

Procedural Order No. 8 – Annex B

Annex B to Procedural Order No. 8
Decision on Respondent’s Requests for Document Production

Document Request 1	
A. Document(s) or category of document(s) requested	Accounting Daybooks/Journals (“ <i>Registros</i> ” or “ <i>Libros Diarios de Contabilidad</i> ” in Spanish) of Fideicomiso BAP containing accounting records for fiscal years 2018 to 2023.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant seeks compensation for alleged costs, fees, and expenses, which were purportedly incurred by Fideicomiso BAP (Claimant’s Memorial, ¶¶ 201-206, 214; Annex II-A, ¶ 5; Annex II-B, tab “Payments breakdown”, cells J50, J142, and J145). Argentina challenges Claimant’s allegations (Counter-Memorial, § VI.C).</p> <p>The requested documents are relevant and material to assess the claimed expenses as recorded in the mandatory accounting books of Fideicomiso BAP. According to Argentina’s Civil and Commercial Code, accounting records must be kept on a uniform basis that provides a true reflection of the activities and acts to be recorded, in such a manner as to permit an individualization of the transactions and of the assets and liabilities, and book entries must be supported by the relevant documents, which must be kept in a methodical manner that allows them to be easily located and ready for consultation (Counter-Memorial, ¶¶ 392-395; Argentina’s Civil and Commercial Code, arts. 321, 322).</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p> <p>Respondent is available to review and obtain copies of the requested documents at the office of the trustee of Fideicomiso BAP or at a location to be coordinated with Claimant, if necessary.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on three grounds.</p> <p>BA Desarrollos’s damages claim is straightforward. It is claiming compensation for its sunk costs on the Project, plus interest, to wipe out the damage caused by Argentina’s breaches of the Treaty (Memorial, ¶¶ 194-197). BA Desarrollos has provided ample evidence of its sunk costs by submitting Fideicomiso BAP’s audited financial statements (C-190 - C-194) and Fideicomiso BAP’s general ledgers (C-195 - C-200). BA Desarrollos also submitted payment receipts and invoices for 92.7% of its claimed Project costs and expenses (C-34bis, C-36bis, C-201). Further, BA Desarrollos submitted a list of Project expenses incurred by BA Desarrollos directly, certified by Mr. [REDACTED] (R-6). BA Desarrollos has also produced to Argentina its bank statements (which are consistent with the list of expenses in [REDACTED]-6) (R-32-R-43, R-103 - R-148).</p>

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Argentina alleges that all of this is not enough and that BA Desarrollos must also support its damages with Fideicomiso BAP's daybooks because allegedly this would be the evidentiary method used in Argentine court (Counter-Memorial, ¶¶ 392-395). This request should be dismissed.

First, this request is justified by the need to prove the Claimant's allegations, *i.e.* whether sufficient evidence of its costs has been provided. Such a request breaches Section 16.2 of Procedural Order No. 1 and is inadmissible.

Second, the requested documents are irrelevant to the case and immaterial to its outcome. (Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules, Section 16.3.2 Procedural Order No. 1).

A) BA Desarrollos has fully supported its damages claim as explained above. There is ample evidence of the costs that BA Desarrollos incurred on the Project, consisting of Fideicomiso BAP's ledgers, audited financial statements and invoices among other sources.

A daybook is a record used by businesses to track financial transactions on a daily basis before they are grouped and posted to the general ledger. Thus, the daybooks would provide yet further confirmation of what BA Desarrollos has already proved: its costs incurred on the Project.

For the same reason, procedural economy, proportionality and fairness also justify dismissing this request (Article 9(2)(g) IBA Rules). It would be unreasonable, burdensome and inefficient to require BA Desarrollos to produce documents to prove its damages by four separate means (*i.e.* by having to submit (i) general ledgers, (ii) audited financial statements, (iii) invoices and proofs of payment and (iv) *daybooks and journals*).

B) The rules of evidence applicable in Argentine court are irrelevant in an ICSID arbitration (*see* Rule 36(1) ICSID Rules) As the *Soufraki v UAE* tribunal held "an international Tribunal [...] is not bound by rules of evidence in Italian civil procedure."¹ In any event, Argentina's allegation regarding how parties in Argentine court proceedings rely on accounting records as evidence is incorrect. Argentine law does not require the submission of daybooks to substantiate a party's accounting. Further, Argentine courts maintain discretion to assess all of the submitted evidence. (*see* C-22, Art. 330).

¹ *Hussein Nuaman Soufraki v The United Arab Emirates* (ICSID Case No. ARB/02/7) Award, 7 July 2004, **RL-185**, ¶¶ 59-61.

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the expenses claimed as they appear in the accounting books that must be kept by the Fideicomiso BAP, <i>i.e.</i>, accounting records contemporary with the expenses included in the claim for compensation. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p> <p>Also, the requested documents are relevant to the case and material to its outcome.² Claimant admits that “[a] daybook is a record used by businesses to track financial transactions on a daily basis”, a “separate means” of proving the alleged damages, that it would provide confirmation of the alleged costs incurred on the project.</p> <p>Indeed, Claimant does not deny relevance and materiality of the requested documents but argues that it has already submitted other means of evidence for Fideicomiso BAP (financial statements, spreadsheets mistakenly called “general ledgers” and some invoices) that allegedly supports its claim for damages. However, Claimant fails to respond to Respondent’s specific and well-founded objections to those documents submitted as purported evidence (Counter-Memorial, ¶¶ 397-410). In any event, the fact that Claimant has submitted evidence before this Tribunal does not exempt it from producing all documents in its possession, custody or control that are responsive to this request and that have not already been produced. Claimant is not entitled to cherry-pick the evidence in its possession, custody or control and withhold evidence that is relevant and material.</p> <p>In addition, the request is proportionate and consistent with the principles of procedural economy and fairness as it seeks to obtain material evidence relevant to the resolution of a key issue in the case and that is easily accessible to Claimant. Claimant has not shown how it would be unreasonable, burdensome or inefficient to produce the documents in this arbitration.</p> <p>Furthermore, Claimant argues that supposedly the rules of evidence applicable in Argentine court would be “irrelevant in ICSID arbitration”. Claimant misses the point. Respondent does not intend to apply an Argentine rule, but to have access to mandatory books for any entity that develops commercial activity in the country as Fideicomiso BAP, which shows that the requested documents are or ought to be in its control, custody or possession. Indeed, Claimant has not denied their existence.</p> <p>Moreover, contrary to Claimant’s assertion, ICSID arbitral tribunals have considered as relevant evidence the mandatory books required by domestic law. In the case <i>MetLife v. Argentina</i>, the tribunal rejected the</p>
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² Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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	claimed costs <i>inter alia</i> because the claimant did not prove them with the specific and obligatory accounting books. ³
E. Decision of the Tribunal on Document Request	Request No. 1 does not appear to be <i>prima facie</i> relevant to the case and material to its outcome considering the evidence that is on record and has already been submitted by Claimant. Therefore, the Tribunal decides to reject it.

Document Request 2	
A. Document(s) or category of document(s) requested	Inventory Ledger and Balance Sheet (“ <i>Libro Inventario y Balance</i> ” in Spanish) of Fideicomiso BAP, containing accounting records for fiscal years 2018 to 2023.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant seeks compensation for alleged costs, fees, and expenses, which were purportedly incurred by Fideicomiso BAP (Claimant’s Memorial, ¶¶ 201-206, 214; Annex II-A, ¶ 5; Annex II-B, tab “Payments breakdown”, cells J50, J142, and J145). Argentina challenges Claimant’s allegations (Counter-Memorial, § VI.C).</p> <p>The requested documents are relevant and material to assess the claimed expenses as recorded in the mandatory accounting books of Fideicomiso BAP. According to Argentina’s Civil and Commercial Code, accounting records must be kept on a uniform basis that provides a true reflection of the activities and acts to be recorded, in such a manner as to permit an individualization of the transactions and of the assets and liabilities, and book entries must be supported by the relevant documents, which must be kept in a methodical manner that allows them to be easily located and ready for consultation (Counter-Memorial, ¶¶ 392-395; Argentina’s Civil and Commercial Code, arts. 321, 322).</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p> <p>Respondent is available to review and obtain copies of the requested documents at the office of the trustee of Fideicomiso BAP or at a location to be coordinated with Claimant, if necessary.</p>
C. Objections to Document Request (max. 500 words)	BA Desarrollos objects to this request on three grounds.

³ *MetLife, Inc, MetLife Servicios S.A. v. Argentine Republic*, ICSID Case No. ARB/17/17, Decision on Claimants’ Request for “Clarification and Rectification” of June 20, 2023, ¶ 153 (RL-188). Claimant’s reference to the *Soufraki*, which related to the issue of domestic law in connection with claimant’s nationality is irrelevant to the present document request that relates to mandatory required books (*Hussein Nuaman Soufraki v The United Arab Emirates* (ICSID Case No. ARB/02/7) Award, 7 July 2004, ¶ 47 (RL-185)).

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First, Argentina already has possession of the “Balance Sheet” that it is requesting. The “Balance Sheet” is another term in Argentina for financial statements (“*balance*” or “*balance general*” in Spanish; see Article 326 of the Argentine Civil and Commercial Code stating that the financial statements (“*estados contables*”) are recorded in the inventory ledger and balance sheet; C-22, p 41, Art 326). Argentina is already in possession of Fideicomiso BAP’s audited financial statements (C-190 to C-194) so there are no further documents that BA Desarrollos could produce in response to this request that Argentina does not already possess (in this respect, BA Desarrollos is voluntarily agreeing to produce Fideicomiso BAP’s financial statement for 2023 pursuant to Document Request No. 5 below).

Second, the “inventory ledger” does not exist. An “inventory ledger” is a record of the quantity, value and movements of a company’s goods. Fideicomiso BAP does not keep such records since Fideicomiso BAP does not own or sell goods. Rather, it was constituted to develop a real estate project. Any land and real estate development costs are capitalized on its balance sheet and are not recorded separately on an inventory ledger (see Memorial, ¶¶ 53-54). Put simply, there is no inventory to record in an inventory ledger and so Fideicomiso BAP does not maintain such a record.

Third, as explained in response to Document Request No. 1, Argentina is seeking these documents to allegedly supplement the evidence that the Claimant has submitted in support of its quantum case. Such a request is in breach of Section 16.2 of Procedural Order No. 1 and is therefore inadmissible.

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Claimant is mistaken in that it confuses the Inventory Ledger and Balance Sheet with Financial Statements. The Inventory Ledger and Balance Sheet is a signed and page-numbered book that must be kept by all companies, which includes analytical details of the composition of the asset and liability items corresponding to the balance sheet comprising the financial statements. Financial Statements do not have the same level of detail as the Inventory Ledger and Balance Sheet. Therefore, the fact that Claimant filed the Financial Statements of Fideicomiso BAP in this proceedings does not mean that it has submitted the information that the Inventory Ledger and Balance Sheet provides.</p> <p>Also, Claimant states that “the ‘inventory ledger’ does not exist” and “Fideicomiso BAP does not maintain such a record”. That is not true. Financial Statements of Fideicomiso BAP expressly indicate that the trust keeps an inventory and balance sheet book, although outdated that needed to be regularized (Counter-Memorial, ¶ 395; <i>see also</i>, C-191, p.12 pdf; C-192, p. 24 pdf; C-193, p. 24 pdf; C-194, p. 20 pdf).</p> <p>In addition, Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the expenses claimed as they appear in the accounting books that must be kept by the Fideicomiso BAP, <i>i.e.</i>, accounting records contemporary with the expenses included in the claim for compensation. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>Request No. 2 does not appear to be <i>prima facie</i> relevant to the case and material to its outcome considering the evidence that is on record and has already been submitted by Claimant. Therefore, the Tribunal decides to reject it.</p>

Document Request 3	
<p>A. Document(s) or category of document(s) requested</p>	<p>Fideicomiso BAP’S VAT Purchase Book or Digital VAT Book (“Libro IVA Compras” o “Libro de IVA Digital” in Spanish) for fiscal years 2018 to 2023.</p>
<p>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</p>	<p>Claimant seeks compensation for alleged costs, fees, and expenses, which were purportedly incurred by Fideicomiso BAP (Claimant’s Memorial, ¶¶ 201-206, 214; Annex II-A, ¶ 5; Annex II-B, tab “Payments breakdown”, cells J50, J142, and J145). Argentina challenges Claimant’s allegations (Counter-Memorial, § VI.C).</p> <p>The requested documents are relevant and material to assess the claimed expenses as recorded in the mandatory books of Fideicomiso BAP pursuant to the Argentine tax authority. The Argentine tax authority requires that VAT-registered persons or entities—such as Fideicomiso BAP—keep an electronic record of transactions called Digital VAT Book (“<i>Libro de IVA Digital</i>”), which must contain, <i>inter alia</i>, the records of “[p]urchases, assignments, leases and services</p>

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	<p>received and definitive imports of goods and services—as well as any other concept invoiced [...] as a consequence of any activity they carry out, they make with suppliers, lessors, providers, commission agents, consignees, etc.” The Digital VAT Book became mandatory between October 2019 and July 2020, according to a schedule defined by the tax authority based on the type of taxpayer (Counter-Memorial, n.717; AFIP General Resolution No. 4597/2019, articles 1, 4, 25 (R-184)). Previously, this data had to be mandatorily recorded in physical form in the VAT Purchase Book.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p> <p>Respondent is available to review and obtain copies of the requested documents at the office of the trustee of Fideicomiso BAP or at a location to be coordinated with Claimant, if necessary.</p>
<p>C. Objections to Document Request (max. 500 words)</p>	<p>BA Desarrollos objects to this request on four grounds, as further explained below.</p> <p>BA Desarrollos’s damages claim is straightforward and BA Desarrollos has provided ample support for its damages claim, as detailed in its objection to Document Request No. 1. Argentina argues that BA Desarrollos should also have supported its damages calculation with its VAT Purchase Book (Counter-Memorial, fn 717). The VAT Purchase Book is used by businesses to track the VAT paid on purchases to allow businesses to claim a credit on the VAT that they collect in sales.</p> <p><i>First</i>, this request is justified by the “need to prove the allegations” made by the Claimant, <i>i.e.</i> whether the Claimant has provided sufficient evidence of the costs that it has incurred. Such a request is in breach of Section 16.2 of Procedural Order No. 1 and is inadmissible.</p> <p><i>Second</i>, the requested documents are irrelevant to the case and immaterial to its outcome.⁴</p>

⁴ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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BA Desarrollos has fully supported its damages claim. It has submitted into the record Fideicomiso BAP's general ledgers and Fideicomiso BAP's audited financial statements. It has also submitted payment receipts and invoices representing 92.7% of its damages claim before interest (*see C-34bis, C-36bis, C-201* and Claimant's Damages Worksheet, Annex II-B to the Memorial, tab "Parameters and results", row 30). Argentina has not alleged any inconsistencies (let alone material ones) between the proof of payments or invoices submitted, Fideicomiso BAP's general ledgers (**C-195 to C-200**) and Fideicomiso BAP's audited financial statements (**C-190 to C-194**). Simply put, there is ample evidence of the costs that BA Desarrollos incurred on the Project, consisting of invoices, Fideicomiso BAP's ledgers and audited financial statements among other sources.

The VAT books would provide yet further confirmation of what BA Desarrollos has already proved: the costs it incurred on the Project.

In addition, the VAT Purchase Book would only partially confirm the Project costs (especially when compared with the general ledgers, financial statements, and invoices and payment receipts, all of which are already in the record). The VAT Purchase Book only lists those transactions that are subject to VAT, so it would not list all of the costs and expenses incurred by Fideicomiso BAP on the Project.

Third, and for the same reason that the requested documents are irrelevant to the case and immaterial to its outcome, considerations of procedural economy, proportionality and fairness also justify dismissing this request (Article 9(2)(g) of the IBA Rules). It would be unreasonable, burdensome and inefficient to require BA Desarrollos to produce documents to prove its damages by five separate means (using (i) general ledgers, (ii) audited financial statements, (iii) invoices and proofs of payment and (iv) *daybooks and journals*, and (v) *VAT books*).

Fourth, Argentina already has access to Fideicomiso BAP's VAT Purchase Book through its tax authorities, so these documents are already in Argentina's possession, custody and control (Article 3(3)(c) of the IBA Rules).

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the expenses claimed as they appear in the accounting books that must be kept by the Fideicomiso BAP, <i>i.e.</i>, accounting records contemporary with the expenses included in the claim for compensation. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p> <p>Also, the requested documents are relevant to the case and material to its outcome.⁵ Indeed, Claimant admits that the VAT books would provide confirmation of the alleged costs incurred on the project and that they would be a “separate means” of proving the alleged damages.</p> <p>Claimant does not deny the relevance and materiality of the requested documents but claims that it has already submitted other means of evidence (financial statements, spreadsheets mistakenly called “general ledgers” and some invoices) that allegedly supports its claim for damages. However, Claimant fails to respond to Respondent’s specific and well-founded objections to those documents submitted as purported evidence (Counter-Memorial, ¶¶ 397-410).</p> <p>Claimant’s argument that the VAT Book “would only partially confirm” the project costs given it “only lists those transactions that are subject to VAT” is unfounded. In addition, Claimant’s statement disregards the fact that, pursuant to Argentine law, VAT is a tax of general application to all transactions involving the sale of movable property, the rendering of all types of services, and even the importation of goods and services.⁶</p> <p>In any event, the fact that Claimant has submitted evidence before this Tribunal does not exempt it from producing all documents in its possession, custody or control that are responsive to this request and that have not already been produced. Claimant is not entitled to cherry-pick the evidence in its possession, custody or control and withhold evidence that is relevant and material.</p> <p>In addition, the request is proportionate and consistent with the principles of procedural economy and fairness as it seeks to obtain material evidence relevant to the resolution of a key issue in the case and that is easily accessible to Claimant. Claimant has not shown how it would be unreasonable, burdensome or inefficient to produce the documents in this arbitration.</p> <p>Furthermore, the request concerns documents that are not in Respondent’s possession, custody, or control. Pursuant to Argentine law, any documents that Fideicomiso BAP has filed with the tax authorities are confidential and protected by tax secrecy. Thus, this representation has no access to the requested documents through Argentine tax authorities.</p>
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⁵ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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E. Decision of the Tribunal on Document Request	Request No. 3 does not appear to be <i>prima facie</i> relevant to the case and material to its outcome considering the evidence that is on record and has already been submitted by Claimant. In addition, only an incomplete picture of the expenses claimed would be available, as not all expenses would appear to be subject to VAT. Therefore, the Tribunal decides to reject it.
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Document Request 4	
A. Document(s) or category of document(s) requested	Printed outputs directly obtained from Fideicomiso BAP’s accounting system, without any amendments or alterations, containing the general ledgers (“ <i>Libros Mayores</i> ” in Spanish) for each of the accrued cost, fee, and expense accounts for the years 2018 to 2023.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant seeks compensation for alleged costs, fees, and expenses, which were purportedly incurred by Fideicomiso BAP (Claimant’s Memorial, ¶¶ 201-206, 214; Annex II-A, ¶ 5; Annex II-B, tab “Payments breakdown”, cells J50, J142, and J145). Argentina challenges Claimant’s allegations (Counter-Memorial, § VI.C).</p> <p>The requested documents are relevant and material to assess the claimed expenses as recorded in the general ledgers of Fideicomiso BAP. Although Claimant alleges to have submitted extracts of the general ledgers of Fideicomiso BAP (Claimant’s Memorial, n.471; Annex II-A, ¶ 2(a)), what it erroneously calls “ledgers” are mere spreadsheets prepared for this arbitration, which do not contain the minimum general ledger data, and whose sources cannot be verified (Counter-Memorial, ¶ 403; Exhibits C-195, C-196, C-197, C-198, C-199; R-179). Claimant states that it prepared spreadsheets (submitted as Annex II to Claimant’s Memorial) “in which the information contained in the Ledgers were combined in an Excel file and maintained in its original form”, but then clarifies that it made alterations: “[a]dditional columns were added to (i) standardize the naming of vendors for ease of reference; (ii) exclude entries that are required for accounting purposes only [...] (iii) incorporate data used to convert ARS to US\$; and (iv) incorporate the relevant rates for calculating interest” (Claimant’s Memorial, ¶ 202, n.473). The raw information stored in the accounting system of Fideicomiso BAP should contain contemporaneous records of the transactions carried out.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p> <p>Respondent is available to review and obtain copies of the requested documents at the office of the trustee of Fideicomiso BAP or at a location to be coordinated with Claimant, if necessary.</p>

⁶ Law of value added tax, art 1 (text ordered by Decree No. 280/1997).
<https://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/42701/texact.htm>.

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<p>C. Objections to Document Request (max. 500 words)</p>	<p>BA Desarrollos objects to this request on three grounds.</p> <p><i>First</i>, Argentina already has possession of the “[p]rinted outputs” of Fideicomiso BAP’s ledgers. Argentina requests the “[p]rinted outputs” of Fideicomiso BAP’s ledgers as recorded in its accounting system, alleging that the Claimant has not submitted Fideicomiso BAP’s ledgers into the record, but only “mere spreadsheets prepared for this arbitration, which do not contain the minimum general ledger data, and whose sources cannot be verified (Counter-Memorial, ¶ 403; Exhibits C-195, C-196, C-197, C-198, C-199; R-179).” This is not true. Exhibits C-195 to C-199 contain Fideicomiso BAP’s raw ledger information. [REDACTED] (a well-known fiduciary service firm in Argentina and the trustee of Fideicomiso BAP), certified that the information contained in the general ledgers “is a true copy of the information extracted from [REDACTED]’s internal accounting system” (C-200). That is precisely the “[p]rinted outputs” obtained from Fideicomiso BAP’s accounting system that Argentina is requesting.</p> <p>Argentina’s request appears to confuse Fideicomiso BAP’s general ledgers (C-195 to C-199), which contain the raw data extracted from [REDACTED]’s internal accounting system, with the Claimant’s Damages Worksheet appended as Annex II to its Memorial, in which the Claimant took the information from Fideicomiso BAP’s ledgers and organized it to explain the various components of its damages claim (see Memorial, ¶ 202, fn 473). Accordingly, Argentina’s allegation that raw ledger information has not been provided is wrong.</p> <p><i>Second</i>, even if Argentina were to (or could) clarify what “minimum” data is allegedly missing from the raw ledger information in the record, and Fideicomiso BAP could provide it, the requested documents would be irrelevant to the case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules, Rule 37(b) of the ICSID Rules, Section 16.3.2 of Procedural Order No. 1). Notably, Fideicomiso BAP’s general ledgers are consistent with its audited financial statements as well as the invoices and receipts already submitted (C-34bis, C-36bis, C-201). Argentina does not specify how obtaining the allegedly missing “minimum” data could or would be relevant to the dispute and material to its outcome.</p> <p><i>Third</i>, the only purpose of Argentina’s request is to supplement the evidence Claimant has submitted to satisfy the Claimant’s burden of proof in relation to its damages claim (see Counter-Memorial, ¶ 382). Accordingly, the request is in breach of Section 16.2 of Procedural Order No. 1 as it is “grounded on the need to prove allegations” by Claimant, and it is therefore inadmissible.</p>
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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The request concerns all documents that are not in Respondent’s possession, custody or control. Exhibits C-195 to C-199 are not and do not contain the information that the general ledgers provide, <i>i.e.</i>, the details of credits, debits and balances for each relevant account (Counter-Memorial, ¶¶ 402-403). In fact, Claimant does not deny that such information is missing in those exhibits.</p> <p>Claimant acknowledges that such exhibits only contain “extracts from the general ledgers” and not the complete information (Claimant’s Memorial, annex II-A, ¶ 2 a). Claimant also confirms that it made additions, modifications and exclusions to the information contained in the accounting books (Claimant’s Memorial, fn. 473, Annex II-A, ¶ 5; Counter-Memorial, ¶ 410). That means that exhibits C-195 to C-199 are documents prepared for purposes of this litigation. In addition, such exhibits correspond to the period 2019-2023, even though Claimant’s claim includes expenses allegedly incurred in 2018 (Counter-Memorial, ¶ 404).</p> <p>Claimant has not submitted the raw data generated by the accounting system of Fideicomiso BAP containing the contemporaneous records of the alleged expenses and financial statements provide aggregated information without the degree of openness necessary to identify the claimed expenses (Counter-Memorial, ¶399). ██████’s certifications on the referred exhibits is also irrelevant since such firm does not meet the minimum requirements of independence for such purposes (Counter-Memorial, ¶¶ 405-408).</p> <p>In addition, the requested documents are relevant to the case and material to its outcome.⁷ Indeed, the existence of the alleged damages and their causal relationship with the challenged measures is a matter of dispute between the parties (Claimant’s Memorial, ¶¶ 191, 201-206, annex II-A; Counter-Memorial, ¶¶ 391-421) and involves a claim for a significant amount of purportedly incurred expenses. In addition, the consistency alleged by Claimant between Exhibits C-195 to C-199 and the financial statements of Fideicomiso BAP⁸ cannot be proven given that financial statements, provide aggregated information without the degree of openness necessary to identify the claimed expenses (Counter-Memorial, ¶399).</p>
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⁷ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

⁸ Objections to Document Request No. 4.

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	<p>Furthermore, the request is not burdensome considering that, according to the referred exhibits submitted by Claimant, there are just a few accounts relating to the alleged expenses claimed.⁹ Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the expenses claimed as they appear in the accounting books that must be kept by the Fideicomiso BAP, <i>i.e.</i>, accounting records contemporary with the expenses included in the claim for compensation. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p>
E. Decision of the Tribunal on Document Request	<p>Request No. 4 does not appear to be <i>prima facie</i> relevant to the case and material to its outcome. The Tribunal takes note of Claimant’s statement that the printed outputs have already been submitted into the record and of [REDACTED]’s certification in Doc. C-200. Therefore, the Tribunal decides to reject it.</p>

Document Request 5	
A. Document(s) or category of document(s) requested	<p>Financial Statements of Fideicomiso BAP for the fiscal year 2023.</p>
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant seeks compensation for alleged costs, fees, and expenses, which were purportedly incurred by Fideicomiso BAP (Claimant’s Memorial, ¶¶ 201-206, 214; Annex II-A, ¶ 5; Annex II-B, tab “Payments breakdown”, cells J50, J142, and J145). Argentina challenges Claimant’s allegations (Counter-Memorial, § VI.C).</p> <p>The compensation Claimant seeks for alleged costs, fees, and expenses purportedly incurred by Fideicomiso BAP includes expenses claimed to have been incurred during 2023. However, Claimant has not submitted Fideicomiso BAP’s financial statements for that fiscal year (Counter-Memorial, ¶ 401). Although financial statements by themselves do not have sufficiently disaggregated information to individualize the claimed expenses, they are relevant and material to assess such expenses in combination with Fideicomiso BAP’s mandatory accounting books. Fideicomiso BAP’s Trust Agreement establishes that financial statements are a category of documents that the trustee has to prepare as part of its accountability obligations (“<i>rendición de cuentas</i>” in Spanish) (Agreement No. 1: Trust Agreement, clause 10.5 (C-023A); Agreement No. 2: Trust Agreement, clause 11.5 (C-023D); Agreement No. 3: Trust Agreement, clause 11 (C-023E); Counter-Memorial, ¶ 396).</p> <p>Respondent has no custody or control of the requested document.</p>

⁹ For example, in 2023 there appears to be only five accounts relating to alleged operating expenses and only six accounts relating to alleged capital expenses. C-199, tab “2023 Administrative expenses”, rows 24-70 and tab “2023 Property Investments”, rows 16-27.

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C. Objections to Document Request (max. 500 words)	BA Desarrollos agrees to voluntarily produce Fideicomiso BAP’s audited financial statement for 2023.
D. Reply to Objections to Document Request No. (500 words max.)	Respondent takes note that Claimant “agrees to voluntarily produce Fideicomiso BAP’s audited financial statement for 2023”. Respondent reserves its right to make any observations on the documents produced.
E. Decision of the Tribunal on Document Request	The Tribunal takes note of Claimant’s commitment to “produce Fideicomiso BAP’s audited financial statement for 2023.” Therefore, and in the event that Claimant has not yet produced the requested Document, it shall produce such Document no later than 27 January 2025, in accordance with Annex B to PO No. 1.

Document Request 6	
A. Document(s) or category of document(s) requested	All quarterly accounting reports of Fideicomiso BAP prepared in order to identify funds received by Fideicomiso BAP and their applications, for the fiscal years 2018 to 2023.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant seeks compensation for alleged costs, fees, and expenses, which were purportedly incurred by Fideicomiso BAP (Claimant’s Memorial, ¶¶ 201-206, 214; Annex II-A, ¶ 5; Annex II-B, tab “Payments breakdown”, cells J50, J142, and J145). Argentina challenges Claimant’s allegations (Counter-Memorial, § VI.C).</p> <p>The requested documents are relevant and material because they contain the contemporaneous record of the sources and uses of the funds of Fideicomiso BAP and must therefore provide a detailed account of any costs, fees, or expenses Fideicomiso BAP may have incurred. Fideicomiso BAP’s Trust Agreement establishes that the requested documents are a category of documents that the trustee has to prepare as part of its accountability obligations (“<i>rendición de cuentas</i>” in Spanish) (Agreement No. 1: Trust Agreement, clause 10.5 (C-023A); Agreement No. 2: Trust Agreement, clause 11.5 (C-023D); Agreement No. 3: Trust Agreement, clause 11 (C-023E); Counter-Memorial, ¶ 396).</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p> <p>Respondent is available to review and obtain copies of the requested documents at the office of the trustee of Fideicomiso BAP or at a location to be coordinated with Claimant, if necessary.</p>
C. Objections to Document Request (max. 500 words)	BA Desarrollos objects to this request on three grounds.

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First, considerations of procedural economy, proportionality and fairness justify the dismissal of this request (Article 9(2)(g) of the IBA Rules). Argentina has already made this request in its Request No. 31 during the first document production phase on preliminary objections, and the Tribunal has already dismissed it.

In its Request No. 31, Argentina had requested “[q]uarterly accounting reports of Fideicomiso BAP sufficient to identify funds received by Fideicomiso BAP and their allocation”. In response, BA Desarrollos explained that Fideicomiso BAP’s financial statements, general ledgers, the Loan Agreements between Fideicomiso BAP and BA Desarrollos, BA Desarrollos’s Participation Certificates in Fideicomiso BAP and BA Desarrollos’s Trust Debt Titles in Fideicomiso BAP were all in the record and that “this information is amply sufficient to identify the funds received by Fideicomiso BAP ‘and their allocation.’” Accordingly, the Tribunal rejected Argentina’s request “tak[ing] note of Claimant’s confirmation that the Documents that respond to Respondent’s request are already on the record.” See Procedural Order No. 2, Annex A, pp 54-55, Document Request No. 31. For reasons of procedural economy, proportionality and fairness, Argentina should not be allowed to request the very same documents again and this request should be dismissed.

Second, Argentina justifies this request to supplement the evidence Claimant has submitted to prove its damages case. Accordingly, the request is in breach of Section 16.2 of Procedural Order No. 1 as it is “grounded on the need to prove allegations” by the Claimant, and it is therefore inadmissible.

Third, the requested documents are irrelevant to the case and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1). The requested documents are general accounting reports prepared by the trustee of Fideicomiso BAP to BA Desarrollos. [REDACTED]

[REDACTED] As BA Desarrollos has already explained in the first document production phase (in response to Argentina’s Request No. 31; see Procedural Order No. 2, Annex A, pp 54-55), these documents would not provide any further information from that which BA Desarrollos has already submitted into the record, namely, Fideicomiso BAP’s general ledgers (C-195 to C-200), Fideicomiso BAP’s audited financial statements (C-190 to C-194), payment receipts and invoices representing 92.7% of claimed expenses (see C-34bis, C-36bis, C-201), the Loan Agreements between Fideicomiso BAP and BA Desarrollos (C-32, C-32A, C-32B), BA Desarrollos’s Participation Certificates in Fideicomiso BAP (C-33bis) and BA Desarrollos’s Trust Debt Titles in Fideicomiso BAP (C-62). Moreover, it is puzzling that Argentina requests documents that would show [REDACTED] when Argentina (wrongly) argues that “aggregated accounting data” is not sufficient to prove damages (see Counter-Memorial, ¶ 399).

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	<p>BA Desarrollos further notes that such reports may contain confidential or privileged information unrelated to the trustee’s reporting on the “funds received [...] and their applications” which would be subject to redactions (<i>see</i> Articles 9(2)(b) and 9(2)I of the IBA Rules).</p>
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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The request is proportionate and consistent with the principles of procedural economy and fairness as it seeks to obtain material evidence relevant to the resolution of a key issue in the case and that is easily accessible to Claimant. Claimant’s reliance on the Tribunal’s decision rejecting Argentina’s request No. 31 in Discovery on preliminary objections is irrelevant. On that occasion, Respondent justified its request on the need to verify the inflows of funds to Fideicomiso BAP, (PO No. 2, annex A, Request 31). However, the present request relates to the alleged expenses of the BAP Trust invoked by Claimant. Therefore, Respondent justifies this request on the need to verify the outflows of funds from the trust.</p> <p>Thus, the documents cited by Claimant that the Tribunal had identified in PO No. 2 that could evidence the funds received by Fideicomiso BAP (namely financial statements, loan agreements, etc.) are not responsive to this request.</p> <p>Financial statements contain aggregated information that does not allow the identification of specific expenses such as those alleged by Claimant (Counter-Memorial, ¶ 399). The requested documents are the ones that will provide a breakdown of expenses per vendor, which may be useful to verify the claim as this is the breakdown with which the Claimant presents its alleged expenses (Memorial, annex II-B).</p> <p>Also, Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the funds received by Fideicomiso BAP and their applications as they appear in the accounting books that must be kept by Fideicomiso BAP, <i>i.e.</i>, accounting records contemporary with the expenses included in the claim for compensation. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p> <p>Furthermore, the requested documents are relevant to the case and material to its outcome.¹⁰ Indeed, the existence of the alleged damages and their causal relationship with the challenged measures is a matter of dispute between the parties (Memorial, ¶¶ 191, 201-206, annex II-A; Counter-Memorial, ¶¶ 391-421) and involves a claim for a significant amount of purportedly incurred expenses. The requested documents will provide details of the application of the funds received by Fideicomiso BAP Trust, which is closely related to the expenses the trust may have incurred. Fideicomiso BAP’s Trust Agreement include the requested documents among the category of documents that the trustee has to prepare as part of its accountability obligations which confirms that the requested documents exist.</p> <p>Moreover, it is not plausible that the entire category of documents requested is covered by privilege. Claimant must produce any responsive documents that are not covered by privilege and provide a privilege log for the documents that it believes are covered, including the document type, date, sender/recipient, and justification. Alternatively, Claimant may produce the documents under a</p>
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	confidentiality agreement similar as the one entered by the Parties on June 25, 2024.
E. Decision of the Tribunal on Document Request	Request No. 6 does not appear to be <i>prima facie</i> relevant to the case and material to its outcome. The Tribunal notes that the description of this Request is almost identical to that of Document Request No. 31 of the First Requests. While the scope of this document production phase is broader, as in the initial document production phase, the evidence that is on record and has already been submitted by Claimant appears to be <i>prima facie</i> sufficient to respond to Argentina’s Request. Therefore, the Tribunal decides to reject it.

Document Request 7	
A. Document(s) or category of document(s) requested	All monthly reports on the progress of the real estate project submitted to date by Fideicomiso BAP’s trustees to BA Desarrollos.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant states that construction of the “Viñoly Project” was supposed to start in March 2019 (Claimant’s Memorial, n.237; Witness Statement of ██████████, ¶ 36). Claimant holds Argentina responsible for subsequent delays (Claimant’s Memorial, ¶¶ 104-109, 113-116). The amount related to the “Viñoly Project” is the largest in the category of the “rest of the costs, fees and expenses” claimed by Claimant (Counter-Memorial, ¶ 416). Argentina challenges Claimant’s allegations (Counter-Memorial, § VI.C).</p> <p>The requested documents are relevant and material because they contain contemporaneous explanations as to the progress of the real estate project. Fideicomiso BAP’s Trust Agreement establishes that the requested documents are a category of documents that the trustee has to prepare as part of its accountability obligations (“<i>rendición de cuentas</i>” in Spanish) (Agreement No. 1: Trust Agreement, clause 10.5 (C-023A); Agreement No. 2: Trust Agreement, clause 11.5 (C-023D); Agreement No. 3: Trust Agreement, clause 11 (C-023E); Counter-Memorial, ¶ 396).</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	BA Desarrollos objects to this request on four grounds.

¹⁰ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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First, this request is irrelevant to the dispute and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1). Argentina justifies its request by noting that “[t]he amount related to the ‘Viñoly Project’ is the largest in the category of the ‘rest of the costs, fees and expenses’ claimed by Claimant.” However, BA Desarrollos has not only submitted Fideicomiso BAP’s general ledgers and audited financial statements, but it has also submitted all invoices for the Viñoly Project (C-201, pp 103-123) so it has undoubtedly satisfied its burden of proof in relation to this cost.

Second, and for the same reason, considerations of procedural economy, proportionality and fairness also justify dismissing this request (Article 9(2)(g) of the IBA Rules). BA Desarrollos has already submitted ample and direct evidence of its costs in relation to the Viñoly Project, and it would be inefficient to order the production of additional documents to substantiate these costs.

Third, as the construction phase of the Project never took place due to Argentina’s Treaty breaches, separate reports on the progress of the Project do not exist. Instead,

Accordingly, Argentina’s request is overly broad

Fourth, Argentina justifies this request to supplement the evidence Claimant has submitted to prove its damages case, in particular in relation to costs and expenses of the Viñoly Project. Accordingly, the request is in breach of Section 16.2 of Procedural Order No. 1 as it is “grounded on the need to prove allegations” by the Claimant, and it is therefore inadmissible.

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The requested documents are relevant to the case and material to its outcome.¹¹ Indeed, Claimant argues that this requirement would be irrelevant given that Argentina supposedly justifies it on the alleged expenses related to the “Viñoly Project”. Claimant misses the point. Respondent bases the present request on the fact that the requested document relate to the delays in the approval of the Viñoly Project (Claimant’s Memorial, ¶¶ 104-109, 113-116; Counter-Memorial, § II.A.1.b). Given that the Viñoly Project is the largest in the category of the “rest of the costs, fees and expenses” claimed by Claimant (Counter-Memorial, ¶ 416), the reasons for any delay in its construction are expected to appear in the required document.</p> <p>The requested documents are relevant and material because they contain contemporaneous explanations as to the development of the real estate project.</p> <p>Although Fideicomiso BAP’s Trust Agreement includes the requested documents among those documents that the trustee has to prepare as part of its accountability obligations, Claimant alleges that supposedly “separate reports on the progress of the Project do not exist”. BA Desarrollos states that [REDACTED]</p> <p>[REDACTED] Claimant does not offer to produce such document.</p> <p>In addition, the request is proportionate and consistent with the principles of procedural economy and fairness as it seeks to obtain material evidence relevant to the resolution of a key issue in the case and that is easily accessible to Claimant.</p> <p>Moreover, Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess contemporary reports which refer the causes of the delays of the Viñoly Project. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p>
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¹¹ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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<p>E. Decision of the Tribunal on Document Request</p>	<p>The Tribunal considers that Request No. 7 is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant to the case and material to its outcome.</p> <p>The Tribunal takes note of Claimant’s statement that “separate reports on the progress of the Project do not exist”, but that [REDACTED]. While the reports do not appear to be <i>prima facie</i> relevant and material to detail the “costs, fees, or expenses Fideicomiso BAP may have incurred”, as sought in Request No. 6, they do appear to be so for the purposes of providing “contemporaneous explanations as to the progress of the real estate project”, as sought in this Request. Therefore, Claimant shall produce information related to “the progress of the real estate Project” [REDACTED] no later than 27 January 2025, in accordance with Annex B to PO No. 1.</p>
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<p style="text-align: center;">Document Request 8</p>	
<p>A. Document(s) or category of document(s) requested</p>	<p>All responses or written objections or challenges that BA Desarrollos may have made to the reports and documents issued by Fideicomiso BAP’s trustees as part of their accountability obligations (“<i>rendición de cuentas</i>” in Spanish) for the years 2018 to 2023.</p>
<p>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</p>	<p>Claimant seeks compensation for alleged costs, fees, and expenses, which were purportedly incurred by Fideicomiso BAP (Claimant’s Memorial, ¶¶ 201-206, 214; Annex II-A, ¶ 5; Annex II-B, tab “Payments breakdown”, cells J50, J142 and J145). Claimant also refers to an alleged total loss of value of Fideicomiso BAP (Claimant’s Memorial, ¶¶ 11, 147). Argentina challenges Claimant’s allegations (Counter-Memorial, §§ VI.B, VI.C).</p> <p>The requested documents are relevant and material as they concern contemporaneous objections BA Desarrollos may have made to the reports of the trustees of Fideicomiso BAP material to the assessment of the claimed expenses, as well as the value of the Fideicomiso BAP’s assets. Fideicomiso BAP’s Trust Agreement establishes that the trustee must provide BA Desarrollos with certain reports as part of its accountability obligations (“<i>rendición de cuentas</i>” in Spanish), including (i) monthly progress reports on the real estate projects, (ii) quarterly accounting reports; and (iii) annual financial statements (showing, among other details, the value of assets). BA Desarrollos is entitled to submit written objections to such reports within 30 days of their receipt. Failure to timely make written objections amounts to tacit acceptance (Agreement No. 1: Trust Agreement, clause 10.5 (C-023A); Agreement No. 2: Trust Agreement, clause 11.5 (C-023D); Agreement No. 3: Trust Agreement, clause 11 (C-023E); Counter-Memorial, ¶ 396).</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>

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C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request.</p> <p>The requested documents do not exist. BA Desarrollos did not object to or provide responses to the reports prepared by Fideicomiso BAP’s trustee.</p>
D. Reply to Objections to Document Request No. (500 words max.)	<p>Respondent takes note that “the requested documents do not exist. BA Desarrollos did not object or provide responses to the reports prepared by Fideicomiso BAP’s trustee”.</p>
E. Decision of the Tribunal on Document Request	<p>The Tribunal takes note of Claimant’s statement that the requested Documents do not exist, as Respondent appears to have conceded.</p> <p>Accordingly, it is not necessary for the Tribunal to issue any further orders in connection with Request No. 8 at this stage.</p>

Document Request 9	
A. Document(s) or category of document(s) requested	<p>Detailed breakdown by supplier/vendor, concept, and amount of the alleged expenses that Fideicomiso BAP purportedly incurred as operating expenses in 2018.</p>
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant seeks compensation for alleged costs, fees, and expenses, which were purportedly incurred by Fideicomiso BAP (Claimant’s Memorial, ¶¶ 201-206, 214; Annex II-A, ¶ 5; Annex II-B, tab “Payments breakdown”, cells J50, J142 and J145). Argentina challenges Claimant’s allegations (Counter-Memorial, § VI.C).</p> <p>Among the expenses allegedly incurred by Fideicomiso BAP, Claimant includes USD 975,801 under the item “Total operating expenses 2018”, which does not include any explanation or clarification (Counter-Memorial, ¶ 419; Annex II-B, tab “Payments breakdown”, row 108). The information requested is the minimum required to know what concepts and amounts are involved in the claim for operating expenses allegedly incurred by Fideicomiso BAP in 2018.</p> <p>Claimant contends that the “2018 Opex entries were sourced from the 2018 Fideicomiso BAP Financial Statement (in ARS)” (Claimant’s Memorial, Annex II-A, ¶ 5 (b)(vi)). However, financial statements provide aggregated information that does not allow the identification of specific expenses such as those claimed by Claimant in this case. Furthermore, the spreadsheets submitted by Claimant, which it erroneously refers to as “Fideicomiso BAP Ledger”, do not even include the 2018 operating expenses (Counter-Memorial, ¶¶ 403-404). Respondent has no custody or control of the requested information, save for documents already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request.</p>

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	<p>This request relates to whether BA Desarrollos has satisfied its burden of proof in relation to all components of its damages claim and is therefore in breach of Section 16.2 of Procedural Order No. 1.</p> <p>Moreover, BA Desarrollos did prove that it had incurred 2018 operating expenses by showing that these operating expenses were recorded in Fideicomiso BAP’s 2018 <u>audited</u> financial statement. Indeed, contrary to Argentina’s allegations, the 2018 operating expenses are broken down per category in Fideicomiso BAP’s 2018 financial statement (<i>see C-190</i>, p 7).</p> <p>Notwithstanding the above, BA Desarrollos agrees to voluntarily produce Fideicomiso BAP’s 2018 general ledger which shows a further breakdown of the 2018 operating expenses (Fideicomiso BAP’s 2019-2023 ledgers are already in the record; <i>see C-195 to C-199</i>).</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess documents contemporary with the expenses included in the claim for compensation and that contain the minimum data required to know what concepts and amounts are involved in the claim for operating expenses allegedly incurred by Fideicomiso BAP in 2018. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p> <p>In any event, the fact that Claimant has submitted evidence before this Tribunal does not exempt it from producing all documents in its possession, custody or control that are responsive to this request and that have not already been produced. Claimant is not entitled to cherry-pick the evidence in its possession, custody or control and withhold evidence that is relevant and material.</p> <p>Respondent takes note that Claimant “agrees to voluntarily produce Fideicomiso BAP’s 2018 general ledger which shows a further breakdown of the of the 2018 operating expenses”.</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>The Tribunal takes note of Claimant’s commitment to “voluntarily produce Fideicomiso BAP’s 2018 general ledger which shows a further breakdown of the 2018 operating expenses” which <i>prima facie</i> appears to respond to Respondent’s wish to “know what concepts and amounts are involved in the claim for operating expenses allegedly incurred by Fideicomiso BAP in 2018.”</p> <p>Accordingly, it is not necessary for the Tribunal to issue any further orders in connection with Request No. 9 at this stage.</p>

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Document Request 10	
A. Document(s) or category of document(s) requested	Purchase orders, contracts with suppliers, invoices, and/or equivalent documents supporting the expenses allegedly incurred by Fideicomiso BAP for the period 2018-2023.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant seeks compensation for alleged costs, fees and expenses, which were purportedly incurred by Fideicomiso BAP (Claimant’s Memorial, ¶¶ 201-206, 214; Annex II-A, ¶ 5; Annex II-B, tab “Payments breakdown”, cells J50, J142 and J145). Argentina challenges Claimant’s allegations (Counter-Memorial, § VI.C).</p> <p>Among the expenses allegedly incurred by Fideicomiso BAP, Claimant includes alleged payments to more than 50 suppliers (Claimant’s Memorial, Annex II-B, tab “Payments breakdown”, rows 10-49 and 63-76). The requested documents are relevant and material to assess the claimed expenses. According to Argentina’s Civil and Commercial Code, accounting records must be supported by the relevant documents, which must be kept in a methodical manner that allows them to be easily located and ready for consultation (Counter-Memorial, ¶ 392; Argentina’s Civil and Commercial Code, art. 321). Moreover, the Trust Agreement of Fideicomiso BAP establishes that the trustee must organize, list, and maintain supporting documentation of its management and its reports, records, and books (Agreement No. 1: Trust Agreement, clauses 10.5-10.6 (C-023A); Agreement No. 2: Trust Agreement, clauses 11.5-11.6 (C-023D); Agreement No. 3: Trust Agreement, clauses 11-12 (C-023E)).</p> <p>Respondent has no custody or control of the requested information, save for documents already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on four grounds.</p> <p><i>First</i>, the request is justified by the “need to prove the allegations” made by the Claimant, <i>i.e.</i> whether the Claimant has provided sufficient evidence of the costs that it has incurred. Such a request is in breach of Section 16.2 of Procedural Order No. 1 and is inadmissible.</p> <p><i>Second</i>, the request is irrelevant to the dispute and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1) because BA Desarrollos has satisfied its burden of proof in relation to all of its claimed expenses, including the expenses of Fideicomiso BAP.</p>

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BA Desarrollos has supported the Projects costs incurred by Fideicomiso BAP with Fideicomiso BAP's audited financial statements (C-190 to C-194), general ledgers (C-195 to C-200), and it has also provided payment receipts and invoices for 92.7% of the Project expenses (C-34bis, C-36bis and C-201 and Claimant's Damages Worksheet (Annex II-B), tab "Parameters and results", row 30). Argentina has not pointed out to any inconsistencies (let alone material ones) between Fideicomiso BAP's general ledgers (C-195 to C-200), Fideicomiso BAP's audited financial statements (C-190 to C-194) and the payment receipts and invoices submitted.

In fact, BA Desarrollos has provided evidence beyond what is required to prove its damages case. Indeed, audited financial statements are presumed to be reliable (it is the very reason financial statements are audited). There is ample precedent of tribunals relying on audited financial statements to substantiate damages, including to prove the actual amounts invested without requiring payment receipts and invoices for each expense.¹²

Nevertheless, Argentina is requesting that BA Desarrollos produce all invoices or equivalent documents supporting the expenses incurred by Fideicomiso BAP. For context, Argentina's request relates to only 6.43% of BA Desarrollos's damages claim, which is already supported by Fideicomiso BAP's general ledgers and audited financial statements, which accuracy Argentina has not disputed (and it would have no grounds to do so).

Third, considering that that the representative sample of invoices matches the ledger information, this request imposes an unreasonable burden upon BA Desarrollos (Article 9(2)(c) of the IBA Rules). BA Desarrollos would be required to locate and organize dozens of invoices or equivalent documents for minor amounts. For example, BA Desarrollos would need to produce, for instance, a payment to Promotora Fiduciaria for [REDACTED] (Claimant's Damages Worksheet, Annex II-B, tab "OpEx – Individual entries", row 43). This is neither reasonable nor necessary to prove BA Desarrollos's incurred costs.

Fourth, and for the same reasons as set out above, considerations of procedural economy, proportionality and fairness also justify dismissing this request (Article 9(2)(g) of the IBA Rules).

That being said, BA Desarrollos will continue to undertake a reasonable search to locate any additional invoices and it will produce any documents located no later than with its Reply.

¹² See e.g., *Siemens AG v The Argentine Republic* (ICSID Case No. ARB/02/8) Award, 6 February 2007, CL-5, ¶¶ 358-360 (finding that the audited financial statements of the claimant's subsidiary were sufficient evidence of the amounts invested by claimant in Argentina under customary international law). See also, *Metalclad Corporation v The United Mexican States* (ICSID Case No. ARB(AF)/97/1) Award, 30 August 2000, CL-43, ¶¶ 122-124 (awarding sunk costs on the basis of the investment made by the claimant, as evidence by tax filings supported by independent audit documents).

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to obtain supporting documents of the economic operations of Fideicomiso BAP, which must be mandatorily kept in accordance with Argentine law, and that relates to the alleged expenses. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p> <p>In addition, the requested documents are relevant to the case and material to its outcome.¹³ Claimant’s argument that it would have already “provided receipts and invoices for 92.7% of the Project expenses” is unfounded, and misleading. Indeed, the present request refers to documents related to payments to suppliers of Fideicomiso BAP, which would fall into the category of alleged damages that the Claimant calls “other Project costs, fees and expenses” for which the significant sum of USD 9.8 million is claimed (Claimant’s Memorial, ¶ 204). Claimant has not submitted any purchase orders or contracts with the suppliers. Claimant has only submitted invoices corresponding to 3 out of the more than 50 alleged suppliers involved (Counter-Memorial, ¶¶ 398, 418-419).</p> <p>Notwithstanding the foregoing, the proportional size of the claim is irrelevant to Respondent’s right to verify its validity. Argentina is entitled to exercise its right of defense with respect to the totality of the damages claimed.</p> <p>In any event, the fact that Claimant has submitted evidence before this Tribunal does not exempt it from producing all documents in its possession, custody or control that are responsive to this request and that have not already been produced. Claimant is not entitled to cherry-pick the evidence in its possession, custody or control and withhold evidence that is relevant and material.</p> <p>Furthermore, Claimant has not shown how it would be unreasonable, burdensome or inefficient to produce the documents in this arbitration. Claimant’s arguments regarding procedural economy and fairness lack merit. The request is narrowly tailored to documents that should be readily available in the ordinary course of business and which Claimant is obligated to maintain under the Trust Agreement of Fideicomiso BAP and Argentina’s Civil and Commercial Code. The burden of producing these documents does not outweigh Respondent’s right to access evidence necessary for its defense. Procedural fairness demands that Respondent be given the opportunity to assess and challenge the evidence underlying Claimant’s damages claims.</p> <p>Respondent takes note that Claimant “will continue to undertake a reasonable search to locate any additional invoices and it will produce any documents located no later than with its Reply”.</p>
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¹³ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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E. Decision of the Tribunal on Document Request	<p>The Tribunal takes note of Claimant’s commitment to “continue to undertake a reasonable search to locate any additional invoices and ... produce any documents located no later than with its Reply” and its statement that it has also provided payment receipts and invoices for 92.7% of the Project expenses, allowing Respondent and its experts to assess the expenses claimed.</p> <p>Accordingly, it is not necessary for the Tribunal to issue any further orders in connection with Request No. 10 at this stage.</p>
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Document Request 11	
A. Document(s) or category of document(s) requested	Printed outputs directly obtained from BA Desarrollos’ accounting system, without any amendments or alterations, containing the general ledgers (“ <i>Libros Mayores</i> ” in Spanish) for each of the accrued cost, fee and expense accounts for the period 2018 to 2023.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant seeks compensation for alleged costs, fees and expenses, which were purportedly incurred by BA Desarrollos (Claimant’s Memorial, ¶¶ 201-206; Annex II-A, ¶ 6; Annex II-B, tab “Payments breakdown”, cell J118). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶ 411).</p> <p>The requested documents are relevant and material to assess the claimed expenses as recorded in the general ledgers of BA Desarrollos. The raw data stored in the accounting system of BA Desarrollos should contain contemporaneous records of the transactions carried out.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on three grounds.</p> <p><i>First</i>, the request is justified by the “need to prove the allegations” made by the Claimant, <i>i.e.</i> whether the Claimant has provided sufficient evidence of the costs that it has incurred. Such a request is in breach of Section 16.2 of Procedural Order No. 1 and is inadmissible.</p> <p><i>Second</i>, the request is irrelevant to the dispute and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1) because BA Desarrollos has satisfied its burden of proof in relation to all of its claimed expenses, including the expenses that BA Desarrollos has directly incurred.</p> <p>As part of its damages claim, BA Desarrollos is claiming US\$136,641 consisting of expenses incurred directly by BA Desarrollos on the Project. (<i>see</i> Claimant’s Damages Worksheet, Annex II-B to the Memorial, tab “Payments breakdown”, row 118). This figure amounts to 0.23% of the Claimant’s damages claim before interest.</p>

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BA Desarrollos has supported this component of its damages claim by submitting BA Desarrollos's list of Project expenses (█-6), certified by Mr. █, the Project developer (*see* Witness Statement of █, █, ¶ 89 and p. 26). BA Desarrollos has also produced to Argentina all of its bank statements (*see* Procedural Order No. 2, Tribunal Decision on Document Request No. 5, **R-32** to **R-43** and **R-103** to **R-148**) which are consistent with BA Desarrollos's list of project expenses and further confirm that BA Desarrollos has incurred these expenses. Indeed, Argentina has not pointed out to any inconsistencies (let alone material ones) between the expenses certified by Mr. █ to have been incurred by BA Desarrollos and BA Desarrollos's bank statements. Thus, given the consistency between the expenses listed by Mr. █ and BA Desarrollos's bank statements, the requested documents are not relevant or material to substantiate BA Desarrollos's direct Project expenses of US\$136,641.

Third, for the same reasons as those set out above, considerations of procedural economy, proportionality and fairness also justify dismissing this request (Article 9(2)(g) of the IBA Rules). It would be unreasonable and inefficient for a party to be required to produce additional documents to prove its damages, when the Claimant has already provided sufficient documentation of its incurred expenses, that Argentina has not alleged inconsistencies in the documents provided, and considering that these documents would serve to confirm less than 1% of Claimant's entire damages case before interest.

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the expenses claimed as they appear in the accounting books that must be kept by the BA Desarrollos, <i>i.e.</i>, accounting records contemporary with the expenses included in the claim for compensation. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p> <p>In addition, the requested documents are relevant to the case and material to its outcome.¹⁴ Indeed, the existence of the alleged damages and their causal link with the challenged measures is a matter of dispute between the parties (Claimant’s Memorial, ¶¶ 191, 201-206, annex II-A; Counter-Memorial, ¶¶ 391-421).</p> <p>The argument that the requested documents represents a small proportion of the overall damages claim does not diminish Respondent’s right to fully verify the alleged damages. Argentina is entitled to exercise its right of defense with respect to the totality of the damages claimed.</p> <p>Although Claimant has submitted bank statements and a list of project expenses prepared specifically for this litigation (█-6), these documents fail to establish a causal link between the expenses and the measures attributed to Argentina. Bank statements merely reflect debits, which may not correspond to BA Desarrollos’ transactions but could instead relate to payments made on behalf of third parties. Such payments would not impact BA Desarrollos’ cost or expense accounts but would instead be receivables from those third parties.</p> <p>Mr. █’s allegations are also irrelevant since he does not meet the minimum requirements of independence to certify Claimant’s accounting information (Counter-Memorial, ¶ 411).</p> <p>The requested documents are in the control, custody, or possession of the Claimant, since the general ledgers form the basis of the trial balances,¹⁵ which is the only accounting information on BA Desarrollos that Claimant has produced in this arbitration so far.¹⁶</p> <p>In any event, the fact that Claimant has submitted evidence before this Tribunal does not exempt it from producing all documents in its possession, custody or control that are responsive to this request and that have not already been produced. Claimant is not entitled to cherry-pick the evidence in its possession, custody or control and withhold evidence that is relevant and material.</p> <p>Furthermore, the request is proportionate and consistent with the principles of procedural economy and fairness as it seeks to obtain material evidence relevant to the resolution of a key issue in the case and that is easily accessible to Claimant. Claimant has not shown how it would be unreasonable, burdensome or inefficient to produce the documents in this arbitration.</p>
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E. Decision of the Tribunal on Document Request	Request No. 11 does not appear to be <i>prima facie</i> relevant to the case and material to its outcome considering the evidence that is on record and has already been submitted by Claimant. Therefore, the Tribunal decides to reject it.
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Document Request 12	
A. Document(s) or category of document(s) requested	Purchase orders, contracts with suppliers, invoices and/or equivalent documents supporting the expenses allegedly incurred by BA Desarrollos for the period 2018-2023.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant seeks compensation for alleged costs, fees and expenses, which were purportedly incurred by BA Desarrollos (Claimant’s Memorial, ¶¶ 201-206; Annex II-A, ¶ 6; Annex II-B, tab “Payments breakdown”, cell J118). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶ 411).</p> <p>The requested documents are relevant and material to assess the claimed expenses. The supporting documents should permit examination of the occurrence, nature, amount and cause of the claimed expenses.</p> <p>Respondent has no custody or control of the requested information, save for documents already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on four grounds.</p> <p><i>First</i>, the sole purpose of Argentina’s request is to supplement the evidence Claimant has submitted to prove its damages case. This request relates to US\$136,641 or 0.23% of the Claimant’s principal damages claim, consisting of expenses incurred by BA Desarrollos itself (<i>see</i> Claimant’s Damages Worksheet, Annex II-B, tab “Payments breakdown”, row 118).</p> <p>BA Desarrollos has supported its damages calculation with a certified list of project expenses (█-6), (<i>see</i> █, ¶ 89 and p. 26) and it has further produced its bank statements which show that the amounts claimed were paid directly by BA Desarrollos (<i>see</i> Procedural Order No. 2, Document Request No. 5, R-32-R-43 and R-103-R-148).</p>

¹⁴ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

¹⁵ Jeffreda Brown, Ryan Eichler, “General Ledger vs. General Journal: What’s the Difference?” Investopedia, updated June 29, 2024 (R-180).

¹⁶ Letter from Claimant’s Memorial to Argentina, May 22, 2024, pp. 3-4 (R-014).

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Argentina now requests the underlying invoices for these claimed expenses, although it has not alleged any inconsistencies between BA Desarrollos's list of project expenses and BA Desarrollos's bank statements (nor could it). However, it is Claimant's burden to prove its damages. The request is "grounded on the need to prove allegations" by Claimant, in breach of Section 16.2 of Procedural Order No. 1, and it is therefore inadmissible.

Second, the requested invoices are irrelevant to the case and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1). Given the consistency between BA Desarrollos's list of expenses (█-6) and BA Desarrollos's bank statements, the requested documents will not provide any further information from that which BA Desarrollos has already provided.

All of the expenses certified by █ as having being incurred directly by BA Desarrollos on the Project have a correlative debit entry in BA Desarrollos's bank statements except for four separate cost items, cumulatively amounting to US\$5,054 (*see* █-6, rows 19-21, 25). Three items correspond to █ payments totaling █ and BA Desarrollos has already produced contracts justifying this cost (*see* R-51, p 6; R-52, p 6). Thus, the only claim remaining that does not have an additional source of substantiation is a cost item of █. It would be unreasonably burdensome to require BA Desarrollos to locate the invoice to further substantiate this amount (Article 9(2)(c) of the IBA Rules).

Third, for the same reasons as those set out above, considerations of procedural economy, proportionality and fairness also justify dismissing this request (Article 9(2)(g) of the IBA Rules). It would be unreasonable and inefficient for BA Desarrollos to be required to produce additional documents to prove its damages, and when the Claimant has already provided sufficient documentation in the record attesting that these amounts were incurred on the Project, also bearing in mind that Argentina has not alleged inconsistencies in the documents provided and that these documents go to substantiating less than 1% of Claimant's entire damages case before interest.

Fourth, the request is also excessively broad (*see* Article 3(3)(a)(ii) of the IBA Rules, Section 16.3.1 of Procedural Order No. 1), because Argentina's request is not tailored to cover only the claimed Project expenses.

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to obtain complete and transparent documents on the nature and causal link of BA Desarrollos’ expenses with the measures at stake. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p> <p>In addition, the requested documents are relevant to the case and material to its outcome.¹⁷ Indeed, the alleged amount in dispute, while small in proportion to the overall damages claim, is not a ground to deny Respondent’s ability to verify the claimed damages. Argentina must examine purchase orders, contracts, invoices, and equivalent documentation to determine whether the expenses incurred by BA Desarrollos are causally linked to the measures attributed to Argentina. As argued in the Counter-Memorial (§ VI.C.3.), the causal link of certain expenses —such as those incurred by the Fideicomiso BAP— must be denied because they originate in risks assumed by the successful bidder Respondent requires this evidence to conduct a thorough analysis and exercise its defense rights.</p> <p>Although Claimant submitted bank statements and a list of project expenses prepared for this litigation (█-6), these documents fail to establish the causal link between the alleged expenses and the measures attributed to Argentina. Bank statements merely show debits, which may not correspond to BA Desarrollos’ transactions but instead to payments made on behalf of third parties. Such payments would not affect BA Desarrollos’ cost or expense accounts but rather constitute receivables from third parties.</p> <p>Mr. █’s allegations are also irrelevant since he does not meet the minimum requirements of independence to certify the accounting information of BA Desarrollos (Counter-Memorial, ¶ 411).</p> <p>Even if the debits in the bank statements relate to expenses corresponding to BA Desarrollos, the causal relationship between these outflows of funds and the challenged measure would not be demonstrated.</p> <p>Indeed, payment records alone do not provide sufficient evidence to establish that the expenses were necessary, reasonable, and directly caused by the alleged measures. Without the requested documents, Respondent cannot assess whether the claimed expenses were incurred as a result of the measures in question or if they relate to other causes or activities unrelated to the arbitration.</p> <p>The procedural economy and fairness considerations raised by Claimant do not outweigh Respondent’s right to examine evidence necessary to its defense. Claimant’s arguments attempt to circumvent its obligation to fully substantiate its claims. Procedural fairness demands that Respondent be given the opportunity to assess and</p>
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¹⁷ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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	<p>challenge the evidence underlying Claimant’s damages claims, regardless of the monetary proportion at issue.</p> <p>Furthermore, Claimant has not shown how it would be unreasonable, burdensome or inefficient to produce the documents in this arbitration.</p> <p>Lastly, the request is not overbroad, but limited in terms of issuer/addressee (BA Desarrollos), time frame (2018-2023) and scope (Purchase orders, contracts with suppliers, invoices and/or equivalent documents supporting the expenses).</p>
E. Decision of the Tribunal on Document Request	<p>The Tribunal considers that Request No. 12 is not <i>prima facie</i> proportionate due to the unreasonable burden that might be created by a search for the large number of Documents that appear to be responsive to the Request, and taking into account the low percentage that the expenses referred to in this Request represent in Claimant’s overall claim for damages. Therefore, the Tribunal decides to reject it.</p>

Document Request 13	
A. Document(s) or category of document(s) requested	<p>Service orders, internal records, memorandums, e-mails, and any other documentation related to the alleged provision of the services invoked by Claimant as “project management services to develop the Project”, purportedly performed by BA Desarrollos, for the period 2018-2023.</p>
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant seeks compensation for alleged costs, fees and expenses, among which Claimant includes USD 377,097 for alleged project management services purportedly performed by BA Desarrollos. Claimant calculates this amount as “4% of the Project costs excluding land acquisition costs”, arguing that this would supposedly be “the industry standard” (Claimant’s Memorial, ¶ 205). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶¶ 412-414).</p> <p>The requested documents are relevant and material to assess the alleged project management services. Claimant’s internal documents should contain records of the provision of the alleged services it invokes. Respondent has no custody or control of the requested information, save for documents already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on four grounds.</p>

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First, this request is excessively broad and unreasonably burdensome (Article 3(3)(a)(ii) and Article 9(2)(c) of the IBA Rules, Section 16.3.1 of Procedural Order No. 1). It would require BA Desarrollos to produce thousands of documents, namely all documents relating to the provision of “project management services to develop the Project” by BA Desarrollos or EMS Capital, including but not limited to “internal records, memorandums, e-mails”, either by BA Desarrollos or EMS Capital, for a period of six years. This encompasses all of EMS Capital’s or BA Desarrollos’s documentation relating to the development of the Project, and would include privileged information as well.

Second, the request is irrelevant to the case and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1). As BA Desarrollos explained in the Memorial, it is claiming a 4% flat project management fee, assessed on the Project expenses excluding the purchase price of the Plots, because it is a standard development cost that is applied in the real estate industry (Memorial, ¶ 205). The documents prepared in the course of managing the Project would not be relevant to substantiating this expense, since it is a flat fee and is not based on the number of documents prepared or the time spent on Project development (which in any case was considerable, as Mr. ██████ describes in his witness statement; *see* ██████, ¶ 88).

Third, and for the same reasons as set out in the first and second objection, considerations of procedural economy, proportionality and fairness also justify dismissing this request (Article 9(2)(g) of the IBA Rules).

Fourth, the request is “grounded on the need to prove allegations” by Claimant, *i.e.* whether it has carried its burden of proof in claiming 4% in project management fees. Such a request is in breach of Section 16.2 of Procedural Order No. 1, and it is therefore inadmissible.

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The request is not overbroad, but limited in terms of issuer/addressee (BA Desarrollos), time frame (2018-2023) and scope (documents related to the alleged provision of the services invoked by Claimant as “project management services to develop the Project).</p> <p>In addition, it is not plausible that the entire category of documents requested is covered by privilege. Claimant must produce any responsive documents that are not covered by privilege and provide a privilege log for the documents that it believes are covered, including the document type, date, sender/recipient, and justification. Alternatively, Claimant may produce the documents under a confidentiality agreement similar as the one entered by the Parties on June 25, 2024.</p> <p>Moreover, the requested documents are relevant to the case and material to its outcome.¹⁸ Indeed, Claimant’s assertion that the 4% flat project management fee is a “standard development cost” lacks substantiation and prevents Respondent from exercising its right to a full defense. Claimant’s calculation of USD 377,097 as project management fees is based solely on an alleged industry standard referenced in Mr. ██████’s witness statement (Witness Statement of ██████ ¶ 88). However, his testimony provides no source or evidence to support the percentage used. Without access to the requested documents, Respondent cannot evaluate whether the alleged project management services were indeed provided, whether the claimed amount is reasonable, or whether it reflects actual costs incurred by Claimant. The absence of such evidence leaves the claim unsupported and undermines Respondent’s ability to meaningfully challenge it.</p> <p>While Claimant argues that the fee is a flat rate, it is not exempt from scrutiny or verification, particularly when its calculation is contested. Respondent must be afforded the opportunity to examine whether Claimant’s internal documents supports the services for which it claims compensation.</p> <p>Furthermore, the request is proportionate and consistent with the principles of procedural economy and fairness as it seeks to obtain material evidence relevant to the resolution of a key issue in the case and that is easily accessible to Claimant.</p> <p>Lastly, Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the reasonableness of the 4% flat fee for alleged project management services purportedly performed by BA Desarrollos. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p>
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¹⁸ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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E. Decision of the Tribunal on Document Request	The Tribunal considers that the description of Request No. 13 is excessively broad, and that complying with it would impose an unreasonable burden on Claimant. Therefore, it decides to reject it.
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Document Request 14	
A. Document(s) or category of document(s) requested	All documents and supporting data used to prepare the document entitled “Catalinas Norte II. Financial Summary. Preliminary. Subject to further review and evaluation” dated August 2018 (C-134), and the updated and final versions of that document, together with the documents and supporting data used to prepare them, including but not limited to any Excel spreadsheets.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant invokes the right to develop its project in the Catalinas Norte II area and its business model for the project. Mr. ██████ testifies that he helped gather information on projected construction costs for the project, totaling USD 258 million (Claimant’s Memorial, nn.144, 237; Witness Statement of ██████, ¶ 36 and nn.8, 9, 15). Claimant has submitted as exhibit C-134 a preliminary financial summary of the project. Argentina has challenged the viability of Claimant’s project (Counter-Memorial, §§ II.A.1.b, II.A.2.e).</p> <p>The requested documents are relevant and material to assess Claimant’s financial projections and costs in relation to the project.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on four grounds.</p> <p><i>First</i>, the requested documents are irrelevant to the case and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1). BA Desarrollos is claiming compensation on the basis of a “sunk costs” approach, for the costs and expenses actually incurred on the Project. <i>See</i> Memorial, ¶¶ 197-198. BA Desarrollos is not using an income-based methodology and is not relying on projections for its damages claim. Thus, the production of all “documents and supporting data” used to prepare “Claimant’s financial projections and costs” in its business plan as well as updated versions is irrelevant to the case and immaterial to its outcome. Further, Argentina has not disputed the financial viability of Claimant’s Project, or the assumptions in the business plan. Argentina has (wrongly) challenged the legal viability of the Viñoly Project (<i>see</i> Counter-Memorial, ¶¶ 59, 104-105), for which the documents requested here (data supporting the business plan) are entirely irrelevant and immaterial.</p>

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Second, it would be excessively broad and unreasonably burdensome for BA Desarrollos to produce all documents and supporting data used to prepare its business plans (*See* Article 3(3)(a)(ii) and Article 9(2)(c) of the IBA Rules; Section 16.3.1 of Procedural Order No. 1). Argentina has not challenged any of the assumptions in the business plan, nor has it put forward its own version of what the business plan should have been, so there is no need for Argentina to review the underlying data and assumptions used for the business plan.

Third, for the same reasons as those set out above in the first and second objections, considerations of procedural economy, proportionality and fairness also justify dismissing this request (Article 9(2)(g) of the IBA Rules). It would be unreasonable and inefficient to require BA Desarrollos to produce documents when the business plan has not been questioned and the Claimant has not presented its quantum claim on the basis of the business plan.

Fourth, Argentina’s request is justified by the “need to prove the allegations” made by the Claimant, *i.e.* whether the Claimant has provided sufficient evidence of its financial projections for the Project. Such a request is in breach of Section 16.2 of Procedural Order No. 1 and is inadmissible.

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The requested documents are relevant to the case and material to its outcome.¹⁹ Claimant’s assertion that the requested documents are irrelevant and immaterial ignores the critical context of the Viñoly Project’s significance. The Viñoly Project represents 47% of non-AABE expenses. Claimant justifies the project’s cancellation by alleging delays attributable to Respondent in granting authorization (Memorial, ¶ 101). The requested documents are therefore indispensable for evaluating the financial feasibility of the Viñoly Project and assessing whether Claimant’s decision to modify its business strategy was linked to Respondent’s alleged conduct or not.</p> <p>In addition, the request is not overbroad. The scope of the request is limited to specific documents and supporting data used to prepare the financial summary and its updates, focusing exclusively on relevant financial information. Respondent does not seek an exhaustive production of Claimant’s records but rather the documents directly supporting Exhibit C-134, which Claimant has already produced in the arbitration, and subsequent iterations. This narrowly tailored request minimizes any undue burden on Claimant while ensuring procedural fairness.</p> <p>Furthermore, the request is both proportionate and consistent with the principles of procedural economy and fairness as it seeks to obtain material evidence relevant to the resolution of a key issue in the case and that is easily accessible to Claimant. Claimant has not shown how it would be unreasonable, burdensome or inefficient to produce the documents in this arbitration.</p> <p>Moreover, Respondent does not base its request on “the need to prove the Claimant’s allegations” but on Respondent’s right to test Claimant’s allegations and evidence, including assessing the assumptions and data underlying Claimant’s financial models. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>The Arbitral Tribunal considers that the requested Documents appear to be <i>prima facie</i> relevant and material for Respondent to assess the financial projections and costs for the Project.</p> <p>In addition, the Tribunal does not agree with the statement that it is unreasonably burdensome to identify the Documents and data used to prepare the one Document referred to in this Request. However, taking into account Claimant’s assertions, the Tribunal invites Claimant to conduct a <u>reasonable</u> search for the Documents that respond to Request No. 14 and submit any results to Respondent no later than 27 January 2025, in accordance with Annex B to PO No. 1.</p>

¹⁹ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The requested documents are relevant to the case and material to its outcome.²⁰ The Viñoly Project constitutes 47% of the non-AABE expenses, making its viability central to Claimant’s allegations. The requested documents are necessary to evaluate whether Claimant had secured or realistically projected sufficient funding to develop the project. This is directly relevant to the case, as Claimant attributes the abandonment of the Viñoly Project to Respondent (Memorial, ¶ 101).</p> <p>Claimant justifies the project’s cancellation by alleging delays attributable to Respondent in granting authorization (Memorial, ¶ 101). The requested documents are therefore indispensable for evaluating the financial feasibility of the Viñoly Project and assessing whether Claimant’s decision to modify its business strategy was linked to Respondent’s alleged conduct or not.</p> <p>In any event, the fact that Claimant has submitted evidence before this Tribunal does not exempt it from producing all documents in its possession, custody or control that are responsive to this request and that have not already been produced. Claimant is not entitled to cherry-pick the evidence in its possession, custody or control and withhold evidence that is relevant and material.</p> <p>Furthermore, the request is proportionate and consistent with the principles of procedural economy and fairness as it seeks to obtain material evidence relevant to the resolution of a key issue in the case and that is easily accessible to Claimant. The scope of the request is narrowly tailored to financing-related documents, ensuring that the burden on Claimant is minimal. Claimant’s assertion that [REDACTED] does not render the requested documents irrelevant. On the contrary, these documents will assist to establish whether Claimant had a feasible financing strategy for the project or whether the lack of financing undermined the project’s viability.</p> <p>Respondent takes note that Claimant “[REDACTED]”. As per documents covered by privilege, Claimant may produce the documents with text redactions or, as appropriate, under a confidentiality agreement similar as the one entered by the Parties on June 25, 2024.</p>
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²⁰ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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E. Decision of the Tribunal on Document Request	<p>The Tribunal considers that Request No. 15 is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant to the case and material to its outcome, to the extent that they will allow an assessment of whether the financing obtained by Claimant to develop the Project was sufficient. Therefore, Claimant shall produce the Documents that respond to this Request no later than 27 January 2025, in accordance with Annex B to PO No. 1.</p> <p>The Tribunal recognizes Claimant’s argument that [REDACTED] [REDACTED].” Should the requirements set out in para. 28 of PO No. 8 be satisfied, Claimant may produce the requested documents with redactions to the privileged information or enter into a confidentiality agreement with Respondent, where possible. In those cases in which the alleged privilege cannot be properly safeguarded through redaction, Claimant, instead of producing the Document, may choose to disclose its existence and characteristics in a privilege log, in accordance with para. 29 of PO No. 8.</p>
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Document Request 16	
A. Document(s) or category of document(s) requested	All documents related to EMS Capital’s decision to set up a special purpose vehicle to participate in the auctions and bid for the plots in the Catalinas Norte II area, and to select a Delaware LLC as the form of such SPV, including all documents related to the consideration of other forms of structuring its project.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant states that BA Desarrollos is a US investor protected under the Argentina-US BIT simply because it is a limited liability company incorporated under the laws of the State of Delaware (Claimant’s Memorial, ¶¶ 123-124). Mr. [REDACTED] states that Delaware LLCs are “[t]he standard way to structure investments in the real estate industry” (Witness Statement of [REDACTED], ¶ 16). Argentina challenges Claimant’s allegations (Counter-Memorial, §§ II.B, IV.A).</p> <p>The requested documents are relevant and material to assess the structuring of the alleged investment at the heart of the discussion between the parties in relation to Argentina’s objection in connection to Article 1(2) of the Argentina-US BIT.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	BA Desarrollos objects to this request on two grounds.

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First, considerations of procedural economy, proportionality and fairness justify dismissing this request (Article 9(2)(g) of the IBA Rules). Indeed, BA Desarrollos is surprised that Argentina has made a further request for documents by reference to its denial of benefits objection. As the Tribunal knows well, Argentina was granted the right to request documents relating to its objection under Article I(2) of the Treaty in an initial document production phase. *See* Transcript of First Session, 26 January 2024 (excerpt), **C-204**, p 1. Argentina then submitted 37 requests for documents under that initial phase. Argentina already had ample opportunity to request these documents (this request is not based on any facts that postdate the Claimant’s Memorial) but failed to do so. For reasons of procedural economy, proportionality and fairness, Argentina should be barred from reopening a procedural phase that has already ended.

Second, as explained in the Memorial, it is standard in the real estate industry to establish special purpose vehicles in Delaware as LLCs to develop real estate projects. *See* Memorial, ¶¶ 50-51; [REDACTED], ¶¶ 14-16. Accordingly, given the widespread practice, the creation of Delaware LLCs is routine for real estate projects. In any event, any assessment of corporate structuring (should such documents exist) would entail the involvement of counsel and would be privileged.

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The request is proportionate and consistent with the principles of procedural economy and fairness as it seeks to obtain material evidence relevant to the resolution of a key issue in the case and that is easily accessible to Claimant.</p> <p>The requested documents are relevant to the case and material to its outcome.²¹ Contrary to what Mr. ██████ stated, Expert Verstein pointed out that “[t]here are several standard and viable structures for real estate projects” (Verstein Expert Report, ¶ 109). Understanding why the Claimant chose to structure its investment through an LLC as an SPV, rather than any other possible structure, is relevant for determining the application of article 1(2) regarding the substantial business activity of the company created with that structure.</p> <p>Claimant states that “[s]hell companies hold shares and do nothing more. In contrast, BA Desarrollos was established as an SPV to actively develop real estate projects, which it did. BA Desarrollos developed the Project in the Catalinas Norte II Area through EMS Capital” (Observations on the Request for Bifurcation, ¶ 53). Argentina challenges these allegations by stating that the structure chosen by Claimant does not require any substantial business activity.</p> <p>Moreover, it is not plausible that the entire category of documents requested is covered by privilege. Claimant must produce any responsive documents that are not covered by privilege and provide a privilege log for the documents that it believes are covered, including the document type, date, sender/recipient, and justification. Alternatively, Claimant may produce the documents under a confidentiality agreement similar as the one entered by the Parties on June 25, 2024.</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>The Tribunal considers that Request No. 16 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 presented by Respondent; in particular, to assess why Claimant decided to structure its investment in the manner that it did (see, for example, Memorial on Jurisdictional Objections and Counter-Memorial, para. 197).</p> <p>The Tribunal recognises that the fact that Respondent did not make the Request during the initial document production phase may potentially imply a loss of efficiency. Should that be the case, the Tribunal may take it into account when making a final decision on the award of costs.</p> <p>In light of the above, Claimant shall produce the Documents that respond to this Request no later than 27 January 2025, in accordance with Annex B to PO No. 1.</p>

²¹ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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Document Request 17	
A. Document(s) or category of document(s) requested	Documents relating to AGP’s supposed acceptance of the redesign and relocation of the control tower, in particular the alleged AGP’s acceptance.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant alleges that the redesign and relocation of the control tower were supposedly approved by AGP (Claimant’s Memorial, ¶ 80). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶¶ 58, 74, and § II.A.2.e).</p> <p>The requested documents are relevant and material to assess the alleged AGP’s approval of the redesign and relocation of the control tower invoked by Claimant and the costs and expenses in relation thereto. Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on three grounds.</p> <p><i>First</i>, the requested documents are under Argentina’s possession, custody or control (<i>see</i> Article 3(3)(c) of the IBA Rules). As explained in the Memorial the “AGP”, <i>i.e.</i> the General Port Administration or <i>Administración General de Puertos</i>, is a state-owned company that administers the Buenos Aires Port (<i>see</i> Memorial, ¶ 33; <i>see also</i> Counter-Memorial, ¶ 74). The General Port Administration reports to the Undersecretariat of Ports which ultimately reports to the Ministry of Transport (<i>i.e.</i>, Argentina’s executive branch) (Memorial, fn 37). Accordingly, the requested documents, referring to the General Port Administration’s acceptance of the redesign and relocation of the train control station, are in Argentina’s possession, custody or control.</p> <p><i>Second</i>, the requested documents are irrelevant to the case and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1).</p> <p>Argentina justifies its request by alleging that the documents are relevant to “assess the alleged AGP’s approval of the redesign and the relocation of the control tower”. However, in its Counter-Memorial, Argentina does not dispute that the AGP approved the redesign of the control tower and accepted to relocate it (nor could it, as ██████████ was involved in these discussions and addresses these facts in his witness statement; <i>see</i> ¶¶ 40-42, 45). All that Argentina alleges is that any costs incurred were to be borne by Fideicomiso BAP because there was no contractual obligation for Argentina to pay for it (<i>see</i> Counter-Memorial, ¶¶ 73-75). However, the documents that Argentina requests <i>i.e.</i> documents showing the AGP’s acceptance of the redesign of the control tower, have no connection to Argentina’s allegations. In any event, BA Desarrollos is claiming the costs of the redesign and relocation of the control tower as a component of BA Desarrollos’s “sunk costs” in the Project (<i>see</i> Memorial, ¶ 197).</p>

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	<p><i>Third</i>, the documents that Argentina has requested would go to assessing whether the Claimant has proved that AGP accepted the redesign and relocation of the tower. Accordingly, the request is in breach of Section 16.2 of Procedural Order No. 1 as it is “grounded on the need to prove allegations” by the Claimant and is therefore inadmissible.</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The request concerns all documents that are not in Respondent’s possession, custody or control. AGP is a state-owned company that is subject mainly to private law, although characterized by being wholly and expressly state-owned. Moreover, under Law 20,705, state-owned companies are decentralized entities with their own assets and legal personality.</p> <p>In addition, the requested documents are relevant to the case and material to its outcome.²² The alleged costs of redesign and relocation of the control tower are part of the claim as Claimant “expected that it would eventually have to bear that cost” (Claimant’s Memorial, ¶ 80) based on an alleged approval of the AGP, which is disputed by Respondent (Counter-Memorial, ¶¶ 58, 74, and §§ II.A.2.b, II.A.2.e)</p> <p>Moreover, Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess that any of the costs incurred by Fideicomiso BAP in connection with the relocation of the control tower were at its own expense. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>By means of Request No. 17, Argentina appears to seek Documents that may prove that AGP accepted the redesign and relocation of the control tower, an issue for which Claimant appears to have the burden of proof. For this reason, Respondent’s alleged purpose in support of this Request (to assess whether “any of the costs incurred by Fideicomiso BAP in connection with the relocation of the control tower were at its own expense”) does not <i>prima facie</i> appear to be served by this Request. Accordingly, the Tribunal decides to reject it as it does not satisfy Section 16.2 of PO No. 1.</p>

²² Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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Document Request 18	
A. Document(s) or category of document(s) requested	All documents related to the presentation, marketing, publicity, and related activities in connection with the Viñoly Project, including but not limited to any communications, presentations and slides to that effect.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant states that it presented the Viñoly Project to various multinational companies interested in leasing space (Claimant’s Memorial, ¶ 92). In footnote 216 of its Memorial it refers to a presentation to [REDACTED]. In its request for compensation, it includes advertising and media consultancy services among the costs, fees and expenses for which it claims reimbursement (Claimant’s Memorial, ¶ 204). Argentina challenges Claimant’s allegations (Counter-Memorial, §§ II.A.2.e, VI.B, VI.C).</p> <p>The requested documents are relevant and material to assess Claimant’s assertions and claims in relation to the Viñoly Project. Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on four grounds.</p> <p><i>First</i>, the requested documents are irrelevant to the case and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1). Argentina does not dispute that the Claimant marketed the Viñoly Project to multinationals such as [REDACTED] and [REDACTED], and does not take issue with the marketing materials presented (Argentina’s reference to Sections II.A.2.e, VI.B and VI.C of its Counter-Memorial are inapposite since these sections do not dispute the Claimant’s marketing efforts in relation to the Viñoly Project to attract prospective tenants).</p> <p>Argentina’s justification for its request is “to assess Claimant’s assertions and claims in relation to the Viñoly Project.” However, Argentina does not explain what assertion or claim the requested documents are relevant for, because they are not relevant.</p> <p><i>Second</i>, Argentina mentions in its justification for this request that BA Desarrollos is claiming compensation for the costs, fees and expenses relating to advertising and media consultancy services. However, BA Desarrollos has already amply proved its damages (<i>see e.g.</i>, BA Desarrollos’s objection to Document Request No. 1). Furthermore, the requested documents (<i>i.e.</i>, marketing “communications, presentations and slides”) will not detail the costs incurred by BA Desarrollos so Argentina’s justification for these documents is misplaced.</p>

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	<p><i>Third</i>, the request is excessively broad and unreasonably burdensome (Articles 3(3)(a)(ii) and 9(2)(c) of the IBA Rules; Section 16.3.1 of Procedural Order No. 1). The request would capture documents such as all communications and presentations related to several meetings with prospective tenants although Argentina has not reasonably justified why it requires the production of these documents.</p> <p><i>Fourth</i>, should this request be construed as Argentina seeking to disprove that the Claimant expended great effort in marketing the Viñoly Project then the request is in breach of Section 16.2 of Procedural Order No. 1 since it would be “grounded on the need to prove allegations” by the Claimant, and it is therefore inadmissible.</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The requested documents are relevant to the case and material to its outcome.²³ Indeed, Argentina has asserted and asserts that Claimant’s alleged costs and expenses on “marketing efforts” should not be covered by Respondent under any circumstance (Counter-Memorial, ¶391, §§ II.A.2.e, VI.B, VI.C). Respondent has further asserted that any expense that Claimant pretends to be reimbursed by Respondent has to be evidenced by Claimant (<i>See, inter alia</i>, Counter-Memorial, §§ VI.A.3-VI.B)</p> <p>In any event, the fact that Claimant has submitted evidence before this Tribunal does not exempt it from producing all documents in its possession, custody or control that are responsive to this request and that have not already been produced. Claimant is not entitled to cherry-pick the evidence in its possession, custody or control and withhold evidence that is relevant and material. Claimant has not even stated that such documents are <i>not</i> in its possession, custody, or control.</p> <p>Moreover, the request is not overbroad, but clearly limited in terms of issuer/addressee (Claimant and Fideicomiso BAP), time frame (around the date when Claimant presented the Viñoly Project to various multinational companies) and scope (documents related to the presentation, marketing, publicity, and related activities in connection with the Viñoly Project).</p> <p>Furthermore, Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess documents to be kept by Claimant, which must contain the detail of the expenses alleged in the claim for damages related to the presentation, marketing, publicity, and related activities in connection with the Viñoly Project. This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p>

²³ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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E. Decision of the Tribunal on Document Request	Request No. 18 appears to require the production of Documents evidencing “advertising and media consultancy services among the costs, fees and expenses for which [Claimant] claims reimbursement.” However, such information does not appear to stem directly from the requested Documents. Therefore, this Request does not appear to be <i>prima facie</i> relevant to the case or material to its outcome. Accordingly, the Tribunal decides to reject it.
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Document Request 19	
A. Document(s) or category of document(s) requested	All documents related to the three replacements of Fideicomiso BAP’s trustees, including but not limited to minutes, summaries, communications, presentations, brochures, analysis, reports and memoranda.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant argues that the replacements of Fideicomiso BAP’s trustees did not affect the timing of the execution of the deeds (Witness Statement of ██████████, ¶ 58). Argentina challenges Claimant’s allegations (Counter-Memorial, § II.A.1.a).</p> <p>The requested documents are relevant and material to assess Claimant’s assertions and claims in relation to the replacements of Fideicomiso BAP’s trustees.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on three grounds.</p> <p><i>First</i>, this request is excessively broad (Article 3(3)(a)(ii) of the IBA Rules, Section 16.3.1 of Procedural Order No. 1).</p> <p>Fideicomiso BAP had three trustees:</p> <ul style="list-style-type: none"> • RBYK Fiduciaria SA (██████████), • Promotora Fiduciaria SA (██████████) • ██████████ (██████████) and ██████████ (██████████) (<i>see</i> Memorial, fn 104). <p>The deeds for the Plots should have been executed at the end of December 2018 for Plot 3 and mid-January 2019 for Plot 2. Memorial, ¶ 85, fn 194.</p>

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Argentina requests all documents relating to the replacement of the trustee of Fideicomiso BAP. However, the selection of RBYK as the first trustee and the change of trustee in [REDACTED] from RBYK to Promotora Fiduciaria had no bearing on whether the deeds could be executed since it took place several months before the required deadline for Argentina to execute the deeds. In its Counter-Memorial, Argentina only makes allegations in relation to the change of trustee from Promotora Fiduciaria to [REDACTED]. However, as explained below, the documents that Argentina requests here are irrelevant to its allegations and are in any event likely protected by legal privilege.

Second, this request is irrelevant to the case and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1). BA Desarrollos has submitted into the record the amendments to the Trust Agreement which documents the date of the change of trustee (*see C-23D and C-23E*). BA Desarrollos also explained that the AABE had requested the replacement of Promotora Fiduciaria SA because, at the time the Auctions for Plots 2 and 3 occurred (*i.e.*, before Promotora Fiduciaria became the trustee), Promotora Fiduciaria [REDACTED]. *See* Memorial, para 90; [REDACTED], ¶ 58, fn 13. Argentina does not challenge this allegation.

Any internal documents relating to BA Desarrollos's replacement of the trustee of Fideicomiso BAP is irrelevant to establishing whether Argentina was obligated to execute the deeds for the Plots.

Third, the appointment and replacement of trustees was done with the assistance of counsel and thus any documents that could be responsive to this request are likely protected by privilege (Article 9(2)(b) of the IBA Rules).

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The request is not overbroad but limited in terms of issuer/addressee (Claimant, Fideicomiso BAP, RBYK Fiduciaria, Promotora Fiduciaria and [REDACTED]), time frame (around when the three replacements of Fideicomiso BAP’s trustees took place) and scope (documents related with the trustees’ replacement). Indeed, it is limited to the three instances in which Fideicomiso BAP’s trustee was replaced.</p> <p>In addition, the requested documents are relevant to the case and material to its outcome.²⁴ Indeed, the details of the trustee’s replacements are relevant as the Claimant claimed that the delay to execute the deeds caused “BA Desarrollos to abandon the Viñoly Project” (Claimant Memorial, ¶¶ 99-112). Argentina challenges this allegation as such delay was caused by the several changes of the trustees of Fideicomiso BAP (§ II.A.1.a). Despite Claimant’s claims, the Trust Agreement and its amendments (C-23-D and C-23E) do not contain further information behind the decision of the trustees’ replacements. In addition, Claimant relies on Mr. [REDACTED]’s witness statement (Witness Statement of [REDACTED], ¶ 58, fn. 13). However, his testimony provides no source or evidence to support.</p> <p>Furthermore, it is not plausible that the entire category of documents requested is covered by privilege. Claimant must produce any responsive documents that are not covered by privilege and provide a privilege log for the documents that it believes are covered, including the document type, date, sender/recipient, and justification. Alternatively, Claimant may produce the documents with text redactions or, as appropriate, under a confidentiality agreement from Respondent.</p>
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²⁴ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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E. Decision of the Tribunal on Document Request	<p>The Tribunal considers that Request No. 19 is, for the most part, narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to establish Argentina’s argument that the delay in executing the deeds was caused by the repeated changes in Fideicomiso BAP’s trustees.</p> <p>However, the Tribunal considers that the Request, in requiring “[a]ll documents related to the three replacements of Fideicomiso BAP’s trustees” appears to be excessively broad, and it thus decides to reduce it to:</p> <p>“All documents that establish the reasons for the three replacements of Fideicomiso BAP’s trustees.”</p> <p>Claimant shall produce the Documents that respond to the reduced scope of the Request no later than 27 January 2025, in accordance with Annex B to PO No. 1.</p> <p>The Tribunal acknowledges Claimant’s argument that any Documents that respond to the Request are likely protected by legal privilege. Should the requirements set out in para. 28 of PO No. 8 be satisfied, Claimant may produce the requested Documents with redactions to the privileged information or enter into a confidentiality agreement with Respondent, where possible. In those cases in which the alleged privilege cannot be properly safeguarded through redaction, Claimant, instead of producing the Document, may choose to disclose its existence and characteristics in a privilege log, in accordance with para. 29 of PO No. 8.</p>
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Document Request 20	
A. Document(s) or category of document(s) requested	All documents prepared by Claimant or its related entities or persons in connection with any administrative and/or criminal investigations into the auctions of the plots in the Catalinas Norte II area.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant alleges that the delay in executing the deeds were due to alleged political hostilities, and that the criminal investigations are no justification (Claimant’s Memorial, ¶ 154). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶¶ 305-306, 345, 347).</p> <p>The requested documents are relevant and material to assess Claimant’s assertions and claims in relation to the investigations into the auctions of the plots in the Catalinas Norte II area.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	BA Desarrollos objects to this request on three grounds.

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First, any responsive documents are likely protected by privilege (*see* Article 9(2)(b) of the IBA Rules).

As explained in the Memorial, BA Desarrollos initially learned about the criminal investigations through the press and “assumed that the investigations were based on political infighting as it was well-known in Argentina that there was animosity between Vice President Kirchner and former President Macri” (Memorial, ¶ 105; [REDACTED], ¶ 74).

The first time that Fideicomiso BAP received a formal notice from the Public Prosecutor [REDACTED] was in May 2023, one month after it had submitted the Follow-Up Letter to Argentina notifying of its dispute under the Treaty. *See* Memorial, ¶ 115. Any reaction to this notice and any subsequent advice on the impact of the criminal or administrative investigations on Fideicomiso BAP’s or BA Desarrollos’s rights was prepared with the advice of counsel and is protected by privilege.

Second, the requested documents are irrelevant to the case and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1). Argentina alleges that the fact that these investigations exist (without more) justifies its refusal to execute the deeds for the Plots (*see e.g.*, Counter-Memorial, ¶ 347). Accordingly, the documents that Argentina requests from the Claimant, namely the Claimant’s reaction to these investigations, are irrelevant to Argentina’s allegation.

Third, considerations of fairness and equality of the Parties justify the dismissal of this request (Article 9(2)(g) of the IBA Rules). Indeed, the strong informational imbalance here is striking. It is Argentina that has possession of the complete record of the criminal investigations and the administrative investigations (including responses from the targets of the investigations, which would undoubtedly show that the investigations are baseless), none of which are in the record. While withholding relevant documents in its possession, Argentina seeks documents about the Claimant’s reaction to the investigations. It bears repeating that the Claimant has little information about the criminal investigation or the administrative proceeding other than what is reported in the press (although the Claimant’s Document Request No. 1 of 9 December 2024 should rectify the informational imbalance).

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>It is not plausible that the entire category of documents requested is covered by privilege. Claimant must produce any responsive documents that are not covered by privilege and provide a privilege log for the documents that it believes are covered, including the document type, date, sender/recipient, and justification. Alternatively, Claimant may produce the documents with text redactions or, as appropriate, under a confidentiality agreement from Respondent.</p> <p>In addition, the requested documents are relevant to the case and material to its outcome.²⁵ Respondent challenges that delay in executing the deeds were due to alleged political hostilities, because the reports that led to the investigation of the public auctions were “raised during the last year of the administration of the Executive Branch before last, considering also that the auditing tasks should have started before the report was prepared” and the investigation is still in process (Counter-Memorial, ¶ 347). The requested documents are relevant to assess the role of the administrative and criminal investigations on the process of execution of the deeds.</p> <p>Furthermore, the request is proportionate and consistent with the principles of procedural economy and fairness as it seeks to obtain material evidence relevant to the resolution of a key issue in the case and that is easily accessible to Claimant.</p> <p>Moreover, the request concerns all documents that are not in Respondent’s possession, custody or control. In particular, and as explained previously, the criminal court file is in the custody of the criminal court, which is part of the Judiciary, a separate branch of government. For that reason, Respondent have no direct access to the record of these investigations. Moreover, the request is aimed to the documents prepared by Claimant in relation with any administrative and/or criminal investigations into the auctions of the plots in the Catalinas Norte II area, that could not be part of the record of these proceedings.</p>
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²⁵ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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E. Decision of the Tribunal on Document Request	<p>The Tribunal considers that Request No. 20 is narrow and specific, as does not appear to be contested by Claimant, and that the requested Documents appear to be <i>prima facie</i> relevant and material to establish the impact, if any, of the administrative and criminal investigations on the process of execution of the deeds. Therefore, Claimant shall produce the Documents that respond to this Request no later than 27 January 2025, in accordance with Annex B to PO No. 1.</p> <p>The Tribunal acknowledges Claimant’s argument that any Documents that respond to the Request are likely protected by legal privilege. Should the requirements set out in para. 28 of PO No. 8 be satisfied, Claimant may produce the requested documents with redactions to the privileged information or enter into a confidentiality agreement with Respondent, where possible. In those cases in which the alleged privilege cannot be properly safeguarded through redaction, Claimant, instead of producing the Document, may choose to disclose its existence and characteristics in a privilege log, in accordance with para. 29 of PO No. 8.</p>
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Document Request 21	
A. Document(s) or category of document(s) requested	All documents prepared by Claimant or its related entities or persons regarding the decision to: (i) participate in the auctions of the plots in Catalinas Norte II area, (ii) bid for the plots, (iii) develop the Viñoly Project and/or the Avanti Project, including but not limited to meeting minutes, summaries, analysis, presentations, internal reports.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant states that Argentina violated the legitimate expectations on which it allegedly relied when deciding to purchase the Plots and incurred “significant” costs to develop the Viñoly Project and/or the Avanti Project, among others (Claimant’s Memorial, ¶¶ 165). Argentina challenges Claimant’s allegations (Counter-Memorial, § V.B.2.b.)</p> <p>The requested documents are relevant and material to assess the analysis conducted by Claimant to decide whether to bid for the plots and the legitimate expectations Claimant alleges it had at the time. Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	BA Desarrollos objects to this request on two grounds.

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	<p><i>First</i>, Argentina’s request is excessively broad. Argentina requests a wide range of “documents” prepared by BA Desarrollos <u>or</u> related entities (without specifying who these may be) <u>or</u> related persons (again, without specifying who these may be) regarding BA Desarrollos’s “decision to: (i) participate in the auctions of the plots in Catalinas Norte II area, (ii) bid for the plots, (iii) develop the Viñoly Project and/or the Avanti Project”. The requested documents span over four years encompassing BA Desarrollos’s initial decision to invest in Argentina in 2017, its decision to bid for the Plots and develop the Viñoly Project in 2018 and its decision to switch to the Avanti Project in 2020. <i>See</i> Memorial, ¶¶ 51-52, 62-63, 65, 101-104. Argentina’s request therefore fails to identify “a narrow and specific category of documents” and should be dismissed (Section 16.3.1 of Procedural Order No. 1; Article 3(3)(a)(ii) of the IBA Rules).</p> <p><i>Second</i>, Argentina justifies its request by alleging that these documents are needed to prove BA Desarrollos’s legitimate expectations at the time it invested. Accordingly, the request is in breach of Section 16.2 of Procedural Order No. 1 as it is “grounded on the need to prove allegations” by Claimant, and it is therefore inadmissible.</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The request is not overbroad, but limited in terms of issuer/addressee (Claimant, including its related persons or entities, understanding that term as encompassing Claimant’s direct and indirect shareholders — whether corporations or persons— and managers), time frame (when deciding to participate in the Auctions, <i>i.e.</i>, between 2017 and 2018) and scope (documents relating to its decision to participate in the auctions of the plots in Catalinas Norte II area, bid for the plots and develop an architectural project on them).</p> <p>Moreover, Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the analysis conducted by Claimant to decide whether to bid for the plots and the legitimate expectations Claimant alleges it had at the time (Counter-Memorial, § V.B.2.b). This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>The Tribunal considers that Request No. 21 is not sufficiently narrow or specific, and thus decides to reject it.</p>

Document Request 22	
<p>A. Document(s) or category of document(s) requested</p>	<p>All documents prepared by Claimant or its related entities or persons in connection with a late 2017 meeting between EMS Capital and AABE in New York (USA) to which it refers, including but not limited to documents made in preparation for the meeting or as a result thereof, minutes, summaries, communications, presentations, brochures, analysis, or similar documents.</p>

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<p>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</p>	<p>Claimant alleges the existence of a legitimate expectation that Argentina “would comply with its own representations made to BA Desarrollos that it [...] would receive title to the Plots after payment and could then proceed with the project” (Claimant’s Memorial, ¶ 164(c)). In particular, Claimant mentions the existence of a meeting, without specifying its date, in which AABE supposedly invited EMS Capital to “invest and develop projects in the Catalinas Norte II” area (Witness Statement of ██████████, ¶ 23). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358).</p> <p>The requested documents are relevant and material to assess the discussions held at the alleged meeting and any representations that may have been made at that meeting.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
<p>C. Objections to Document Request (max. 500 words)</p>	<p>BA Desarrollos objects to this request.</p> <p>Contrary to Argentina’s allegation that BA Desarrollos has not specified the date for this meeting, BA Desarrollos submitted a record from Argentina’s Official Hearing Registry which shows that the meeting took place on 13 November 2017 at EMS Capital’s offices in New York (C-116).</p> <p>Argentina alleges that its request goes to prove BA Desarrollos’s legitimate expectations at the time it invested, and in particular what Argentina told the EMS Group at the meeting. Accordingly, the request is in breach of Section 16.2 of Procedural Order No. 1 as it is “grounded on the need to prove allegations” by Claimant, and it is therefore inadmissible.</p> <p>Moreover, Argentina does not dispute that the meeting took place and that Argentina met with the EMS Group to expressly invite its investment in the Catalinas Norte II Area (Memorial, ¶ 49). Accordingly, the requested documents are not relevant to Argentina’s allegations and Argentina’s request should be dismissed.</p> <p>Finally, BA Desarrollos notes that it is likely to have few documents responsive to this request since the meeting was attended by Mr. Edmond Safra and Mr. Ezra Nasser. Mr. Nasser may have made notes of what was discussed at this meeting but ██████████</p>

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<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the scope of the discussions held in the November 13, 2017 meeting and any representations that may have been made insofar as it is Argentina’s contention that commentaries or vague, general or unreasonable representations do not qualify as legitimate expectations that would be protected by the BIT (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358). This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p> <p>In addition, the purpose of the document request is not to confirm whether the meeting took place or not, but to understand its scope and the discussions held. Argentina does indeed dispute that “Argentina met with the EMS Group to expressly invite its investment in the Catalinas Norte II Area”. That statement constitutes hearsay as it only arises from Mr. ██████’s “know[ledge] from speaking to colleagues at EMS Capital that the AABE came to New York in late 2017 and met with the EMS Group to invite it to invest and develop projects in the Catalinas Norte II Area. I did not attend the meeting as I was not working at EMS Capital at the time” (Witness Statement of ██████, ¶ 23). Thus, the requested documents are relevant to the case and material to its outcome (Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules) as they could provide non-biased evidence of the discussions held at the meeting and any representations that may have been made.</p> <p>Respondent takes note that Claimants state that “it is likely to have few documents responsive to this request since the meeting was attended by Mr. Edmond Safra and Mr. Ezra Nasser. Mr. Nasser may have made notes of what was discussed at this meeting but h ██████”</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>The Tribunal considers that Request No. 22 is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of Respondent’s case; in particular, in connection with Argentina’s argument that the meetings with Argentine officials could not establish legitimate expectations (see, for example, Memorial on Jurisdictional Objections and Counter-Memorial, para. 357). Therefore, Claimant shall produce the Documents that respond to this Request no later than 27 January 2025, in accordance with Annex B to PO No. 1.</p>

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Document Request 23	
A. Document(s) or category of document(s) requested	All documents prepared by Claimant or its related entities or persons in connection with the August 13, 2018 meeting to which it refers, between Mr. Safra, his brother, Marval, O’Farrell, Mairal, former President Mauricio Macri, and Mr. Lanús, including but not limited to documents made in preparation for the meeting or as a result thereof, minutes, summaries, communications, presentations, brochures, analysis, or similar documents.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant alleges the existence of a legitimate expectation that Argentina “would grant BA Desarrollos the building authorizations to build the Viñoly Project as designed” (Claimant’s Memorial, ¶ 164(e)). In particular, it states that on an August 13, 2018 meeting, “[t]he AABE and President Macri expressed excitement about the project that would bring world-class design to Buenos Aires” (Claimant’s Memorial, ¶ 71). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358).</p> <p>The requested documents are relevant and material to assess the discussions held at the meeting and any representations that may have been made at that meeting.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request.</p> <p>Argentina alleges that its request goes to prove BA Desarrollos’s legitimate expectations around time of its investment. Accordingly, the request is in breach of Section 16.2 of Procedural Order No. 1 as it is “grounded on the need to prove allegations” by Claimant, and it is therefore inadmissible.</p> <p>Moreover, Argentina does not dispute the Claimant’s contention that the meeting with President Macri and the head of the AABE took place and that both the head of the AABE and President Macri were excited about the Viñoly Project that Mr. Safra presented to them. Thus, Argentina’s request is not relevant to Argentina’s allegations and should be dismissed.</p>

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D. Reply to Objections to Document Request No. (500 words max.)	<p>Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the scope of the discussions held in the August 13, 2018 meeting and any representations that may have been made insofar as it is Argentina’s contention that commentaries or vague, general or unreasonable representations do not qualify as legitimate expectations that would be protected by the BIT (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358). This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p> <p>In addition, the purpose of the document request is not to confirm whether the meeting took place or not, but to understand its scope and the discussions held. Argentina does indeed dispute that “both the head of the AABE and President Macri were excited about the Viñoly Project that Mr. Safra presented to it”. That statement constitutes hearsay as it only arises from Mr. ██████’s recollection of what Mr. Safra told him (“[a]fter the meeting Mr. Safra told me that (...) it was good to hear that (...)”, Witness Statement of ██████, ¶ 37). Thus, the requested documents are relevant to the case and material to its outcome as they could provide non-biased evidence of the discussions held at the meeting and any representations that may have been made.</p> <p style="text-align: left; margin-left: 20px;">26</p>
E. Decision of the Tribunal on Document Request	<p>The Tribunal considers that Request No. 23 is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of Respondent’s case; in particular, in connection with Argentina’s argument that the meetings with Argentine officials could not establish legitimate expectations (see, for example, Memorial on Jurisdictional Objections and Counter-Memorial, para. 357). Therefore, Claimant shall produce the Documents that respond to this Request no later than 27 January 2025, in accordance with Annex B to PO No. 1.</p>

Document Request 24	
A. Document(s) or category of document(s) requested	<p>All documents prepared by Claimant or its related entities or persons in connection with a meeting to which it refers, to present the Viñoly Project to Buenos Aires’ City Mayor Horacio Rodríguez Larreta and other Buenos Aires City Government officials, including but not limited to documents made in preparation for the meeting or as a result thereof, minutes, summaries, communications, presentations, brochures, analysis, or similar documents.</p>

²⁶ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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<p>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</p>	<p>Claimant alleges the existence of a legitimate expectation that Argentina “would grant BA Desarrollos the building authorizations to build the Viñoly Project as designed” (Claimant’s Memorial, ¶ 164(e)). In particular, Claimant mentions the existence of a meeting, without identifying its date, in which “BA Desarrollos [] presented the project to Mayor Rodríguez Larreta and other Buenos Aires City Government officials, who were all very enthusiastic about the project” (Claimant’s Memorial, ¶ 110). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358). The requested documents are relevant and material to assess the discussions held at the alleged meeting and any representations that may have been made at that meeting. Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
<p>C. Objections to Document Request (max. 500 words)</p>	<p>BA Desarrollos objects to this request because no such documents exist.</p> <p>In the Memorial, Claimant explained that, in mid-2021, BA Desarrollos started working with the other plot owners in the Catalinas Norte II Area to design an urban development proposal for the area, which included plans to develop green pedestrian plazas, public sculptures and increase pedestrian zones. This proposal, submitted in the record as exhibit C-182, was presented to Mayor Rodríguez Larreta and other Buenos Aires City Government officials at a meeting in 2021. The meeting did not concern the Viñoly Project or building authorizations. In fact, as BA Desarrollos explained, by that time, BA Desarrollos was forced to abandon the Viñoly Project and had started working on the Avanti Project (<i>see</i> Memorial, ¶¶ 102-104, 110).</p> <p>In addition, since Argentina justifies this request on the basis that it is relevant to prove BA Desarrollos’s legitimate expectations, the request is in breach of Section 16.2 of Procedural Order No. 1, and it is therefore inadmissible.</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess but on the need to assess the scope of the discussions held in the meeting and any representations that may have been made (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358). This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p> <p>Respondent takes note that “no such documents exist” as “the meeting did not concern the Viñoly Project of building authorizations”.</p>

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E. Decision of the Tribunal on Document Request	<p>The Tribunal takes note of Claimant’s argument that the meeting with Mayor Rodríguez Larreta and other Buenos Aires City Government officials did not refer to the Viñoly Project and that, therefore, the requested Documents do not exist, as appears to be conceded by Respondent.</p> <p>Accordingly, it is not necessary for the Tribunal to issue any further orders in connection with Request No. 24 at this stage.</p>
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Document Request 25	
A. Document(s) or category of document(s) requested	<p>All documents prepared by Claimant or its related entities or persons in connection with a March 2019 meeting to which it refers, between Mr. García Llorente (an AABE senior official), Invest BA (the Buenos Aires City Government’s investment promotion agency) and BA Desarrollos, including but not limited to documents made in preparation for the meeting or as a result thereof, minutes, summaries, communications, presentations, brochures, analysis, or similar documents.</p>
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant alleges the existence of a legitimate expectation that Argentina “would grant BA Desarrollos the building authorizations to build the Viñoly Project as designed” (Claimant’s Memorial, ¶ 164(e)). In particular, Claimant mentions the existence of a meeting, without identifying its specific date, in which AABE supposedly expressed that it was “motivated to ensure that the authorizations would be approved soon, so that [BA Desarrollos] could hold an inauguration ceremony for the Viñoly Project at the end of May 2019” (Claimant’s Memorial, ¶ 86). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358).</p> <p>The requested documents are relevant and material to assess the discussions held at the alleged meeting and any representations that may have been made at that meeting.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request.</p> <p>Argentina justifies its request as necessary to prove BA Desarrollos’s legitimate expectations. In particular, Argentina’s request is to prove whether—as Claimant argues (<i>see</i> Memorial, ¶ 86; ██████, ¶ 56)—the AABE represented to BA Desarrollos that it would grant the authorizations to build the Viñoly Project and whether it represented that the inauguration ceremony for the Viñoly Project would take place at the end of May 2019. Accordingly, the request is in breach of Section 16.2 of Procedural Order No. 1 as it is “grounded on the need to prove allegations” by the Claimant, and it is therefore inadmissible.</p>

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D. Reply to Objections to Document Request No. (500 words max.)	Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the scope of the discussions held in the March 2019 meeting and any representations that may have been made insofar as it is Argentina’s contention that commentaries or vague, general or unreasonable representations do not qualify as legitimate expectations that would be protected by the BIT (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358). This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.
E. Decision of the Tribunal on Document Request	The Tribunal considers that Request No. 25 is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of Respondent’s case; in particular, in connection with Argentina’s argument that the meetings with Argentine officials could not establish legitimate expectations (see, for example, Memorial on Jurisdictional Objections and Counter-Memorial, para. 357). Therefore, Claimant shall produce the Documents that respond to this Request no later than 27 January 2025, in accordance with Annex B to PO No. 1.

Document Request 26	
A. Document(s) or category of document(s) requested	All documents related to the information allegedly provided to Claimant or its related entities or persons by ABBE and the Buenos Aires City Government in or around late April 2019 regarding the potential use of the air space between the Plots.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	Mr. ██████ narrates that “[i]n late April 2019, the AABE and the Buenos Aires City Government informed us that they were ready to grant us the authorization to use the air space in between the Plots but that BA Desarrollos needed to make a formal request to the AABE to acquire the land between the Plots along with our agreement to grant an easement for the railroad lines” (Witness Statement of ██████, ¶ 57; Claimant’s Memorial, ¶ 87). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶ 341). The requested documents are relevant and material to assess the alleged information received by Claimant and its assertions and claims in relation thereof. Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.
C. Objections to Document Request (max. 500 words)	BA Desarrollos objects to this request on two grounds.

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	<p><i>First</i>, the requested documents are under Argentina’s possession, custody or control (Article 3(3)(c) of the IBA Rules). Argentina requests “documents related to the information allegedly provided [...] by ABE [sic] and the Buenos Aires City Government” in April 2019 regarding the potential use of the air space between the Plots. Naturally, any documents provided to the Claimant by the Argentine authorities, like the ABE or the Buenos Aires City Government, are under Argentina’s custody, possession or control.</p> <p><i>Second</i>, Argentina justifies its request by alleging that the documents are relevant to prove whether—as Claimant argues (<i>see</i> Memorial, ¶ 87; ██████, ¶ 57)—the ABE and the Buenos Aires City Government informed the Claimant that they were ready to grant the authorization to build the Viñoly Project upon a formal request from BA Desarrollos to the ABE “to acquire the land between the Plots along with [BA Desarrollos’s] agreement to grant an easement for the railroad lines” (██████, ¶ 57). Accordingly, the request is in breach of Section 16.2 of Procedural Order No. 1 as it is “grounded on the need to prove allegations” by Claimant, and it is therefore inadmissible.</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The request concerns all documents that are not in Respondent’s possession, custody or control.</p> <p>As to documents involving ABE, Claimant has not provided any information that would allow Respondent to identify whether such documents exist. Claimant solely mentions in its memorial that “[i]n late April 2019, the ABE and the Buenos Aires City Government informed Fideicomiso BAP that they were ready to grant the authorization (...)” (Claimant’s Memorial ¶ 87, fn. 200 that refers to Witness Statement of ██████, ¶ 57). Claimant has not identified a specific date or type of document in which the information was purportedly conveyed to Claimant. As Claimant does not object to having any information in its possession, custody or control, reasons of procedural economy proportionality and fairness justify this Tribunal granting the document request (Article 9(2)(g) IBA Rules). After a reasonable search, Respondent has not been able to locate documents in response to this request, which is why it is requesting them from Claimant.</p> <p>As to documents involving the Buenos Aires City Government, Claimant erroneously asserts that any responsive documents are in the custody, control or possession of the Republic. The Government of the City of Buenos Aires is autonomous of the National Government (Argentine Constitution, art. 1: “[t]he Argentine Nation adopts the federal republican representative form of government”, art. 122 and 129: “the City of Buenos Aires shall have an autonomous system of government with power of legislation and jurisdiction”). Consequently, any documents that Claimant may have submitted to the government of the City of Buenos Aires are not in the possession, custody or control of Respondent.</p>

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	<p>Furthermore, Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the alleged information received by Claimant regarding any potential authorization as it is Argentina’s contention that (i) commentaries or vague, general or unreasonable representations do not qualify as legitimate expectations that would be protected by the BIT (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358); and (ii) the Argentine rules and regulations prevented the granting of an authorization to use the airspace as Claimant expected (Counter-Memorial, ¶¶ 341). This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>The Tribunal notes that Respondent has stated that it undertook a reasonable search for these Documents, which appeared to originate from governments, offices or bodies of Argentina, without success. Therefore, what Respondent appears to seek through Request No. 26 is the production of Documents that can show the non-existence of the authorisation, an issue for which the burden of proof appears to be on Claimant. Accordingly, the Tribunal decides to reject it as it does not satisfy Section 16.2 of PO No. 1.</p>

Document Request 27	
<p>A. Document(s) or category of document(s) requested</p>	<p>All documents prepared by Claimant or its related entities or persons in connection with a July 30, 2019 meeting to which it refers, between Mr. Safra, Mr. ██████, Mr. Viñoly, AABE and the Buenos Aires City Government regarding the potential use of the air space between the Plots, including but not limited to documents made in preparation for the meeting or as a result thereof, minutes, summaries, communications, presentations, brochures, analysis, or similar documents.</p>
<p>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</p>	<p>Claimant refers to Mr. ██████’s recollections of alleged discussions held at a July 30, 2019 meeting, invoking the existence of an alleged legitimate expectation that Argentina “would grant BA Desarrollos the building authorizations to build the Viñoly Project as designed” (Claimant’s Memorial, ¶ 164(e); Witness Statement of ██████, ¶¶ 61-62). Argentina challenges Claimant’s allegations (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358).</p> <p>The requested documents are relevant and material to assess the discussions held at the alleged meeting and any representations that may have been made at that meeting.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
<p>C. Objections to Document Request (max. 500 words)</p>	<p>BA Desarrollos objects to this request.</p>

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	<p>Argentina justifies its request by alleging that the documents are relevant to prove BA Desarrollos’s legitimate expectations. In particular, Argentina’s alleges that its request is relevant as to whether—as Claimant argues (<i>see</i> Memorial, ¶ 91; ██████, ¶ 61)—the AABE and the Buenos Aires City Government represented to the Claimant that they would grant the authorizations to build the Viñoly Project. Accordingly, the request is in breach of Section 16.2 of Procedural Order No. 1 as it is “grounded on the need to prove allegations” by the Claimant, and it is therefore inadmissible.</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Respondent does not base its request on “the need to prove the Claimant’s allegations” but on the need to assess the scope of the discussions held in the July 30, 2019 meeting and any representations that may have been made insofar as it is Argentina’s contention that commentaries or vague, general or unreasonable representations do not qualify as legitimate expectations that would be protected by the BIT (Counter-Memorial, ¶¶ 332-333, 336, 354, 357-358). This request is independent of Claimant’s burden of proof and is solely intended to enable Respondent to obtain documents to exercise its right of defense.</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>The Tribunal considers that Request No. 27 is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of Respondent’s case; in particular, in connection with Argentina’s argument that the meetings with Argentine officials could not establish legitimate expectations (<i>see</i>, for example, Memorial on Jurisdictional Objections and Counter-Memorial, para. 357). Therefore, Claimant shall produce the Documents that respond to this Request no later than 27 January 2025, in accordance with Annex B to PO No. 1.</p>

Document Request 28	
<p>A. Document(s) or category of document(s) requested</p>	<p>All documents prepared by Claimant or its related entities or persons in connection with a January 2019 meeting to which it refers, between ██████ (Fideicomiso BAP’s vendor), ██████ (Fideicomiso BAP’s consultant), the Buenos Aires City Environmental Protection Agency, DAPSA and Edesur, including but not limited to documents made in preparation for the meeting or as a result thereof, minutes, summaries, communications, presentations, brochures, analysis, or similar documents.</p>
<p>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</p>	<p>Claimant claims that AABE refused coordinating with the relevant third parties to remove the power lines and clean up any pollutants in Plot 2 (Claimant’s Memorial, ¶ 82; Witness Statement of ██████, ¶ 51). Mr. ██████ refers to a meeting held in January 2019 to allegedly discuss the environmental remediation process for Plot 2 (Witness Statement of ██████, ¶ 51). Argentina challenges Claimant’s allegations (Counter-Memorial, §§ II.A.2.c, II.A.2.d, VI.B, VI.C). The requested documents are relevant and material to assess the discussions held at the alleged meeting and Claimant’s assertions and claims in relation thereof.</p>

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	<p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
<p>C. Objections to Document Request (max. 500 words)</p>	<p>BA Desarrollos objects to this request.</p> <p>Argentina’s request muddles the facts. BA Desarrollos does not claim that the AABE refused to coordinate the removal of the power line and clean up pollutants at a January 2019 meeting. That meeting was an informational meeting with the APRA, the AABE, DAPSA and EDESUR to discuss issues with Plot 2 (██████ ¶ 51). In fact, as explained in the Memorial, the AABE’s refusal to coordinate the remediation of the Plots came two months later, via two written notices dated 27 March 2019, which Claimant has submitted as exhibits C-140 and C-141 (<i>see also</i> Memorial, ¶ 82).</p> <p>Argentina does not dispute (nor can it) that the AABE categorically refused to coordinate the remediation of the Plots in March 2019. Thus, the documents presented at the January 2019 meeting are irrelevant (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1).</p> <p>For the avoidance of doubt, BA Desarrollos clarifies that the evidence relating to the remediation of the Plots has been submitted to explain why Fideicomiso BAP has incurred and continues to incur these costs in relation to the Project.</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The requested documents are relevant to the case and material to its outcome.²⁷</p> <p>Argentina does not purport to muddle the facts by claiming that AABE refused to coordinate the removal of the power line and clean up pollutants at a January 2019 meeting. When addressing the relevance and materiality of the documents requested, Argentina expressly referred to Mr. ██████’s Witness Statement and his description of a January 2019 meeting in which Claimant purportedly discussed environmental remediation with different parties.</p> <p>Respondent further explained that the requested documents are relevant and material “to assess the discussions held at the alleged meeting and Claimant’s assertions and claims in relation thereof”. In particular, the content of the discussions of the January 2019 meeting is relevant as Claimant invokes the existence of a legitimate expectation based on “(ii) the numerous meetings with Argentine officials in relation to resolving various issues on the Project, including the environmental remediation, including the remediation of the Plots and the building authorization for the Viñoly Project”. In the footnote placed at the end of numeral (ii), Claimant refers to Mr. ██████’s recollection of a January 2019 meeting (Counter-Memorial, ¶ 164(c), fn. 376). However, his testimony provides no source or evidence to support.</p>

²⁷ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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	As a consequence, the requested documents are not only relevant and material to the resolution of the case, but also intended to enable Respondent to obtain documents to exercise its right of defense’.
E. Decision of the Tribunal on Document Request	The Tribunal takes note of Claimant’s statement that the coordination of the removal of the power lines and the cleanup of pollutants was not discussed at a meeting in January 2019. Therefore, the requirement of relevance and materiality does not appear to have been duly proven. Accordingly, the Tribunal decides to reject Request No. 28.

Document Request 29	
A. Document(s) or category of document(s) requested	All documents related to any analysis and/or action plan made by or at the request of Claimant or its related entities or persons, concerning the issue of environmental pollutants in Plot 2.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant alleges that AABE refused to coordinate with DAPSA the cleanup of any pollutants in Plot 2 and argues that Argentina should have covered the cost of removal of the pollutants (Claimant’s Memorial, ¶¶ 61, 82; Witness Statement of ██████, ¶¶ 28, 51). Argentina challenges Claimant’s allegations (Counter-Memorial, §§ II.A.2.d, VI.B, VI.C).</p> <p>The requested documents are relevant and material to assess Claimant’s assertions and claims in relation to removal of the pollutants.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on four grounds.</p> <p><i>First</i>, Argentina’s request is excessively broad. Argentina asks for “[a]ll documents” relating to the analysis by BA Desarrollos or any related entity or persons (without specification) and/or action plans with regard to the environmental remediation of Plot 2, without specifying any dates. The request covers a wide range of documents spanning over six years: from January 2019, when BA Desarrollos found out about the environmental pollution, until today, when BA Desarrollos continues conducting environmental monitoring on the Plots. <i>See</i> ██████, ¶¶ 51, 87. Argentina’s request therefore fails to identify “a narrow and specific category of documents” and should be dismissed. <i>See</i> Section 16.3.1 of Procedural Order No. 1; Article 3(3)(a)(ii) of the IBA Rules.</p>

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	<p><i>Second</i>, any action plan or analysis made by or at the request of BA Desarrollos and/or Fideicomiso BAP in relation to the environmental pollution had to be submitted before APRA, the Buenos Aires City Environmental Protection Agency, which is a governmental authority. See [REDACTED], ¶¶ 54, 65, 72. Accordingly, any responsive document is under Argentina’s custody or possession (<i>see</i> Article 3(3)(c) of the IBA Rules).</p> <p><i>Third</i>, the requested documents, consisting of analysis or action plans relating to the issue of environmental pollutants in Plot 2, will not provide information about (i) whether the AABE refused to coordinate the removal of the power lines and the environmental cleanup (this refusal was recorded in two written notices sent by the AABE to Fideicomiso BAP, which are in the record as C-140 and C-141, as explained in Claimant’s objection to Document Request No. 28), and (ii) whether Argentina should have paid for the cost of the removal of the pollutants (a legal issue under Argentine domestic law). Accordingly, the requested documents are irrelevant to the case and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1).</p> <p><i>Fourth</i>, BA Desarrollos notes that the number of potentially responsive documents is likely to be voluminous, which would impose an unreasonable burden on the Claimant (Article 9(2)(c) of the IBA Rules).</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The request is not overbroad, but clearly limited in terms of issuer/addressee (by Claimant or a third-party at Claimant’s request), time frame (as of the date when Claimant purportedly was aware of the pollutants in Plot 2) and scope (documents related to analysis or action plans concerning the environmental pollutants).</p> <p>In addition, the request concerns all documents that are not in Respondent’s possession, custody or control. Claimant confirms that any responsive documents were “submitted before APRA, the Buenos Aires City Environmental Protection Agency, which is a governmental authority”. The Environmental Protection Agency to which Claimant refers is part of the Government of the City of Buenos Aires, which is autonomous of the National Government (Argentine Constitution, art. 1: “[t]he Argentine Nation adopts the federal republican representative form of government”, art. 122 and 129: “the City of Buenos Aires shall have an autonomous system of government with power of legislation and jurisdiction”). Consequently, any documents that Claimant may have submitted to APRA are not in the possession, custody or control of Respondent.</p>

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	<p>Furthermore, the requested documents are relevant to the case and material to its outcome.²⁸ Indeed, documents related to the environmental pollutants are necessary to determine Respondent’s responses to Claimant’s allegations regarding liability and quantum. Particularly insofar as it is Respondent’s position that it was for Claimant to bear the costs of the removal of the pollutants and the power lines in the Plots as they were part of the operational risk undertaken by Fideicomiso BAP when purchasing the Plots in the Catalinas Norte II area (Counter-Memorial on Preliminary Objections and Merits, §§ II.A.2.c, II.A.2.d, VI.B, VI.C).</p> <p>Moreover, Claimant has not shown how it would be unreasonable, burdensome or inefficient to produce the documents in this arbitration.</p>
E. Decision of the Tribunal on Document Request	<p>The Tribunal considers that Request No. 29 is not sufficiently narrow and specific, and thus decides to reject it.</p>

²⁸ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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Document Request 30	
A. Document(s) or category of document(s) requested	All documents related to the removal of the power lines in the Plots, including but not limited to agreements, understandings, communications, or similar documents, entered with Edesur or any other awardee of any plot in the Catalinas Norte II area.
B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control	<p>Claimant alleges that AABE refused to coordinate with relevant third parties the removal of power lines in the Plots and thus it had no choice but to bear the cost of moving the high voltage power lines from the Plots (Claimant’s Memorial, ¶ 82; Witness Statement of ██████, ¶ 51). Argentina challenges Claimant’s allegations (Counter-Memorial, §§ II.A.2.c, II.A.2.d, VI.B, VI.C). In particular, the removal was funded by all the awardees of the Catalinas Norte II area (Counter-Memorial, ¶ 89).</p> <p>The requested documents are relevant and material to assess Claimant’s assertions and claims in relation to the removal of the power lines.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration proceeding that Claimant may identify as responsive in its response to this request.</p>
C. Objections to Document Request (max. 500 words)	<p>BA Desarrollos objects to this request on three grounds.</p> <p><i>First</i>, Argentina’s request is excessively broad. Argentina asks for “[a]ll documents” relating to BA Desarrollos’s removal of the power lines in the Plots, without specifying any dates. The request likely covers a wide range of documents involving not only BA Desarrollos and/or Fideicomiso BAP, but also the other Catalinas Norte II awardees and EDESUR. <i>See</i> ██████, ¶ 54; Memorial, fn 186. Argentina’s request therefore fails to identify “a narrow and specific category of documents” and should be dismissed (Section 16.3.1 of Procedural Order No. 1, Article 3(3)(a)(ii) of the IBA Rules).</p> <p><i>Second</i>, the requested documents are irrelevant to the case and immaterial to its outcome (Rule 37(b) of the ICSID Rules, Article 9(2)(a) of the IBA Rules, Section 16.3.2 of Procedural Order No. 1).</p> <p>A) The requested documents, consisting of documents relating to the removal of power lines and particularly those documents entered into with EDESUR or any other Catalinas Norte II awardee, will not provide information on whether the AABE refused to coordinate the removal of the power lines (which is recorded in two written notices from the AABE to Fideicomiso BAP, C-140 and C-141, as explained in Claimant’s objection to Document Request No. 28).</p>

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	<p>B) Second, the fact that “the removal was funded by all the awardees of the Catalinas Norte II area” is not relevant to this dispute. BA Desarrollos is not claiming the whole cost of the relocation of power lines, but only its share, as duly supported by Fideicomiso BAP’s general ledgers (C-195 to C-200), audited financial statements (C-190 to C-194) and invoices (C-201). In particular, the relocation of power lines was performed by ██████. See Memorial, fn 186; ██████, ¶ 54. BA Desarrollos has submitted all the invoices paid to ██████ (C-201, pp 124-188). See Memorial, fn 480.</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>The request is not overbroad, but limited in terms of issuer/addressee (Claimant, Edesur and/or any other awardee of plots in the Catalinas Norte II area), time frame (around the date when AABE purportedly refused to coordinate with the relevant third parties) and scope (documents related to the removal of the power lines in the Plots).</p> <p>In addition, the requested documents are relevant to the case and material to its outcome.²⁹ Indeed, documents related to the removal of the power lines in the Plots are relevant to assess Respondent’s position that it was for Claimant to bear the costs of the removal of the pollutants and the power lines in the Plots as they were part of the operational risk undertaken by Fideicomiso BAP when purchasing the Plots in the Catalinas Norte II area (Counter-Memorial on Preliminary Objections and Merits, §§ II.A.2.c, II.A.2.d, VI.B, VI.C).</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>The Tribunal considers that Request No. 30 is not sufficiently narrow and specific, and thus decides to reject it.</p>

Document Request 31	
<p>A. Document(s) or category of document(s) requested</p>	<p>All documents prepared by Claimant or its related entities or persons in connection with its request to AABE for reimbursement of the costs incurred in connection with the removal of the pollutants and power lines, the environmental remediation processes and the subsequent monitoring of the Plots.</p>
<p>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</p>	<p>Claimant alleges that AABE refused to coordinate with relevant third parties the cleanup of any pollutants and the removal of power lines in the Plots (Claimant’s Memorial, ¶ 82; Witness Statement of ██████, ¶ 51). Mr. ██████ mentions that Claimant “accepted to bear the cost and later request that the AABE cover it” (Witness Statement of ██████, ¶ 54). Argentina challenges Claimant’s allegations (Counter-Memorial, §§ II.A.2.c, II.A.2.d, VI.B, VI.C).</p> <p>The requested documents are relevant and material to assess Claimant’s assertions and claims in relation to the removal of pollutants and power lines.</p> <p>Respondent has no custody or control of the requested documents, save for those already submitted or produced by Claimant in this arbitration</p>

²⁹ Section 16.3.2. Procedural Order No. 1, Rule 37(b) ICSID Rules, Article 9(2)(a) IBA Rules.

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	<p>proceeding that Claimant may identify as responsive in its response to this request.</p>
<p>C. Objections to Document Request (max. 500 words)</p>	<p>BA Desarrollos objects to this request since these documents do not exist.</p> <p>This request is premised on a misreading of Mr. ██████’s Witness Statement. Mr. ██████ explains that “the AABE notified us that they would not help with the removal of the power lines [...] But, if we wanted to develop the Project, all of these issues with the Plots had to be fixed one way or another. We accepted to bear the cost and later request that the AABE cover it” (██████ ¶¶ 53-54). Accordingly, BA Desarrollos “accepted to... later request” reimbursement. Mr. ██████ does not testify that BA Desarrollos “request<u>ed</u>” reimbursement.</p> <p>For the avoidance of doubt, BA Desarrollos confirms that, after the AABE refused BA Desarrollos’s request that the AABE remove the power lines itself or in coordination with EDESUR (<i>see</i> explanation in Claimant’s objection to Document Request No. 28), BA Desarrollos did not submit a reimbursement request.</p> <p>As is clear from Mr. ██████’s witness statement, at that time, BA Desarrollos prioritized the development of the Project leaving any reimbursement discussions for a later stage once the Project was ongoing. However, that never took place given the destruction of the Project due to Argentina’s breaches of the Treaty. BA Desarrollos is claiming compensation to wipe out the effects of Argentina’s wrongful conduct, comprising all of its sunk costs in the Project, which includes the costs incurred to ready the Plots for development such as removal of the power lines (Memorial, ¶¶ 197, 204; for examples of activities conducted by BA Desarrollos to ready the Plots, <i>see e.g.</i>, Memorial, ¶¶ 74, 80, 82, fns 186-187; ██████, ¶¶ 40, 45, 51-54, 65).</p>
<p>D. Reply to Objections to Document Request No. (500 words max.)</p>	<p>Respondent takes note that “BA Desarrollos did not submit a reimbursement request”. However, the document request did not assume that Claimant or its related entities or persons had effectively done so. The request —relevant and material to assess Claimant’s assertions and claims in relation to the removal of pollutants and power lines— aims at obtaining documents that reflect on what grounds Claimant intended to seek the recovery from costs from Respondent. Particularly when the Terms and Conditions expressly set as a condition for the sale that buyers of plots waived the right to claim for any possible hidden defects and redhibitory defects (<i>vicios redhibitorios</i>) (Counter-Memorial, §§ II.A.2.c, II.A.2.d, VI.B, VI.C).</p>
<p>E. Decision of the Tribunal on Document Request</p>	<p>The Tribunal takes note of Claimant’s statement that the requested Documents do not exist. In addition, Request No. 31, as formulated, does not appear to be intended to “obtain documents that reflect on what grounds Claimant intended to seek the recovery from costs”, as described by Respondent, but specifically seeks the production of Documents “<u>prepared</u> ... with its request to AABE.” Therefore, the description of the Request does not appear to match its purpose, and the Tribunal thus decides to reject it.</p>