p>The Respondent is not in possession of the requested documents.</p> <p>The Respondent believes that the requested Documents exist and are in Claimants' possession because they would have been delivered in the ordinary course of business.</p>
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	<p>In relation to the potential claim of privilege, please refer to General Reply 1.</p> <p>Per Respondent's recent realization as to VP-98, Respondent respectfully requests production of the notice of default from GOSH dated 26 April 2013.</p>
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement. The Claimant shall produce the notice of default from GOSH dated 26 April 2013.

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<sup>24</sup> Jose Montalvo witness statement, ¶ 50.

<b>Request No.</b>	26.
<b>Document / Category of Documents:</b>	Copies of every <i>addendum</i> or amendment agreement to the Charters concluded by OSA and the Subsidiaries.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The Respondent is not in possession of the requested documents. In fact, the Respondent knows that some Charters were repeatedly modified, such as the one related to the vessel Rodrigo DPJ that was modified six times.<sup>25</sup></p> <p>The Respondent believes that the requested Documents exist because they would have been kept in the ordinary course of business.</p>
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they have not been produced already, are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement.

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<sup>25</sup> See R-005.

<b>Request No.</b>	27.
<b>Document / Category of Documents:</b>	<p>Records of shareholder meetings, board of director and committees from the Subsidiaries that identify any of the following:</p> <ul style="list-style-type: none"> <li>• Shareholders;</li> <li>• Partners;</li> <li>• Relevant employees and directors;</li> <li>• Members of the board of directors from 2011 to 2015.</li> </ul>
<b>Justifications:</b>	<p>In paragraph 64, Claimant states that “Mr. Yáñez and Mr. Díaz were silent investors and had no involvement in the management of the company.” Notwithstanding that they were part of the board of directors during the relevant time that the Invex trust was concluded.</p> <p>The Respondent considers that understanding how the board of directors and the management of the Subsidiaries worked would explain the decisions to create the Invex trust and identity the parties involved.</p> <p>The Respondent is not in possession of the requested documents.</p> <p>The Respondent believes that the requested documents exist because they would have been kept in the ordinary course of business.</p>

<p><b>Objections:</b></p>	<p>Claimant objects to this request on the following grounds.</p> <p><i>First</i>, the request is vague and overbroad, and searching for responsive documents would impose an unreasonable burden on Claimant. (See IBA Rules, Articles 3(3)(a)(i), 3(3)(a)(ii), 3(7), 9(2)(c), and 3(3)(c)(i)). Respondent does not attempt to narrow the search to a specific time-period, and makes a sweeping request for corporate documents which identify OSA’s “shareholders,” “partners,” “relevant employees and directors,” and “members of the board.” The request is formulated in the broadest possible terms, since virtually any type of corporate document would presumably identify or mention at least one of the categories mentioned by Respondent. Moreover, the first three portions of the request bear no time limit at all, and the last portion (members of the Board) is only nominally limited to an unreasonably broad time-period (2011 through 2015). This excessively broad request fails to satisfy the requirement under the IBA Rules that a document request describe “in sufficient detail (including subject matter) a narrow and specific requested category of Documents”.</p> <p><i>Second</i>, the documents sought are not relevant or material to the outcome of this arbitration. (See IBA Rules, Articles 3(3)(b) and 9(2)(a)). Respondent’s justification for this request is that “Mr. Yáñez and Mr. Díaz were silent investors and had no involvement in the management of the company. Notwithstanding that they were part of the board of directors during the relevant time that the Invex trust was concluded.” The Respondent considers that <i>understanding how the board of directors and the management of the Subsidiaries worked would explain the decisions to create the Invex trust and identity the parties involved.</i>” But Respondent fails to identify in that justification a single issue that is actually in dispute in this arbitration. Respondent does not deny that Mr. Yáñez or Mr. Díaz were silent investors. Claimant does not deny that they were part of the board of directors. And the parties in this arbitration have not disputed the identity of the parties involved in the Invex Trust, which are clearly established on the face of that agreement (Exhibit C-70). Finally, “understanding how the board of directors... works” bears no relationship whatsoever with the establishment of a Trust to ensure that the Subsidiaries were paid for their work. This is a textbook example of a fishing expedition.</p> <p>Without waiving this objection and, in order to clarify Mr. Yáñez’s and Mr. Díaz’s role in the Subsidiaries, Claimant agrees to conduct a reasonable search for, and produce, any corporate documents memorializing any action taken, or decision made, by Mr. Yáñez or Mr. Díaz within the corporate structure of the Subsidiaries, to the extent that they are non-privileged and in Claimant’s possession, custody, or control.</p>
<p><b>Reply:</b></p>	<p>Respondent would like to clarify that this request is focused on understanding who were the most relevant persons in each Subsidiary in order to ascertain the management of the Subsidiaries by Mr. Yáñez and Mr. Díaz, which goes to the fact that Respondent alleges that these two people were not just silent investors.</p>

	<p>Respondent appreciates Claimant's effort to explain and search for the actions and decisions taken by Mr. Yáñez and Mr. Díaz; however, this information does not explain the structure or general management of the Subsidiaries. Thus, Respondent respectfully submits that Claimant did not object to the request and should produce the documents requested.</p> <p>Finally, in relation to Claimant's potential assertion of privilege, please refer to General Reply 1.</p>
<b>Tribunal's decision:</b>	<p>The Tribunal takes note of the Claimant's statement. The documents that the Claimant may find shall be produced with an explanation showing their relation to the management structure of the Subsidiary concerned.</p>

<b>Request No.</b>	28.
<b>Document / Category of Documents:</b>	Records of communications between POSH and the Subsidiaries and between POSH/Subsidiaries and OSA (including any attachments thereto) regarding the rationale to establish and the establishment of the so-called “Irrevocable Trust”.  This request is limited to the period between 1 January and 31 December 2013.
<b>Justifications:</b>	<p>The Statement of Claim states that “[t]he purpose of the Irrevocable Trust was to secure the payments originating from PEMEX and shield them from any contingency affecting OSA” (SoC, ¶ 72). However, the Claimant fails to explain why the trust was not established in the Joint Venture Agreement (or before August 2013 for that matter), nor does it elaborate on the reasons for its creation.</p> <p>The Respondent intends to argue and further elaborate in its Rejoinder that the trust was established to prevent OSA’s discretionary disposal of payments received from PEP concerning vessels owned by the Claimant’s subsidiaries. The Respondent also intends to argue that the reason behind the establishment of the trust was the Claimant’s concerns regarding OSA’s indebtedness and inability to continue making payments to the Claimant and its subsidiaries and/or payment delays of the Subsidiaries’ invoices to OSA. The requested documents are relevant to these issues and material to the outcome of the case because they will demonstrate the absence of a causal link between the damages claimed in this case and the measures alleged to be in breach of the BIT.</p> <p>The requested documents are not in the possession, custody or control of the Respondent. The Respondent reasonably believes that the documents exist and are in the possession, custody or control of the Claimant because it is an undisputed fact that the trust was created and there must have been internal discussions on the rationale for its creation.</p>
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant’s possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal’s decision:</b>	The Tribunal takes note of the Claimant’s statement.



<b>Request No.</b>	29.
<b>Document / Category of Documents:</b>	Internal documents discussing the rationale to establish a trust to receive payments made by PEP to OSA under the bareboat charter contracts involving vessels owned by the Subsidiaries.  This request is limited to the period between 1 January 2013 to 2015.
<b>Justifications:</b>	Please refer to the justification offered in the previous request.
<b>Objections:</b>	Claimant objects to this request because the time-period is unnecessarily broad. Respondent requests documents dated between January 1, 2013 and 2015, but the Irrevocable Trust was established in August 2013. The only documents that could potentially discuss the rationale to establish a trust would have been prepared prior to its establishment, which occurred in August 2013. Request No. 28—which is nearly identical—acknowledges this and provides a shorter time-period: between January 1 and December 31, 2013.  Without waiving this objection, Claimant agrees to conduct a reasonable search for, and produce, the requested documents prepared <i>between January 1 and December 31, 2013</i> , to the extent that they are non-privileged and in Claimant’s possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal’s decision:</b>	The Tribunal takes note of the Claimant’s statement.

<b>Request No.</b>	30.
<b>Document / Category of Documents:</b>	Internal documents and record of communications between senior management, directors, shareholders and/or external advisors of POSH and the Subsidiaries regarding the Autofin Trust.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>Neither the SoC nor Claimant’s exhibits explain the purpose of the Autofin Trust. The Respondent believes that this trust was part of the different measures adopted by OSA to guarantee its obligations under the Charters concluded with the Subsidiaries.</p> <p>The parties of the Autofin Trust were: i) AF Banorte as the primary trustee; ii) Banorte as the secondary trustee; iii) OSA, as the trustor and / or tertiary trustee, and iv) Autofin, as the trust.<sup>26</sup> Based on the Autofin Trust, OSA received a credit from Banorte guaranteed with three OSA-PEP contracts, two of them related to Rodrigo DPJ and Caballo Grano de Oro vessels.</p> <p>The Respondent is not in possession of the requested documents.</p> <p>The Respondent believes that the requested Documents exist since Claimant knew about the existence of the Autofin Trust based on the exhibits of the Claimant.<sup>27</sup></p>
<b>Objections:</b>	<p>Claimant objects to this request on the ground that the documents sought are not relevant or material to the outcome of this arbitration. (<i>See</i> IBA Rules, Articles 3(3)(b) and 9(2)(a)). In the justification section of this request, Respondent acknowledges that neither POSH nor the Subsidiaries were parties to the Autofin Trust. In the SOD, Respondent further acknowledges that the Autofin Trust “does not mention POSH, POSH Honesto or POSH Hermosa, or any other subsidiary related to POSH” (SOD, ¶112). Respondent fails to identify how the Autofin Trust would be relevant to the claims filed by Claimant in this arbitration, the damages suffered by Claimant, the Measures adopted by the State, or any other relevant issue in dispute in connection with the Autofin Trust. In fact, Claimant has made no allegation in connection with the Autofin Trust.</p>

<sup>26</sup> Statement of Defence, ¶109.

<sup>27</sup> “Banorte has provided a loan to OSA with 3 contracts as collateral (two of which are Rodrigo DPJ and Caballo Grano de Oro”. C-237.

	In any case and, in the interest of efficiency, Claimant informs Respondent and the Tribunal that the requested documents do not exist.
<b>Reply:</b>	<p>Respondent seeks to establish that POSH did not perform the proper due diligence to avoid business relationships with OSA or OSA’s shareholders. This mismanagement and poor decision-making can be ascertained at different points in time, before Claimant’s decision to “invest” and during its business relationship, especially in 2013 when OSA sought to undergo an emergency financial restructuring.</p> <p>For Respondent it is important to establish Claimant’s awareness of OSA’s trust with Autofin because this trust is directly related to two of Claimant’s vessels. It will also confirm that Claimant continued its business relationship in spite of the signs of OSA’s financial crisis. Respondent in SoD ¶ 115 confirmed that OSA’s practice of establishing trusts was created to provide legal and financial certainty to its service providers, instead of solely securing obligations, such as the bridge loan granted by POSH to GOSH. Autofin is an example of OSA’s practice.</p> <p>Finally, Respondent respectfully requests the Tribunal to order the Claimant to search and confirm whether there are more documents akin to C-237.</p>
<b>Tribunal’s decision:</b>	The Tribunal takes note of the Claimant’s statement that the documents do not exist.

<b>Request No.</b>	31.
<b>Document / Category of Documents:</b>	Copies of any notice or request for arbitration or arbitration memorial, as well as any commercial or civil litigation statement of claim filed by POSH and the Subsidiaries against OSA, including a copy of any awards issued in those arbitrations including the award in the commercial arbitration initiated by SEMCO IV against OSA or Amado Yáñez.
<b>Justifications:</b>	<p><i>See</i> general justification.</p> <p>The Respondent is not in possession of the requested documents.</p> <p>The Respondent believes that the requested documents exist since SEMCO IV filed a notice of arbitration against OSA based on the contractual breaches of OSA.<sup>28</sup> Since the Charters concluded by the Subsidiaries and OSA established arbitration clauses and SEMCO IV initiated an arbitral proceeding against OSA, it is reasonable to infer that additional arbitral proceedings were initiated against OSA or Amado Yáñez.</p>
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement.

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<sup>28</sup> *See* R-014.

<b>Request No.</b>	32.
<b>Document / Category of Documents:</b>	To the extent that they have not been included as exhibits to Mr. Méjan's report and as part of the Respondent's exhibits, all the documents provided by the Claimant and relied upon by the expert legal opinion on Insolvency Law in his report, for example: documents listed as number 77, 78, 80, 81, 83, 86, 88, 89, 90, 95, 96 <sup>29</sup> , 99, 103, 104, 105 - 109, 113, 115 and 123 – 125.
<b>Justifications:</b>	<p>Paragraph 14 of the Méjan's Report states that he "reviewed the documentation that has been provided ... by POSH's Counsel, and which is listed in Appendix B.</p> <p>From the documents listed the Respondent believes that Claimant had a comprehensive understanding of the insolvency proceedings but selectively chose only some parts of the facts and provided incomplete and bias explanations of the proceedings.</p> <p>The requested documents are needed to fully understand, evaluate and verify the conclusions and assumptions made by the Claimant's insolvency expert. The fact that the Claimant chose to make those documents available to its expert makes them <i>ipso facto</i> relevant to the case and material to its outcome, particularly those that the expert decided to rely on in their report for assumptions and conclusions.</p> <p>The requested documents are not in the possession, control or custody of the Respondent.</p> <p>To the extent that the requested documents exist they are in the Claimant's possession, custody or control because they were provided to its expert.</p>
<b>Objections:</b>	Claimant agrees to produce all documents provided by Claimant and relied upon by Mr. Meján for the purposes of preparing his report to the extent that they are not on the record.
<b>Reply:</b>	Respondent does not have additional comments.
<b>Tribunal's decision:</b>	No action needed by the Tribunal.

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<sup>29</sup> Please see below Request No. 33

## E. Damages

### General justification

In accordance with the Statement of Claim, the Claimant seeks full reparation for the losses alleged to have been suffered which compromise two different periods: historical losses and the lost value of the business on a going concern as of the valuation date (SoC, ¶ 410-412).

However, the Claimant does not provide evidence to enable the Respondent to corroborate or refute all those allegations. For instance, the Claimant did not include financial statements of the performance of the subsidiaries, communications explaining how POSH or the Subsidiaries arrange negotiations to enter into joint ventures or business arrangements for the purposes of chartering the vessels, analyses made to ascertain an immediate renewal of the charter contracts, documents supporting the demobilization costs and repairs to the vessels, or studies of the Subsidiaries projections.

Once the Respondent has full access to the requested records, they will support the contributory fault argument submitted as well as demonstrate that there were no expectations as alleged by the Claimant.

The documents requested under this section are relevant and material for the outcome of the case, because they are necessary to determine whether the Claimant in fact had a proper investment that covered historical losses and the lost value of the business as it is claimed.

<b>Request No.</b>	33.
<b>Document / Category of Documents:</b>	Internal documents containing any assessment, analysis, opinion, discussion or records of communications between senior management, directors, shareholders and/or external advisors of POSH, the Subsidiaries, and Invex regarding the termination of the Invex Trust.
<b>Justifications:</b>	<p>Neither the SoC nor Claimant's exhibits explain how the Invex trust operated under the insolvency proceedings or how it terminated.</p> <p>The Respondent believes that the Invex trust had funds available for POSH and GOSH that were not accounted for in the Claimant's SoC or exhibits. Annex B of Mr. Méjan's states in number 96 that Invex itself terminated the trust and gave back the existing funds.</p> <p>The Respondent is not in possession of the requested documents.</p> <p>The Respondent believes that the requested Documents exist since Mr. Méjan's listed the termination of Invex Trust dated in September 2015.</p>

<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement.

<b>Request No.</b>	34.
<b>Document / Category of Documents:</b>	Audited financial statements (including notes thereto) for POSH and the Subsidiaries from 2011 to 2014. In case no audited financial statements exist, please provide unaudited financial statements including the notes thereto.
<b>Justification:</b>	<p>The documents requested are relevant to the issue of quantum. They are needed to corroborate or refute certain aspects of the Claimant’s quantification of damages, such as operating costs; rates/revenues, receivables, the value of the vessels, etc. As such, the documents are crucial to the defense on damages. The Respondent also may wish to submit an alternative damages estimate based on the past financial performance of the subsidiaries. The companies’ financial statements are crucial to that endeavor.</p> <p>The documents requested are material for the resolution of the case because they could have a significant impact in the quantification of damages owed to the Claimant, should this Tribunal determine that Mexico is internationally liable for a breach of the Mexico-Singapore BIT.</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p> <p>The Respondent believes that the documents exist and are in the possession, custody or control of the Claimant as they are documents that any enterprise would have prepared in the ordinary course of business.</p>
<b>Objections:</b>	<p>Claimant objects to this request on the ground that it is unnecessarily broad. Respondent’s justification for this request is that the documents “are needed to corroborate or refute certain aspects of the Claimant’s quantification of damages.” This quantification was prepared by Versant Partners, based on certain documentation made available by Claimant. In order to corroborate or refute Versant’s quantification, Respondent and Respondent’s expert would need only the documentation made available to Versant. Respondent fails to frame its request this way, making it unnecessarily broad.</p> <p>Without waiving this objection, Claimant agrees to produce all documents that Claimant made available to and were relied upon by Versant Partners for the purposes of preparing their report, to the extent that they are not on the record.</p>
<b>Reply:</b>	The request could hardly be narrower and more specific. Respondent also disagrees with Claimant that “[i]n order to corroborate or refute Versant’s quantification, Respondent and Respondent’s expert would need only the documentation made available to Versant”. Audited financial statements are the main and most trusted source of financial information for any company and, as such, the cornerstone of any financial projection. The information contained therein is not only necessary to corroborate the accuracy of the information relied upon by Versant in its



	report, but also necessary to provide an alternative estimate of the damages should the Respondent chose to submit one. Claimant has not disputed this aspect of the request nor questioned the relevance and materiality of the requested documents.
<b>Tribunal's decision:</b>	The Claimant shall produce the documents requested.

<b>Request No.</b>	35.
<b>Document / Category of Documents:</b>	<p>To the extent the documents have not been produced pursuant to a previous request or are already in the record, please provide all proposals, draft agreements and records of communications between POSH (or the Subsidiaries) and other Mexican operators that were prequalified to participate in PEP tenders concerning the possibility of entering into a joint venture or other business arrangement (such as a supply arrangement) for the purposes of chartering vessels to PEP.</p> <p>This request is circumscribed to documents between 1 January 2010 and 31 December 2011.</p>
<b>Justification:</b>	<p>The Claimant states that “[a]t the end of 2010, POSH decided to respond to PEMEX’s need for foreign capital to recover its production levels and develop its expansion project with new vessels.”<sup>30</sup> In doing so, “POSH engaged in discussions with several Mexican operators who were prequalified for participation in the PEMEX tenders” in early 2011 and “held a series of business and other strategic meetings in Mexico in mid-June 2011”.<sup>31</sup> Ultimately, POSH decided to partner with the principal shareholders’ of OSA, which was “largest oil and gas services company in Mexico “ with a “a long-standing relationship with PEMEX”.<sup>32</sup></p> <p>The Respondent contends that “POSH did not fulfill its duty of conducting its business in a reasonable manner. Not only did it exercise a bad decision in choosing Amado Yáñez and Martín Díaz as its business partners, but it did not perform <i>due diligence</i> before continuing its contractual relationship with OSA even though the company owed the Subsidiaries millions of dollars”.<sup>33</sup> The Respondent also contends that the Claimant assumed an unnecessary and unreasonable business risk by voluntarily narrowing its business options to a single Mexican customer (SoD, ¶ 702).</p> <p>The requested documents are thus relevant to the contributory fault argument submitted by the Respondent and, consequently, could have a significant and material impact on the quantification of damages if the Tribunal determines that international liability exists.</p>

<sup>30</sup> Statement of Claim, ¶ 51.

<sup>31</sup> Statement of Claims, ¶ 53.

<sup>32</sup> Statement of Claim, ¶ 53-54.

<sup>33</sup> Statement of Defence, ¶ 655 (emphasis in original).

	The requested documents are not in the possession, custody or control of the Respondent. The Respondent reasonably believes that the documents exist and are in the possession, custody or control of the Claimant in view of the passages from the SoC cited above and maintains that such documents would have been prepared and kept in the ordinary course of business.
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement.

<b>Request No.</b>	36.
<b>Document / Category of Documents:</b>	<p>Business plan(s) prepared by or at the behest of POSH and/or the Subsidiaries for their operations in Mexico. This request includes business plan(s), ancillary analyses such as financial projections, market analyses, SWOT<sup>34</sup> analyses, regulatory analyses, and their supporting documentation if any.</p> <p>This request is circumscribed to documents prepared in anticipation of making the investment or shortly thereafter. It is, therefore, limited to documents prepared between August 2010 and August 2012.</p>
<b>Justification:</b>	<p>The Claimant has submitted a damages assessment that is based <i>inter alia</i> on the Claimant’s alleged expectation that the contracts with its vessels would be immediately renewed upon expiry under the same terms for the expected life of the vessels.</p> <p>The Respondent intends to argue in its Rejoinder that there were no such expectations and that the business plan and contemporary financial projections were much more cautious. The requested documents are relevant to issue of the Claimant’s expectations of future profits as of the expropriation date and therefore to the quantification of damages material to the outcome of the case.</p> <p>The requested documents are not in the possession, custody or control of the Respondent. The Respondent believes that the documents exist and are in the possession, custody or control of the Claimant as such documents would have been prepared and maintained in the ordinary course of business.</p>
<b>Objections:</b>	Request No. 36 is duplicative of Request No. 2. There, Claimant already agreed to conduct a reasonable search, and produce the requested documents, to the extent that they are non-privileged and in Claimant’s possession, custody, or control.
<b>Reply:</b>	Respondent incorporates by reference the reply relating to Request No. 2.
<b>Tribunal’s decision:</b>	The Tribunal takes note of the Claimant’s statement.

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<sup>34</sup> SWOT is an acronym that stands for “strengths, weaknesses, opportunities and threats”.

<b>Request No.</b>	37.
<b>Document / Category of Documents:</b>	Financial projections prepared by POSH and/or the Subsidiaries concerning the Mexican operations (i.e., the Subsidiaries) between 2013 and 2014.
<b>Justification:</b>	Please refer to the justification of the previous request.
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement.

<b>Request No.</b>	38.
<b>Document / Category of Documents:</b>	<p>To the extent they have not been produced pursuant to a previous request or are already in the record, please provide the due diligence documents prepared or obtained by POSH or the Subsidiaries on OSA and/or Messrs. Amado Yáñez and Díaz prior to its decision to enter into the Master Collaboration Agreement (MCA) on 12 August 2011. This request includes, but is not limited to investigations and/or analyses of:</p> <ol style="list-style-type: none"> <li>1. OSA’s financial condition/performance;</li> <li>2. OSA’s compliance with existing and past contracts with Pemex;</li> <li>3. OSA’s compliance with Mexican laws regulations;</li> <li>4. Other potential business and/or regulatory risks in relation to the then potential joint venture/Master Collaboration Agreement with OSA;</li> <li>5. Background checks on Messrs. Yáñez and Díaz;</li> </ol> <p>This request is circumscribed to documents between 1 January 2010 and 31 December 2011.</p>
<b>Justification:</b>	<p>The Respondent has argued that “[t]he Claimant deliberately chose to include Mr. Yáñez and Mr. Díaz as shareholders in GOSH. By doing so the Claimant voluntarily assumed all risks associated with making Mr. Yáñez and Mr. Díaz shareholders in GOSH including the reputational risks associated with each of them personally.” (SoD, ¶ 702)</p> <p>The Respondent also contends that the Claimant failed to conduct the necessary due diligence on OSA, Mr. Yáñez and Mr. Díaz or provide evidence that it undertook these necessary actions necessitated by the high level of risk it faced (SoD, ¶¶ 709-710) and that it ignored several “red flags” that indicated that it was risky to do business with OSA. (SoD, ¶¶ 653-654). By doing so, the Claimant assumed unnecessary and unreasonable business risks which contributed to the amount of damages claimed in these proceedings.</p> <p>The requested documents will show that the Claimant either did not conduct the necessary due diligence or voluntarily decided to do business with OSA and its shareholders despite evidence of OSA’s financial and compliance problems. The requested documents are thus relevant to the contributory fault argument submitted by the Respondent and, consequently, could have a significant and material impact on the quantification of damages if the Tribunal determines that international liability exists.</p> <p>The requested documents are not in the possession, custody or control of the Respondent. The Respondent reasonably believes that the documents exist and are in the possession, custody or control of the Claimant as they have been prepared and maintained in the ordinary course of business.</p>

<b>Objections:</b>	<p>Request No. 38 is duplicative of Requests Nos. 3 and 4. Respondent’s justification for this request is that “the Claimant either did not conduct the necessary due diligence or voluntarily decided to do business with OSA and its shareholders despite evidence of OSA’s financial and compliance problems.” This overlaps with Request No. 3 (“internal documents containing due diligence... about the risks of doing business with OSA” or its shareholders) and Request No. 4 (“internal documents or records of communication... discussing risks of doing business with OSA” or its shareholders).</p> <p>Without waiving the respective objections, Claimant has already agreed to carry a reasonable search for, and produce, internal documents or records of communications containing due diligence on, or discussions on doing business with OSA or its shareholders, <i>between the end of 2010 and August 2011</i>, to the extent that they are non-privileged and in Claimant’s possession, custody, or control.</p>
<b>Reply:</b>	Respondent incorporates by reference its replies to the objections to Requests Nos. 3 and 4.
<b>Tribunal’s decision:</b>	The Tribunal takes note of the Claimant’s statement.

<b>Request No.</b>	39.
<b>Document / Category of Documents:</b>	<p>Records of communications between POSH and/or the Subsidiaries and OSA (including any attachments thereto) regarding outstanding payments for demobilization costs and repairs to the vessels.</p> <p>This request covers the time period between 1 September 2011 and the expropriation date.</p>
<b>Justification:</b>	<p>The Claimant has included in the damages assessment USD \$1.8 million allegedly owed for demobilization fees and repairs. The Cornerstone Report explains that there is no evidence that the Pemex was contractually obligated to pay demobilization fees to OSA or pay for the damage allegedly caused to POSH’s vessels: Caballo Grano de Oro, Rodrigo DPJ, Salvirile, and Salvision while they were chartered to OSA. (SoD, ¶ 728)</p> <p>The requested documents are relevant to the case and material to its outcome in that they will demonstrate that OSA’s non-payment of these invoices had nothing to do with any of the measures that give rise to this dispute and thus, could significantly reduce the amount of damages.</p> <p>The requested documents are not in the possession, custody or control of the Respondent. The Respondent reasonably believes that the documents exist and are in the possession, custody or control of the Claimant in view of the passages from the SoD cited above and maintains that such documents would have been prepared and kept in the ordinary course of business.</p>
<b>Objections:</b>	<p>Claimant objects to this request on the ground that the documents sought are not relevant or material to the outcome of this arbitration. (<i>See</i> IBA Rules, Articles 3(3)(b) and 9(2)(a)). Respondent justifies this request on two grounds: (i) Claimant has claimed damages for demobilization and repair costs; and (ii) the Cornerstone report allegedly explains that there is no evidence that Pemex had an obligation to pay such costs. On that exclusive basis, Respondent concludes that records of communication between POSH and OSA “w[ould] demonstrate that OSA’s non-payment of these invoices had nothing to do with any of the measures that give rise to this dispute.” Respectfully, the justification and the conclusion are both groundless for two reasons.</p> <ul style="list-style-type: none"> <li>- <i>One</i>, whether Pemex had an obligation to pay demobilization or repair costs or not is purely a contractual issue, which cannot, and will not, be resolved by reviewing “records of communication between POSH... and OSA.”</li> <li>- <i>Two</i>, Respondent fails to explain why the communications between OSA and POSH would allegedly “demonstrate that OSA’s non-payment... had nothing to do with any of the measures...” The issue of whether Mexico’s Measures deteriorated OSA’s financial situation irreparably, and eventually destroyed Claimant’s investment cannot, and will not, be resolved by reviewing “records of communication between POSH... and OSA” on outstanding payments either.</li> </ul>



	<p>Without waiving this objection and, with regard to Claimant’s demobilization and repair costs, Claimant has already agreed in response to Request No. 34 to provide all documents Claimant made available to and relied upon by Versant Partners for the purposes of preparing their report to the extent that they are not on the record.</p>
<p><b>Reply:</b></p>	<p>It is important to clarify that there is a substantive difference between the invoices Claimant made available to Versant Partners and the communications between Claimant and OSA regarding the outstanding payments for demobilization costs and repairs of the vessels. While Appendix E.8 and VP 96 from Versant Partners reflect such costs, those documents do not show how Claimant interacted with OSA or the causes for such outstanding payments. Thus, this request concerns documents that are relevant and material because they will help explain the context of the expenses and connections those expenses may have with OSA and the measures alleged Claimant to be treaty violations.</p> <p>Further, please refer to the reply relating to Request No. 24.</p>
<p><b>Tribunal’s decision:</b></p>	<p>The Tribunal takes note of the Claimant’s statement. In addition, the Claimant shall produce the documents requested by the Respondent.</p>

<b>Request No.</b>	40.
<b>Document / Category of Documents:</b>	<p>Records of communications between POSH and/or the Subsidiaries and OSA (including any attachments thereto) regarding outstanding payments for work performed and invoiced.</p> <p>This request covers the time period between 1 September 2011 and the expropriation date.</p>
<b>Justification:</b>	<p>The Versant Report quantifies <i>inter alia</i> the amounts owed for unpaid charter hire that were not related to the investment trust at US\$8.71 million. This figure includes multiple unpaid invoices issued by GOSH, HONESTO, HERMOSA and SEMCO IV. The authors of the Versant Report indicate that they “understand that Claimant claims that Mexico refused to allow OSA to pay accounts receivable to Claimant’s investments and prevented OSA from performing their contracts” but do not refer to the Memorial or any other evidence in support of their understanding nor do they explain how exactly did Mexico impede payment of these invoices. (SoD, ¶¶ 720-721)</p> <p>The Respondent has argued, and intends to further elaborate in its Rejoinder, that OSA owed significant amounts to the Subsidiaries for work performed and invoiced, and that OSA’s lack of payment of those invoices was unrelated to any the government measures that give rise to this case. The requested records of communications will serve to demonstrate this point which has the potential of significantly reducing the amount of damages. The Respondent therefore maintains that the requested documents are relevant to the case and material to its outcome.</p> <p>The requested documents are not in the possession, custody or control of the Respondent. The Respondent reasonably believes that the documents exist and are in the possession, custody or control of the Claimant as it would be implausible that the Subsidiaries did not communicate with OSA regarding these substantial outstanding amounts.</p>
<b>Objections:</b>	<p>Claimant objects to this request because the documents sought are not relevant or material to the outcome of this arbitration. (<i>See</i> IBA Rules, Articles 3(3)(b) and 9(2)(a)). Respondent acknowledges that OSA owed certain amounts to the Subsidiaries for services performed and invoiced, but claims that the lack of payment would be unrelated to the Measures. Respondent fails to explain, however, how records of communication between POSH and the Subsidiaries, on one side, and OSA on the other side, would be of any relevance to assess and resolve this issue. They are not.</p> <p>Claimant asserts that the Measures irreparably damaged OSA’s financial situation and led to its Insolvency; and within OSA’s Insolvency Proceedings, the court ordered SAE to suspend all payments to creditors, including POSH and the Subsidiaries (this is uncontested). The issue in dispute is, thus, whether the Measures contributed</p>

	to OSA's insolvency and the destruction of Claimant's investment. Records of communication between POSH and OSA are entirely irrelevant to this issue. Respondent is engaging on a fishing expedition.
<b>Reply:</b>	Respondent incorporates by reference the reply relating to Request No. 39. Further, Claimant's fails to address that the sum of US\$8.71 million is unsupported.
<b>Tribunal's decision:</b>	The objection is in part rejected. Subject to legal professional privilege, the Claimant shall produce documents supporting the understanding to which Versant refers.

<b>Request No.</b>	41.
<b>Document / Category of Documents:</b>	<p>To the extent not covered in previous requests, please provide internal documents and records of communications between POSH/Subsidiaries and other Mexican companies (such as Huasteca Oil Energy, S.A. de C.V.) concerning potential partnerships for supplying vessels to Pemex.</p> <p>This request is limited to the period between 1 January 2011 and the alleged expropriation date.</p>
<b>Justification:</b>	<p>The Claimant contends that Pemex’s “increasing ‘demand for deep-water vessels including platform supply vessels and mud-boats in Mexico’” in November 2013 led to POSH’s partnership with a different business partner (Husteca Oil Energy). (SoC, ¶¶ 96-98). However, the Claimant fails to explain what motivated it to attempt to meet Pemex’s increasing demand through a different partner, as opposed to do so through OSA. The Respondent believes this alternative partnership was motivated by the various problems that the Claimant experienced with OSA and that the requested documents will serve to prove that part of the damages were not caused by alleged measures but rather by OSA’s financial problems.</p> <p>The Respondent also intends to further elaborate in its Rejoinder that the Claimant contributed to the damages by <i>inter alia</i> through its improvident decision to conduct and maintain business with a single company (OSA) rather than diversifying risk by contracting with other suppliers of offshore support vessels and services, as it finally did in mid 2014. (SoD, ¶ 709, SoC, ¶ 98)</p> <p>The requested documents are also relevant to the following related issues:</p> <ul style="list-style-type: none"> <li>• whether the Claimant sought to diversify its client base in Mexico by reaching out to other business partners and the rationale for doing so;</li> <li>• the extent to which the decision to find alternative partnerships was grounded on problems with OSA and not the measures taken by the government with respect to OSA;</li> <li>• the extent to which the decision to reach out to Huasteca Oil Energy was premised (as the Claimant contends) on the “increasing demand for deep-water vessels including platform supply vessels and mud-boats in Mexico” by PEMEX in November 2013. (SoC)</li> </ul> <p>The Respondent maintains that the requested documents are relevant to these issues and are material to the resolution of the case because of their potential impact on the determination of damages.</p>

	The requested documents are not in the possession, custody or control of the Respondent. The Respondent reasonably believes that the documents exist and are in the possession of the Claimant since there is evidence of at least one alternative arrangement with Huasteca Oil Energy, S.A. de C.V. and the Claimant's assertion that it made reasonable efforts to mitigate damages by attempting to negotiate alternative partnerships with other companies.
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement.

<b>Request No.</b>	42.
<b>Document / Category of Documents:</b>	<p>To the extent not covered in previous requests, please provide internal documents discussing potential partnerships with other Mexican companies (including Huasteca Oil Energy, S.A. de C.V.) to supply vessels to Pemex.</p> <p>This request is limited to the period between the expropriation date (February 2014) and the sale of the vessels in February 2015.</p>
<b>Justification:</b>	<p>The Claimant argues that “[a]ny attempt to re-charter the vessels in Mexico, however, faced virtually insurmountable difficulties. As noted above, PEMEX is the sole producer of oil and gas in Mexico and, therefore, the sole end client for the oil and gas offshore services industry” and “[e]ven once that prohibition had been lifted, PEMEX was wary of entering into contracts for the use of vessels that had previously serviced PEMEX-OSA contracts.” (SoC, ¶ 216)</p> <p>The Respondent intends to argue that the rationale behind this new partnership with Huasteca Oil Energy, S.A. de C.V. was that said company was not “linked to a company in a state of pre-insolvency” that “constantly defaulted on payment obligations” and through which “crimes were possibly committed that had “accumulated hundreds of millions of dollars in liabilities”. (SoD, ¶ 492)</p> <p>The requested documents are not in the possession, custody or control of the Respondent.</p>
<b>Objections:</b>	<p>We note that “February 2014” is not the “expropriation date,” as stated by Respondent in this request. February 2014 is the date of the first measure on which the claim relies (the Unlawful Sanction). The valuation date is May 16, 2014.</p> <p>In any case, Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant’s possession, custody, or control.</p>
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal’s decision:</b>	The Tribunal takes note of the Claimant’s statement.

<b>Request No.</b>	43.
<b>Document / Category of Documents:</b>	Internal documents and records of communications between POSH/Subsidiaries (or any third party acting on their behalf) concerning the efforts to re-charter the vessels, particularly those listed in the table following ¶ 220 of the Statement of Claim
<b>Justification:</b>	<p>The Claimant claims that “POSH’s Subsidiaries did in fact try to re-charter the vessels outside of Mexico and engaged in discussions with several operators to that effect. GOSH Vessels and SMP Vessels were Mexican flagged and based in Mexico and most had been specially configured as mud processing vessels for PEMEX. This substantially impaired potential deals since the costs of reconfiguration and redeployment are very high.” (SoC, ¶ 219-220) The Claimant has included a table summarizing these efforts but has failed to adduce any evidence to support this particular claim.</p> <p>The requested documents will serve to corroborate or refute the claimant’s allegations regarding these effort to re-charter the vessels and mitigate damages. Thus, it is clear they are relevant to the case and material to its outcome.</p> <p>The requested documents are not in the possession, custody or control of the Respondent. The Respondent reasonably believes that the documents exist and are in the possession of the Claimant in view of the table included in ¶ 220 of the SoC.</p>
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant’s possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal’s decision:</b>	The Tribunal takes note of the Claimant’s statement.

<b>Request No.</b>	44.
<b>Document / Category of Documents:</b>	Valuations/appraisals of the vessels at issue in this dispute conducted by POSH or its Subsidiaries or a third party at their behest before their sale.
<b>Justification:</b>	<p>The Claimant’s and Respondent’s damages expert subtract the proceeds obtained from the sale of the vessels from their respective damages’ assessments. However, the vessels were apparently sold to related companies<sup>35</sup> and thus the question arises whether these transactions were conducted at arm’s-length prices and conditions (i.e., at market prices).</p> <p>The contracts are silent on the method used to determine the value of the vessels and the Claimant has not put into evidence any documents on this point. Since the value of the vessels is a significant component of quantum, the Respondent maintains that the documents are relevant to the case and material to its outcome.</p> <p>The requested documents are not in the possession, custody or control of the Respondent. The Respondent believes that the documents exist and are in the possession, custody or control of the Claimant as they would have been needed to determine the value of these assets prior to their sale.</p>
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant’s possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal’s decision:</b>	The Tribunal takes note of the Claimant’s statement.

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<sup>35</sup> Statement of Claim, ¶ 227 (“To mitigate damages arising from GOSH’s default on the Loan, POSH entered into an agreement with GOSH to sell the GOSH Vessels and repay the Loan with the sale proceeds thereof (the Settlement). Pursuant to the Settlement, GOSH’s Vessels were all reflagged and eventually acquired by other POSH-designated entities as repayment of the Loan.” (emphasis added)).



<b>Request No.</b>	45.
<b>Document / Category of Documents:</b>	Record of communications or documents prepared by the Claimant, the Subsidiaries and Invex, or their lawyers or consultants containing an assessment, analysis, opinion or discussion related to the agreement of 15 December 2014 in which POSH decided to terminate GOSH's debt.
<b>Justification:</b>	<p>The Claimant asserts that to mitigate damages POSH entered into an agreement with GOSH to sell the Vessels and repay the loan; <sup>36</sup> however there is not a clear indication at what time that agreement occurred or under which exact terms was done nor who is the actual owner of the Vessels.</p> <p>The Respondent has argued, and intends to further elaborate in its Rejoinder, that the Claimant continued to be in the possession of the Vessels and the decisions made to terminate the loan were made by Claimant itself and are unrelated to any the government measures that give rise to this case. The requested records of communications will serve to demonstrate this point which has the potential of significantly reducing the amount of damages. The Respondent therefore maintains that the requested documents are relevant to the case and material to its outcome.</p> <p>The requested documents are not in the possession, custody or control of the Respondent. The Respondent reasonably believes that the documents exist and are in the possession, custody or control of the Claimant as the termination of the loan has been stated by the Claimant.</p>
<b>Objections:</b>	Claimant agrees to conduct a reasonable search for, and produce, the requested documents to the extent that they are non-privileged and in Claimant's possession, custody, or control.
<b>Reply:</b>	In relation to the potential claim of privilege, please refer to General Reply 1.
<b>Tribunal's decision:</b>	The Tribunal takes note of the Claimant's statement.

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<sup>36</sup> Statement of Claim, ¶ 227

<b>Request No.</b>	46.
<b>Document / Category of Documents:</b>	To the extent that they have not been included as exhibits to the Versant Report or the Statement of Claim, please provide all the documents provided by the Claimant to Versant for the purposes of preparing their report.
<b>Justification:</b>	<p>Paragraph 9 of the Versant Report states that the experts’ “analysis and conclusions are based on the documents and information available” to them and “instructions provided” by Counsel, and where “this information was incomplete” the experts “relied on estimates and assumptions” identified by them.<sup>37</sup></p> <p>The requested documents are needed to fully understand, evaluate and verify the calculations and assumptions made by the Claimant's damages experts. The fact that the Claimant chose to make those documents available to its experts makes them <i>ipso facto</i> relevant to the case and material to its outcome, particularly those that the experts decided to rely on in their report for assumptions and conclusions.</p> <p>The requested documents are not in the possession, control or custody of the Respondent.</p> <p>To the extent that the requested documents exist they are in the Claimant’s possession, custody or control because they were provided to its experts.</p>
<b>Objections:</b>	This request is fully duplicative of Request No. 34. There, Claimant already agreed to produce all documents that Claimant provided to and were relied upon by Versant Partners, to the extent that they are not on the record.
<b>Reply:</b>	<p>The Respondent observes that Request No. 34 is for “Audited financial statements (including notes thereto) for POSH and the Subsidiaries from 2011 to 2014. In case no audited financial statements exist, please provide unaudited financial statements including the notes thereto.” It follows that Request No. 46 is <u>not</u> fully duplicative of Request No. 34.</p> <p>In relation to the potential claim of privilege, please refer to General Reply 1.</p>
<b>Tribunal’s decision:</b>	The objection is upheld to the extent that is duplicative of request 34.

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<sup>37</sup> Versant Report, ¶ 9.