

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

BA Desarrollos LLC

v.

Argentine Republic

(ICSID Case No. ARB/23/32)

**PROCEDURAL ORDER No. 3
(Claimant's Document Production)**

Members of the Tribunal

Ms. Deva Villanúa, President of the Tribunal
Mr. Stephen L. Drymer, Arbitrator
Mr. Luis Alberto González García, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

Assistant to the Tribunal

Mr. Ethan Shannon-Craven

20 June 2024

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WHEREAS

1. On 29 April 2024 the Tribunal issued Procedural Order [“**PO**”] No. 2, through which it made a decision on Respondent’s Request for Document Production on Preliminary Objections [“**Decision**”]. As per the Procedural Calendar¹ in PO No. 1², a deadline of 9 May 2024 was set for Claimant to produce those documents whose production had been ordered by the Tribunal.
2. On 9 May 2024 Claimant produced a series of documents which were responsive to the Decision.
3. On 30 May 2024 Argentina contacted the Tribunal, informing it of alleged non-compliance with the Decision, namely in relation to Document Requests 3, 14, 17, 19, 20, 21 and 25³.
4. On 31 May 2024 the Tribunal granted Claimant until 5 June 2024 to provide its comments⁴. On said deadline the Tribunal received a request for an extension from Claimant⁵, which was duly granted⁶. Shortly after the granting of the extension, Argentina sent an email to the Tribunal voicing its opposition to the extension and reserving the right to request an extension to the deadline for producing its Request for Bifurcation if necessary⁷.
5. On 10 June 2024 Claimant provided its comments regarding its document production⁸.
6. On 11 June 2024 Respondent provided additional remarks regarding Claimant’s document production⁹.

¹ Words which are capitalised yet not defined in this Procedural Order have previously been defined by the Tribunal.

² PO No. 1, Annex B.

³ Respondent’s letter of 30 May 2024.

⁴ ICSID’s email of 31 May 2024.

⁵ Claimant’s email of 5 June 2024.

⁶ ICSID’s email of 5 June 2024.

⁷ Respondent’s email of 5 June 2024.

⁸ Claimant’s letter of 10 June 2024.

⁹ Respondent’s email of 11 June 2024.

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DECISION

7. The Tribunal hereby emits its decision regarding the alleged non-compliance with the Decision as Annex A to the present Procedural Order. The criteria for making the decision are the same as those used in PO No. 2 to the same end¹⁰.
8. For ease of reference, the Tribunal has added Claimant's comments from its letter of 10 June 2024 to the table produced by Respondent in its letter of 30 May 2024. The non-inclusion of the Parties' comments from its other communications does not imply them not being taken into account in the formulation of the present Procedural Order.
9. Claimant is invited to comply with the Tribunal's decisions regarding Document Requests 14, 19, 20 and 21 by **Monday, 24 June 2024** at the latest.
10. The Tribunal acknowledges Claimant's agreement to the Tribunal granting Respondent a two-day extension for filing its Request for Bifurcation¹¹. For reasons of procedural fairness, the Tribunal grants the same extension that it granted Claimant to provide its comments regarding its document production – an additional five days, with Argentina now having until **28 June 2024** to produce the Request for Bifurcation. All other dates within the Procedural Calendar remain unaltered.

On behalf of the Arbitral Tribunal,

[Signed]

Deva Villanúa
President of the Arbitral Tribunal
Date: 20 June 2024

¹⁰ PO No. 2, Section 1.

¹¹ Claimant's letter of 10 June 2024.

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ANNEX A

Document Request 3	
A. Document(s) or category of document(s) requested	Financial Statements of BA Desarrollos LLC for all fiscal years between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>The requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Financial statements are documents that provide information on the economic activities of the company, which include explanatory notes from management together with details of the company’s annual accounts that allow to identify the amount of the company’s assets, liabilities, and shareholders’ equity, its income statement and statement of cash flow, among other relevant information. Financial statements must be audited by the respective government agencies and accountants to ensure accuracy and for tax, financing, or investing purposes.</p> <p>Arbitral tribunals have considered that financial statements are relevant evidence to determine if a company has substantial activities in a State. <i>Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine</i>, SCC Case No. V 2015/092, Final Award, 4 February 2021, ¶¶ 632, 634.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 123-124.</p>
C. Objections to Document Request (max. 500 words)	BA Desarrollos disagrees with the assertions made by Argentina to justify its request, as well as the timeframe requested. Nevertheless, BA Desarrollos agrees to voluntarily produce its financial statements for the years available, [REDACTED]. The financial statements are not audited given that BA Desarrollos is a privately-owned company.
D. Decision of the Tribunal on Document Request	The Tribunal takes note of Claimant’s agreement to produce its financial statements for the years [REDACTED]. Claimant shall produce such documents no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.
E. Respondent’s Comments	Claimant agreed to produce voluntarily “its financial statements for the years available, [REDACTED]”. The

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	<p>Tribunal took note of Claimant’s undertaking and ordered it to produce such documents in due time.</p> <p>On 9 May 2024, Claimant did not submit the financial statements. Instead, it submitted Excel spreadsheets [REDACTED] reports without indicating the source and arguing that “BA Desarrollos does not prepare audited financial statements given that it is a privately-owned company.”¹² Such clarification was not new; it had already been provided by Claimant when filing its Objections to Document Request.</p> <p>On 17 May 2024, Argentina requested Claimant to comply with the production of the financial statements or, alternatively, to provide the sources from which the data included in the Excel spreadsheets have been taken and to provide printed outputs of the accounting systems Claimant used as a source to prepare the Excel spreadsheets.</p> <p>On 22 May 2024, for the first time, Claimant stated that it does not issue financial statements. Claimant submitted a certificate from the [REDACTED] confirming that Claimant does not issue financial statements and that that its [REDACTED].</p> <p>Claimant refuses to provide the sources from which the data included in the Excel spreadsheets have been taken and to provide printed outputs of the accounting systems.</p> <p>Claimant’s refusal to comply with the Tribunal’s order undermines Argentina’s right of defense. Claimant expressly committed itself “to voluntarily produce its financial statements for the years available, [REDACTED]”¹³ and made no reference to the alleged fact that it does not prepare financial statements. Thus, Argentina requests that the Tribunal order Claimant to comply with PO#2.</p>
<p>F. Claimant’s Comments</p>	<p>In Document Request No. 3, Argentina requested BA Desarrollos’s audited financial statements, alleging they were necessary “to determine whether BA Desarrollos LLC has ‘substantial business activities in the territory of’ the US.”¹⁴</p> <p>In response, BA Desarrollos agreed to “voluntarily produce its financial statements for the years available, [REDACTED]”¹⁵ BA Desarrollos noted in its response that it does not prepare “audited financial statements”.¹⁶</p>

¹² Claimant’s Index of Responsive Documents to Argentina’s Document Requests, 9 May 2024.

¹³ Claimant’s Response to Respondent’s DR#3, 18 April 2024.

¹⁴ Argentina’s Letter, Annex A, p 3.

¹⁵ Argentina’s Letter, Annex A, p 3.

¹⁶ See Argentina’s Letter, Annex A, p 3; BA Desarrollos’s Index, 9 May 2024, Document Request No. 3 (p 1).

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On 9 May 2024, BA Desarrollos produced [REDACTED] for the years [REDACTED], which set out [REDACTED]

[REDACTED]¹⁷ In accounting terms, [REDACTED]

[REDACTED]¹⁸

BA Desarrollos does not prepare financial statements because it is not required by Delaware law to do so and therefore financial statements do not exist.¹⁹ [REDACTED] that BA Desarrollos produced are the best way to capture the internal accounting records of BA Desarrollos.²⁰

BA Desarrollos has explained all of this to Argentina,²¹ but Argentina has applied to this Tribunal, asking that it order BA Desarrollos to produce financial statements, documents which do not exist. Argentina has also asked for the “printed outputs of the accounting systems the Claimant used to prepare” [REDACTED].²² In other words, it is requesting individual ledger entries. Individual ledger entries are never included in financial statements, and it is far outside the scope of Argentina’s request and what BA Desarrollos agreed to voluntarily produce. In addition, [REDACTED].

Accordingly, Argentina’s request should be dismissed. BA Desarrollos has already produced [REDACTED] which capture all of the financial activities of BA Desarrollos, and are the [REDACTED] to prepare financial statements were it required to do so (as explained, it does not).

¹⁷ See *Investopedia*, [REDACTED], C-207, p 002.

¹⁸ See *Investopedia*, [REDACTED], C-207, pp 001-002.

¹⁹ BA Desarrollos already explained this to Argentina and provided evidence. See BA Desarrollos’s letter of 22 May 2024, p 3.

²⁰ BA Desarrollos’s letter of 22 May 2024, pp 2-3.

²¹ See BA Desarrollos’s letter of 22 May 2024, pp 2-3. See also “Letter from Claimant to the Argentine Republic, 22 May 2024, Annex A” attached to Argentina’s Letter.

²² Argentina’s Letter, Annex A, p 4.

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G. Tribunal's Decision

The Tribunal takes note of the fact that Claimant undertook to provide its financial statements for the years available, [REDACTED], and is sympathetic with Respondent's frustration that this undertaking has not realised as it expected, that is, by the production of actual "financial statements". That being said, the Tribunal cannot order the production of documents that do not exist and believes that, in circumstances in which, as Claimant has explained, it "does not prepare financial statements because it is not required by Delaware law to do so", [REDACTED]. As Claimant correctly notes, ordering the production of the underlying sources used to produce [REDACTED] would go beyond the information provided in a financial statement – and therefore beyond the scope of Document Request 3. For this reason, the Tribunal finds that Claimant has adequately complied with this Document Request and no further production is ordered.

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Document Request 14	
A. Document(s) or category of document(s) requested	Documents sufficient to identify BA Desarrollos LLC’s full shareholding structure, including but not limited to share registers and details of the stakeholders of BA Desarrollos LLC and the number of shares held by each of them, as well as documents sufficient to show the chain of shareholding up until Claimant’s ultimate controlling party, the place of incorporation of each entity or the nationality of the natural persons in the shareholding structure, between the date of incorporation of BA Desarrollos LLC (October 3, 2017) and the date of the filing of the Request for Arbitration (inclusive).
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>The requested documents are relevant and material in light of the “control” element of Article 1(2) of the Argentina-US BIT.</p> <p>██████████ (one of the entities in the so-called EMS Group) constituted BA Desarrollos LLC, a limited liability company incorporated under the laws of Delaware to act as the special purpose vehicle for the Catalina’s Norte II project (<i>see</i> Memorial on the Merits, ¶ 52). In ██████████, all of ██████████ membership interests in BA Desarrollos seem to have been assigned to ██████████ (<i>see</i> Memorial on the Merits, fn. 94).</p> <p>Claimant refers to the so-called EMS Group (<i>see</i> Witness Statement of ██████████, ¶¶ 14, 17), which is not known to be a shareholder, and implies that it would be part of the corporate chain of BA Desarrollos. Also, Mr. Safra, an Italian and Brazilian national according to Claimant (Memorial on the Merits, fn. 92), seems to be the ultimate owner of the so-called EMS Group (<i>see</i> Witness Statement of ██████████, ¶ 20).</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, ¶¶ 52, 123-124, fns. 92, 94; Witness Statement of ██████████, ¶ 20.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request.</p> <p>The request is irrelevant to the case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules).</p> <p>As BA Desarrollos has explained, BA Desarrollos was owned by ██████████, an entity incorporated in the Cayman Island from October 2017 ██████████. As of ██████████, BA Desarrollos is owned by ██████████, an entity incorporated in the British Virgin Islands. Neither entity is a US national.</p>

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	<p>As BA Desarrollos has also explained, BA Desarrollos is ultimately owned by Mr. Safra, an Italian and Brazilian national. <i>See</i> Memorial on the Merits, para 51, fn 92; Witness Statement of [REDACTED], para 14, fn 4, and para 18.</p> <p>BA Desarrollos further confirms that there is no entity in its chain of ownership that is a US national.</p>
D. Decision of the Tribunal on Document Request	<p>The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document that is response to the request no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p>
E. Respondent's Comments	<p>Claimant was ordered to produce documents sufficient to identify BA Desarrollos LLC's full shareholding structure, <u>including the chain of shareholding up until Claimant's ultimate controlling party</u>, the place of incorporation of each entity or the nationality of the natural persons in the shareholding structure.</p> <p>On 9 May 2024, Claimant submitted evidence on certain of the companies that composed BA Desarrollos LLC's full shareholding structure, but it failed to provide evidence as to who controlled [REDACTED] (for the period prior to [REDACTED]) and who controls [REDACTED] (since [REDACTED] onwards) and who is its ultimate controlling party. [REDACTED] is the sole member and therefore the sole owner of BA Desarrollos LLC. Therefore, such information is essential for Argentina to exercise its rights under Art. I.2. of the BIT.</p> <p>Instead, Claimant produced a chart as document BA-000279,²³ a chart prepared by EMS Capital LP which would show part of the corporate structure of BA Desarrollos. However, the chart is not complete. There are certain boxes where the name of the company(ies) is omitted and a general expression [REDACTED] or [REDACTED] is included instead. In addition, the chart is not accompanied by the supporting documentation. It only contains a certification from the [REDACTED], who certifies that the information is supposedly true and correct.</p> <p>On 17 May 2024, Argentina requested Claimant to comply with the Tribunal's order, and to submit the supporting documentation for document BA-000279, specifically to identify [REDACTED] controlling the corporate structure of BA Desarrollos</p>

²³ Claimant's chart of corporate structure of BA Desarrollos LLC, 9 May 2024 (BA-000279).

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LLC, which Claimant generically identifies as [REDACTED] or [REDACTED]²⁴ and to provide supporting documents of the creation and the participation of each of them in the corporate structure of BA Desarrollos LLC, up until Claimant's ultimate controlling party.

Also, Argentina requested Claimant to produce the supporting documents of the constitution and the participation in the chain of control of BA Desarrollos LLC of the following [REDACTED] that Claimant identifies as intermediaries in the control structure BA Desarrollos LLC: [REDACTED].

On 22 May 2024, Claimant stated that the chart submitted as document BA-000279 “showed that (i) between 3 October 2017 and [REDACTED], there were [REDACTED] incorporated in the [REDACTED] and [REDACTED] incorporated in the [REDACTED] in the chain between Edmond Safra, the ultimate owner of BA Desarrollos, and [REDACTED] [REDACTED] the former direct owner of BA Desarrollos), and (ii) after [REDACTED], there was [REDACTED] incorporated in the [REDACTED] in the chain between Edmond Safra and [REDACTED] (the current direct owner of BA Desarrollos).”²⁵ This is precisely the point on which Claimant produced no document at all.

Claimant did not produce any document as to Edmond Safra being the ultimate controlling person [REDACTED] that controls BA Desarrollos LLC. In fact, Claimant does not even provide the names of the allegedly intermediary [REDACTED] between [REDACTED] and Edmond Safra. Document BA-000279 simply states that BA Desarrollos is controlled by [REDACTED] and that [REDACTED] is controlled by [REDACTED] in the [REDACTED], and that Edmond Safra and [REDACTED] would be the beneficiaries of those [REDACTED].²⁶ However, the chart does not indicate who the [REDACTED] of [REDACTED] actually is and Claimant refuses to produce documents about the [REDACTED].

Claimant asserts that “BA Desarrollos confirms that, it is not, and has never been controlled by a national of the United States for the purposes of Article I(2) of the Treaty. This confirmation resolves Argentina's concerns with respect to the ‘control’ element under

²⁴ Claimant's chart of corporate structure of BA Desarrollos LLC, 9 May 2024 (BA-000279).

²⁵ Letter from Claimant to the Argentine Republic, 22 May 2024.

²⁶ Claimant's chart of corporate structure of BA Desarrollos LLC, 9 May 2024 (BA-000279).

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	<p>Article I(2) and renders this and several other of Argentina's requests moot".²⁷ However, that is not new. Claimant made a similar statement when submitting its Objections to Documents Request. Nonetheless, the Tribunal ordered Claimant to produce the requested documents.</p> <p>Claimant's refusal to comply with the Tribunal's order undermines Argentina's right of defense. Thus, Argentina requests that the Tribunal order Claimant to comply with PO#2.</p>
<p>F. Claimant's Comments</p>	<p>In Document Requests Nos. 14 and 20, Argentina requested that BA Desarrollos produce "[d]ocuments sufficient to identify [BA Desarrollos's and ██████████] shareholding structure[s] [...] as well as documents to show [BA Desarrollos's] chain of shareholding up until Claimant's ultimate controlling party, the place of incorporation of each entity or the nationality of the natural persons in the shareholding structure" which it alleged was necessary to determine whether BA Desarrollos is controlled by nationals of a third country, in light of Article I(2) of the Argentina-US BIT.²⁸</p> <p>Argentina's Letter states that BA Desarrollos "failed to provide evidence as to who controlled ██████████ [...] and who controls ██████████ [...] and who is its ultimate controlling party."²⁹ Argentina holds that "such information is essential for Argentina to exercise its rights under Art. I.2 of the BIT."³⁰</p> <p>Document Requests Nos. 14 and 20, which Argentina justified as necessary to assess whether BA Desarrollos is controlled by a US national for the purposes of Article I(2) of the Treaty are moot, given that BA Desarrollos does not claim that it is controlled by a US national. Argentina has not explained why it continues to require this information when the issue of the control of BA Desarrollos by a US national is not in dispute. Argentina argues that its right of defense has been undermined, although it has not explained how.³¹ Argentina could request the Tribunal to draw an adverse inference,³² but the only inference it could ask for is that BA Desarrollos is not controlled by a US national for the purposes of Article I(2) of the Treaty, which BA Desarrollos has already admitted.</p> <p>In any event, BA Desarrollos has already produced the corporate structure of BA Desarrollos certified by the ██████████ which indicates the nationality</p>

²⁷ Letter from Claimant to the Argentine Republic, 22 May 2024.

²⁸ Argentina's Letter, Annex A, pp 5, 12.

²⁹ Argentina's Letter, Annex A, p 6.

³⁰ Argentina's Letter, Annex A, p 6.

³¹ Argentina's Letter, Annex A, p 8.

³² See IBA Rules on the Taking of Evidence in International Arbitration, Article 9(6).

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	<p>of every entity in its corporate chain. BA Desarrollos also produced several supporting documents that were in its custody, possession and control evidencing the registration details and incorporation of various entities in BA Desarrollos's corporate chain and in the corporate chain of EMS Capital.³³</p> <p>BA Desarrollos has withheld the name (but not nationality) of a few [REDACTED] that were intermediate entities in the corporate chain of BA Desarrollos and Mr. Safra, most of which [REDACTED]. As BA Desarrollos already explained to Argentina,³⁴ BA Desarrollos is not seeking to be difficult in not revealing the names of these [REDACTED]. There has long been significant interest by the press in the business and affairs of [REDACTED] Safra [REDACTED], and these [REDACTED] involve information relating to [REDACTED], which is sensitive and cannot be disclosed. These [REDACTED] only have a [REDACTED] and are in no way relevant to this dispute or to Argentina's denial of benefits objection.</p>
<p>G. Tribunal's Decision</p>	<p>The document request is two-fold:</p> <ul style="list-style-type: none">(i) “[D]ocuments sufficient to identify BA Desarrollos LLC’s full shareholding structure, including but not limited to share registers and details of the stakeholders of BA Desarrollos LLC and the number of shares held by each of them”. This Document Request necessitates a greater level of detail in relation to BA Desarrollos LLC than to the other companies in the shareholding structure. Claimant is therefore ordered to produce any responsive documents to this part of the Document Request that it is yet to provide to Argentina, in particular, but not limited to, share registers, Monday, 24 June 2024.(ii) “[D]ocuments sufficient to show the chain of shareholding up until Claimant’s ultimate controlling party, the place of incorporation of each entity or the nationality of the natural persons in the shareholding structure, between the date of incorporation of BA Desarrollos LLC (October 3, 2017) and the date of the filing of the Request for Arbitration (inclusive)”. <p>After analysing the content of Document BA-000279, the Tribunal finds that Document Request has been fulfilled insofar as part (ii).</p> <p>Respondent alleges that Claimant’s production is deficient for failing to provide evidence as to who controlled and controls [REDACTED] and [REDACTED] respectively. More specifically, it suggests that Claimant has not provided supporting documents demonstrating the constitution and participation of the</p>

³³ See BA Desarrollos’s Index, 9 May 2024, Document Requests Nos. 14, 20 and 24 (pp 2-4).

³⁴ BA Desarrollos’s letter of 22 May 2024, fn 2.

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	<p>various intermediary ██████████ and the ██████████ and ██████████ ██████████ within the shareholding structure. What's more, insufficient evidence has been provided to uphold the claim that Mr. Safra is the ultimate controlling person.</p> <p>Whether or not Claimant has provided the above evidence, Respondent's allegations either fall outside of the scope of Document Request 14 or have been adequately met by Claimant's production. Ultimately, at no point did Respondent request that it be provided with exhaustive documents demonstrating the constitution of the various ██████████ (with the exception of ██████████ ██████████, see the Tribunal's decision regarding Document Request 20 below), with it being sufficient for Claimant to demonstrate the place of incorporation/nationality of each entity within the corporate structure – a requirement that Claimant has met.</p>
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Document Request 17	
A. Document(s) or category of document(s) requested	Financial statements of EMS Opportunity Ltd. for all fiscal years between [REDACTED] and the date of the filing of the Request for Arbitration (inclusive).
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>The requested documents are relevant and material in light of [REDACTED] the Argentina-US BIT, considering that Claimant asserts that EMS Opportunity Ltd., [REDACTED] (Memorial on the Merits, [REDACTED]), and that EMS Opportunity Ltd [REDACTED] (Amended and Restated [REDACTED] Agreement of [REDACTED] first recital, [REDACTED]).</p> <p>Financial statements are documents that provide information on the economic activities of the company, which include explanatory notes from management together with details of the company’s annual accounts that allow to identify the amount of the company’s assets, liabilities, and shareholders’ equity, its income statement and statement of cash flow, among other relevant information. Financial statements must be audited by the respective government agencies and accountants to ensure accuracy and for tax, financing, or investing purposes.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, [REDACTED].</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request.</p> <p>The request is excessively broad as EMS Opportunity [REDACTED] since [REDACTED] (Article 3(3)(a) of the IBA Rules). Argentina argues that the financial statements of EMS Opportunity would show the “assets”, “liabilities” and “cash flow[s]” of EMS Opportunity and that these documents [REDACTED]. All of these elements are irrelevant and immaterial to establishing whether [REDACTED] (Article 9(2)(a) of the IBA Rules).</p>
D. Decision of the Tribunal on Document Request	<p>The Tribunal does not consider EMS Opportunity’s financial statements after [REDACTED] to be relevant, as EMS Opportunity [REDACTED] thereafter. Therefore, the Tribunal resolves that this request should be reduced to: <i>“Financial statements of EMS Opportunity Ltd. for all fiscal years between [REDACTED] and [REDACTED] (inclusive).”</i></p> <p>The Tribunal considers that the (reduced) request is <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Documents responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p>

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<p>E. Respondent's Comments</p>	<p>On 9 May 2024, Claimant produced redacted documents and stated that it “has redacted portions of documents that contain sensitive commercial information and are unrelated to the scope of the document production order.”³⁵</p> <p>On 17 May 2024, Argentina requested Claimant to produce complete and unredacted versions of the documents stating that the only limitation included by the Tribunal in its Order was the time period of the request. Moreover, Claimant did not mention at the time of its Objections to Document Request that it would produce redacted documents.</p> <p>On 22 May 2023, Claimant stated that such documents were redacted due to “the sensitivity of its commercial information” and that [REDACTED]</p> <p>[REDACTED]³⁶ However, that is not new. Claimant made a similar statement when submitting its Objections to Documents Request. Nonetheless, the Tribunal ordered Claimant to produce the requested documents.</p> <p>Claimant’s refusal to comply with the Tribunal’s order undermines Argentina’s right of defense. Thus, Argentina requests that the Tribunal order Claimant to comply with PO#2.</p>
<p>F. Claimant's Comments</p>	<p>In Document Request No. 17, Argentina requested the production of financial statements of EMS Opportunity (<i>EMSOL</i>) alleging that “[t]he requested documents [REDACTED]”³⁷ As explained in the Memorial,³⁸ EMSOL [REDACTED]</p> <p>[REDACTED]</p> <p>EMSOL invests in a wide array of assets all over the world, including without limitation, equity and equity-related derivatives (spot, forwards, futures, options markets, and other derivative instruments), global macro, sovereign debt, real estate and real-estate related investments.”³⁹ It also invests in a wide number of jurisdictions and sectors.⁴⁰</p> <p>On 9 May 2024, BA Desarrollos produced EMSOL’s financial statements for [REDACTED] and [REDACTED] with redactions for commercially sensitive information, namely the dollar amount of EMSOL’s investments in assets that have nothing to do with this dispute (such as its investments in [REDACTED]),⁴¹ leaving the dollar amounts showing for</p>

³⁵ Claimant’s Index of Responsive Documents to Argentina’s Document Requests, 9 May 2024.

³⁶ Letter from Claimant to the Argentine Republic, 22 May 2024.

³⁷ Argentina’s Letter, Annex A, p 8.

³⁸ Claimant’s Memorial, fn 94. See also Claimant’s responses to Argentina’s document production requests in Argentina’s Letter, Annex A, p 9.

³⁹ See EMS Opportunity Ltd., Audited Financial Statement, [REDACTED], C-208, p 012.

⁴⁰ See, e.g., EMS Opportunity Ltd., Audited Financial Statement, [REDACTED], C-208, pp 005-008.

⁴¹ BA Desarrollos’s Index, 9 May 2024, Document Request No. 17 (p 3) (“The Claimant has redacted portions of documents that contain sensitive commercial information and are unrelated to the scope of the document production

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	<p>██████████ and ██████████ (i.e., the only figures that could be relevant ██████████).⁴²</p> <p>In Argentina’s Letter, Argentina complains about these redactions and requests that the redactions be removed. This complaint is without merit.</p> <p>Argentina requested EMSOL’s financial statements allegedly to assess ██████████. As explained above ██████████, rendering this document request entirely moot ██████████.</p> <p>Further, the dollar amounts of EMSOL’s investments in other jurisdictions and markets have no bearing at all ██████████. Argentina may request an adverse inference that the dollar amounts in EMSOL’s financial statements that BA Desarrollos redacted ██████████.</p> <p>In any event, BA Desarrollos is only required to produce documents insofar as they are relevant to the case and material to its outcome,⁴³ and do not interfere with commercial confidentiality.⁴⁴ BA Desarrollos is within its rights to redact commercial sensitive information that has nothing to do with this dispute and its outcome. EMSOL is not publicly listed, which only increases the sensitivity of its commercial information.</p>
<p>G. Tribunal’s Decision</p>	<p>The Tribunal notes the unusualness of Claimant not producing an objection based on confidentiality in its Objections to Document Request 17 – the most opportune and customary moment in the proceedings to raise such an objection. That being said, and after reviewing the ██████████ Audited Financial Statement provided to the Tribunal (C-208), the redacted information does not seem <i>prima facie</i> to prevent Argentina from assessing ██████████ – the stated purpose for Document Request 17. For this reason, the Tribunal finds that Claimant has adequately complied with this Document Request and no further production is ordered.</p>

order”). See, e.g., EMS Opportunity Ltd., Audited Financial Statement, ██████████, C-208, p 006.

⁴² See, e.g., EMS Opportunity Ltd., Audited Financial Statement, ██████████, C-208, p 006.

⁴³ See IBA Rules on the Taking of Evidence in International Arbitration, Article 9(2)(a).

⁴⁴ See IBA Rules on the Taking of Evidence in International Arbitration, Article 9(2)(e).

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Document Request 19	
A. Document(s) or category of document(s) requested	Incorporation Agreement of EMS Continuation S.A. or similar instruments under which EMS Continuation S.A. was constituted, including all of its schedules, supplements or other documents containing provisions as to the conduct of the business and affairs of EMS Continuation S.A.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant argues that [REDACTED] in [REDACTED] (Request for Arbitration, ¶¶ 1, 27-29); however, it has not submitted documents regarding [REDACTED].</p> <p>It appears that, [REDACTED] has been [REDACTED].</p> <p>[REDACTED], a company incorporated in the [REDACTED] and also registered in [REDACTED] as a company domiciled abroad.</p> <p>The requested documents are relevant and material to know the place of incorporation and the registration details of EMS Continuation S.A., [REDACTED].</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, [REDACTED]; Witness Statement of [REDACTED], fn. 4.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request.</p> <p>The request is irrelevant to the case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules). Argentina argues that it needs this information to ascertain whether [REDACTED]</p> <p>[REDACTED] is irrelevant [REDACTED].</p> <p>In any event, it is not in dispute that EMS Continuation is incorporated in [REDACTED]. <i>See</i> Witness Statement of [REDACTED], para 14, fn 4. It is also not in dispute [REDACTED].</p> <p>[REDACTED] EMS Continuation [REDACTED].</p>

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D. Decision of the Tribunal on Document Request	The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to the request no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.
E. Respondent's Comments	<p>On 9 May 2024, Claimant produced the Certificate of Incorporation of EMS Continuation S.A., which only reflects the date of registration of EMS Continuation in [REDACTED]. The document does not provide any information about EMS Continuation's owners or the purpose or activity of the company. Claimant indicated in the Index that "<i>EMS Continuation S.A.</i> [REDACTED]"⁴⁵.</p> <p>On 17 May 2024, Argentina requested Claimant to produce the "incorporation Agreement of EMS Continuation S.A. or similar instruments under which EMS Continuation S.A. was constituted (...) containing provisions as to the conduct of the business and affairs of EMS Continuation S.A."⁴⁶ as the Tribunal ordered.</p> <p>On 22 May 2024, Claimant stated that "<i>the Certificate of Incorporation, an instrument under which EMS Continuation was constituted, shows both its place of incorporation and registration details. The document produced satisfies Argentina's request and no further production in response to this request is necessary.</i>"⁴⁷</p> <p>EMS Continuation S.A. [REDACTED], therefore, this information is essential for Argentina to attest its Preliminary Objections.</p> <p>Claimant's refusal to comply with the Tribunal's order undermines Argentina's right of defense. Thus, Argentina requests that the Tribunal order Claimant to comply with PO#2.</p>

⁴⁵ Claimant's Index of Responsive Documents to Argentina's Document Requests, 9 May 2024.

⁴⁶ E-mail from the Argentine Republic to Claimant, 17 May 2024.

⁴⁷ Letter from Claimant to the Argentine Republic, 22 May 2024.

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F. Claimant's Comments

In Document Request No. 19, Argentina requested the production of the “Incorporation Agreement of EMS Continuation S.A. or similar instruments under which EMS Continuation S.A. was constituted, including all of its schedules, supplements or other documents containing provisions as to the conduct of the business and affairs of EMS Continuation S.A.”⁴⁸ Argentina justified this request by alleging that it needed “to know the place of incorporation and the registration details of EMS Continuation S.A., [REDACTED] in

order to assess [REDACTED]⁴⁹

On 9 May 2024, as ordered by the Tribunal, BA Desarrollos produced EMS Continuation S.A.’s Certificate of Incorporation, which shows both EMS Continuation’s place of incorporation and registration details, in accordance with Document Request No. 19.

In Argentina’s e-mail, Argentina complained that BA Desarrollos had not complied with the Tribunal’s document production order but it did not explain what information was allegedly lacking for the purposes of knowing the “place of incorporation” and the “registration details” of EMS Continuation. BA Desarrollos answered that all of the information requested by Argentina is found in EMS Continuation’s Certificate of Incorporation.⁵⁰

Argentina’s Letter now attempts to amend the scope of its Document Request No. 19 and alleges that EMS Continuation’s Certificate of Incorporation “does not provide any information about EMS Continuation’s owners or the purpose or activity of the company.”⁵¹ Argentina further states that this information is “essential for Argentina to attest its Preliminary Objections.”⁵² But, besides this generic reference to “Preliminary Objections”, Argentina does not mention which preliminary objection it intends to support by means of amending the scope of Document Request No. 19.

In any event, Argentina cannot belatedly change the scope of its original document request nor is a vague reference to “preliminary objections” in general an appropriate way to justify a document request, which must be specific and indicate how the request is relevant to the dispute and material to its outcome.⁵³ Argentina’s request should therefore be dismissed.

⁴⁸ Argentina’s Letter, Annex A, p 10 (emphasis added).

⁴⁹ Argentina’s Letter, Annex A, p 10.

⁵⁰ BA Desarrollos’s letter of 22 May 2024, p 5.

⁵¹ Argentina’s Letter, Annex A, p 11.

⁵² Argentina’s Letter, Annex A, p 11.

⁵³ See ICSID Arbitration Rules, Rule 37; IBA Rules on the Taking of Evidence in International Arbitration, Article 9(2)(a).

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G. Tribunal's Decision

The Tribunal notes that the scope of Document Request 19 was the “*Incorporation Agreement of EMS Continuation S.A. or similar instruments under which EMS Continuation S.A. was constituted, including all of its schedules, supplements or other documents containing provisions as to the conduct of the business and affairs of EMS Continuation S.A.*”

As Respondent acknowledges, on 9 May 2024 Claimant produced EMS Continuation S.A.’s incorporation certificate. This production is, therefore, only deficient insofar as Claimant has “*schedules, supplements or other documents containing provisions as to the conduct of the business and affairs of EMS Continuation S.A.*” in its possession, custody or control that it has not provided to Argentina. Therefore, if Claimant has any responsive documents to the original request in its possession they must be provided by **Monday, 24 June 2024**.

That being said, the scope of the Request does not, however, extend to documents “*provid[ing] any information about EMS Continuation’s owners*” as suggested by Respondent and Claimant is under no obligation to provide such documents under this Request.

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Document Request 20	
A. Document(s) or category of document(s) requested	Documents sufficient to show the shareholding structure of [REDACTED], including but not limited to share registers and details of the stakeholders of [REDACTED] and the number of shares held by each of them, as well as all BA Desarrollos LLC shares owned by [REDACTED], if any, between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant argues that BA Desarrollos LLC was incorporated in Delaware (Request for Arbitration, ¶¶ 1, 27-29); however, it has not submitted documents regarding its chain of ownership or its managers.</p> <p>It appears that, [REDACTED] has been the direct and sole shareholder (“member”) of BA Desarrollos LLC. (Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC [REDACTED], second recital, C-003), a company incorporated in the British Virgin Islands and also registered in Brazil as a company domiciled abroad.</p> <p>The requested documents are relevant and material to know the partner(s), member(s), shareholder(s) or owner(s) of [REDACTED], as the apparent current sole and immediate shareholder (“member”) of BA Desarrollos LLC, in light of the “control” element of Article 1(2) of the Argentina-US BIT.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, fn. 94.</p>
C. Objections to Document Request (max. 500 words)	BA Desarrollos objects to this request which is duplicative with Request 14. BA Desarrollos refers to its Response to Request 14. For the avoidance of doubt, BA Desarrollos confirms that [REDACTED] is the sole Member of BA Desarrollos and that no entity in its chain of ownership is a US national.
D. Decision of the Tribunal on Document Request	<p>The Tribunal does not consider the requested Documents to be relevant for the period prior to [REDACTED], since [REDACTED] did not own BA Desarrollos at that time. Therefore, the Tribunal resolves that this request should be reduced to:</p> <p><i>“Documents sufficient to show the shareholding structure of [REDACTED], including but not limited to share registers and details of the stakeholders of [REDACTED] and the number of shares held by each of them, as well as all BA Desarrollos LLC shares owned by [REDACTED], if any, between [REDACTED] and the date of the filing of the Request for Arbitration (inclusive).”</i></p>

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	The Tribunal considers that the (reduced) request is <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.
E. Respondent's Comments	<i>Id.</i> DR#14.
F. Claimant's Comments	<i>Id.</i> DR#14.
G. Tribunal's Decision	The Tribunal does not find that the production of Document BA-000279 sufficiently responds to Document Request 20. For this reason, Claimant is hereby ordered to produce any further responsive documents to the Document Request that are in its possession, custody or control, in particular, but not limited to, share registers, by Monday, 24 June 2024 .

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Document Request 21	
A. Document(s) or category of document(s) requested	Financial statements of EMS Continuation S.A. for all fiscal years between the date of [REDACTED] and the date of the filing of the Request for Arbitration (inclusive).
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>The requested documents are relevant and material in light of the [REDACTED] Argentina-US BIT, considering that it seems that EMS Continuation S.A. [REDACTED], a company incorporated in the [REDACTED] and also registered in [REDACTED] as a company domiciled abroad.</p> <p>Financial statements are documents that provide information on the economic activities of the company, which include explanatory notes from management together with details of the company’s annual accounts that allow to identify the amount of the company’s assets, liabilities, and shareholders’ equity, its income statement and statement of cash flow, among other relevant information. Financial statements must be audited by the respective government agencies and accountants to ensure accuracy and for tax, financing, or investing purposes.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, [REDACTED].</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request.</p> <p>The request is excessively broad as EMS Continuation has [REDACTED] (Article 3(3)(a) of the IBA Rules). Argentina argues that the financial statements of EMS Continuation would show the “assets”, “liabilities” and “cash flow[s]” of EMS Continuation and that these documents “are relevant and material [REDACTED] All of these elements are irrelevant and immaterial [REDACTED] (Article 9(2)(a) of the IBA Rules).</p>
D. Decision of the Tribunal on Document Request	<p>The Tribunal does not consider EMS Continuation’s financial statements prior to [REDACTED] to be relevant, as it [REDACTED]. Therefore, the Tribunal resolves that this request should be reduced to:</p> <p><i>“Financial statements of EMS Continuation S.A. for all fiscal years between [REDACTED] and the date of the filing of the Request for Arbitration (inclusive).”</i></p> <p>The Tribunal considers that the (reduced) request is <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p>

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<p>E. Respondent's Comments</p>	<p>On 9 May 2024, Claimant produced no documents on this category arguing, for the first time, that “<i>EMS Continuation S.A. is a disregarded entity for tax purposes and does not produce financial statements</i>”.⁵⁴ However, no reference at all was made when submitting its Objections to Document Request.</p> <p>EMS Continuation [REDACTED]; thus, the information requested is fundamental to Argentina’s Preliminary Objections.</p> <p>On 17 May 2024, Argentina requested Claimant to produce any document similar to financial statements, analogous instruments or draft versions thereof.</p> <p>On 22 May 2024, Claimant stated that “<i>Argentina’s Request No. 21 has now been rendered moot. As explained above [REDACTED] obviating the need for Argentina to examine EMS Continuation’s [REDACTED]. Accordingly, no further production in response to this request is necessary.</i>”⁵⁵</p> <p>Claimant’s refusal to comply with the Tribunal’s order undermines Argentina’s right of defense.</p> <p>Claimant’s refusal to comply with the Tribunal’s order undermines Argentina’s right of defense. Thus, Argentina requests that the Tribunal order Claimant to comply with PO#2.</p>
<p>F. Claimant's Comments</p>	<p>In Document Request No. 21, Argentina requested the production of EMS Continuation’s financial statements, alleging that “[t]he requested documents are relevant and material in light of [REDACTED] the Argentina-US BIT.”⁵⁶ As explained in the Memorial,⁵⁷ EMS Continuation [REDACTED].</p> <p>Following the Tribunal’s Decision, BA Desarrollos conducted a reasonable search for the documents in its possession, custody or control and confirmed that “<i>EMS Continuation S.A. is a disregarded entity for tax purposes and does not produce financial statements.</i>”⁵⁸ Yet Argentina continues to insist on requesting documents that do not exist.</p> <p>In any event, as explained above [REDACTED], this [REDACTED], this</p>

⁵⁴ Claimant’s Index of Responsive Documents to Argentina’s Document Requests, 9 May 2024.

⁵⁵ Letter from Claimant to the Argentine Republic, 22 May 2024.

⁵⁶ Argentina’s Letter, Annex A, p 13.

⁵⁷ [REDACTED]

⁵⁸ BA Desarrollos’s Index, 9 May 2024, Document Request No. 21 (p 4).

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	request is moot as it is irrelevant to the dispute and immaterial to its outcome.
G. Tribunal's Decision	<p>The Tribunal acknowledges Claimant's clarification that EMS Continuation S.A. does not produce financial statements. It notes, however, that these circumstances have not prevented Claimant from producing analogous documents for other companies [REDACTED].</p> <p>[REDACTED]. The Tribunal, therefore, deems it appropriate, and not unreasonably burdensome, for Claimant to produce analogous documents, if they exist. For this purpose, it is granted until Monday, 24 June 2024.</p>

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Document Request 25	
A. Document(s) or category of document(s) requested	Financial statements of EMS Capital LP for all fiscal years between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the request for Arbitration (inclusive).
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>The requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US and is controlled by nationals of a third country, in light of Article 1(2) of the Argentina-US BIT.</p> <p>The requested documents are germane to the role of EMS Capital LP in connection with BA Desarrollos LLC. Claimant indicates that EMS Capital LP is the manager of BA Desarrollos (Request for Arbitration, ¶ 8; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC [REDACTED], second recital (C-003); Memorial on the Merits, ¶ 52), and that BA Desarrollos “conducts its business activities” purportedly “via its manager, EMS Capital” (Memorial on the Merits, ¶ 124).</p> <p>Financial statements are documents that provide information on the economic activities of the company, which include explanatory notes from management together with details of the company’s annual accounts that allow to identify the amount of the company’s assets, liabilities, and shareholders’ equity, its income statement and statement of cash flow, among other relevant information. Financial statements must be audited by the respective government agencies and accountants to ensure accuracy and for tax, financing, or investing purposes.</p> <p>Arbitral tribunals have considered that financial statements are relevant evidence to determine if a company has substantial activities in a State. <i>Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine</i>, SCC Case No. V 2015/092, Final Award, 4 February 2021, ¶¶ 632, 634.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: see, e.g., Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, ¶ 52.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request.</p> <p>It is irrelevant to the case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules).</p> <p>BA Desarrollos has established that EMS Capital is the manager of BA Desarrollos. BA Desarrollos’s Company Agreement and amended agreement set out in great detail the broad scope of activities that EMS Capital undertakes for BA Desarrollos. <i>See</i> Limited Liability Company Agreement of BA Desarrollos LLC, 3 October 2017, C-121, Art 4; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC, [REDACTED]</p>

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	<p>██████████, C-3, Art 5. <i>See also</i> Witness Statement of ██████████, paras 1, 8, 17-19.</p> <p>Moreover, Argentina’s request is excessively broad. As BA Desarrollos has explained, EMS Capital acts as the investment manager for a large base of assets owned by the EMS Group. <i>See</i> Memorial on the Merits, paras 50-51; Witness Statement of ██████████, paras 1, 14. <i>See also</i> EMS Capital LP, “Real Estate Portfolio”, June 2022, C-117, pp 002-004; EMS Capital, SEC Form 13F, 2022, C-118, pp 006-007. It is irrelevant and excessively broad to produce information about the entire base of assets managed by EMS Capital. <i>See</i> Section 16.3.1 of Procedural Order No. 1 and Article 3(3)(a)(ii) of the IBA Rules.</p> <p>BA Desarrollos is voluntarily producing its own financial statements. <i>See</i> Response to Request 3.</p>
D. Decision of the Tribunal on Document Request	<p>The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to the request no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p>
E. Respondent’s Comments	<p>On 9 May 2024, Claimant produced the balance sheets and income statements of EMS Capital ██████████ although it did not submit the financial statements. Instead, it submitted Excel spreadsheets containing balance sheets and income statements without indicating the source and arguing that “EMS Capital LP does not produce audited financial statements given that it is a privately-owned company”.⁵⁹ Such clarification was not new; it had already been provided by Claimant when filing its Objections to Document Request.</p> <p>On 17 May 2024, Argentina requested Claimant to comply with the production of the financial statements, or, alternatively, to provide the sources from which the data included in the Excel spreadsheets have been taken and to provide printed outputs of the accounting systems Claimant used as a source to prepare the Excel spreadsheets.</p> <p>On 22 May 2024, Claimant stated that “[a]s explained by the State of Delaware’s website, limited partnerships are not subject to annual reporting requirements”.⁶⁰ Claimant submitted a certificate from the ██████████ confirming that EMS Capital LP does not issue financial statements and that its balance sheets and income statements ██████████</p>

⁵⁹ Claimant’s Index of Responsive Documents to Argentina’s Document Requests, 9 May 2024.

⁶⁰ Letter from Claimant to the Argentine Republic, 22 May 2024.

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	<p>[REDACTED]. Claimant refuses to provide the sources of the data included in the Excel spreadsheets and the printed outputs of the accounting systems.</p> <p>Claimant’s refusal to comply with the Tribunal’s order undermines Argentina’s right of defense. Thus, Argentina requests that the Tribunal order Claimant to comply with PO#2.</p>
<p>F. Claimant’s Comments</p>	<p>In Document Request No. 25, Argentina requested the “[f]inancial statements of EMS Capital LP” alleging that this was necessary “to determine whether BA Desarrollos LLC has ‘substantial business activities in the territory of’ the US” and whether it “is controlled by nationals of a third country” for the purposes of denying BA Desarrollos the benefits of the Treaty under Article I(2) of the Treaty.⁶¹</p> <p>EMS Capital does not prepare financial statements and it is not required to do so under Delaware law.⁶² On 9 May 2024, BA Desarrollos produced the balance sheets and income statements of EMS Capital [REDACTED], clarifying that “EMS Capital LP does not produce audited financial statements given that it is a privately-owned company.”⁶³ The documents produced provide ample information on EMS Capital’s financial activities, since the balance sheet reports on the assets and liabilities of EMS Capital as well as the amount invested [REDACTED], and the income statement shows the profit and losses of EMS Capital.⁶⁴ The information shown in the balance sheets and income statements [REDACTED]. BA Desarrollos explained this to Argentina in its letter of 22 May 2024.⁶⁵</p> <p>Nevertheless, Argentina has applied to this Tribunal, asking for documents that do not exist.</p> <p>In addition, Argentina has asked for the “printed outputs of the accounting systems” that EMS Capital used to prepare the balance sheet and income statements. Argentina’s request for the individual ledger entries, is overbroad, since such information is never included in financial statements.</p>

⁶¹ Argentina’s Letter, Annex A, p 15.

⁶² BA Desarrollos’s letter of 22 May 2024, p 6.

⁶³ BA Desarrollos’s Index, 9 May 2024, Document Request No. 25 (p 4).

⁶⁴ See Investopedia, “Income Statement: How to Read and Use It”, C-209, pp 001-002; Investopedia, “Balance Sheet: Explanation, Components, and Examples”, C-210, pp 001-002.

⁶⁵ BA Desarrollos’s letter of 22 May 2024, p 6.

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	<p>Moreover, since EMS Capital acts as the investment manager for a large base of assets owned by the EMS Group,⁶⁶ producing the individual ledger entries will require a significant amount of work from BA Desarrollos to redact information that is commercially sensitive and which is completely unrelated to BA Desarrollos or this dispute.⁶⁷ Since Argentina already has all the relevant documents showing EMS Capital’s financial activities as recorded in EMS Capital’s income statements and balance sheets, Argentina’s request for the individual ledger entries should be dismissed.</p>
<p>G. Tribunal’s Decision</p>	<p>Although the Tribunal is sympathetic with Respondent’s frustration that it has not been provided with EMS Capital LP financial statements <i>per se</i>, it cannot order the production of documents that do not exist. In their absence, balance sheets and income statements [REDACTED] seem <i>prima facie</i> to provide an adequate alternative. As Claimant correctly notes, ordering the production of the “<i>printed outputs of the accounting systems</i>” would go beyond the information provided in a financial statement – and therefore beyond the scope of Document Request 25. For this reason, the Tribunal finds that Claimant has adequately complied with this Document Request and no further production is ordered.</p>

⁶⁶ Claimant’s Memorial, paras 50-51; Witness Statement of [REDACTED], paras 1, 14. *See also* EMS Capital LP, [REDACTED], June 2022, C-117, pp 002-004; EMS Capital, SEC Form 13F, 2022, C-118, pp 006-007.

⁶⁷ *See* IBA Rules on the Taking of Evidence in International Arbitration, Articles 3(3)(a), 9(2)(a), 9(2)(e).