

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**BA Desarrollos LLC**

**v.**

**Argentine Republic**

**(ICSID Case No. ARB/23/32)**

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**PROCEDURAL ORDER No. 2**

***Members of the Tribunal***

Ms. Deva Villanúa, President of the Tribunal

Mr. Stephen L. Drymer, Arbitrator

Mr. Luis Alberto González García, Arbitrator

***Secretary of the Tribunal***

Ms. Catherine Kettlewell

***Assistant to the Tribunal***

Mr. Ethan Shannon-Craven

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29 April 2024

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**BACKGROUND**

1. This arbitration has arisen between BA Desarrollos LLC [**“Claimant”**] and the Argentine Republic [**“Respondent”** or **“Argentina,”** and, together with Claimant, **“Parties”**] under the Treaty between the United States of America and the Argentine Republic concerning the Reciprocal Encouragement and Protection of Investment, which entered into force on 20 October 1994 [the **“Treaty”**].
2. On 15 March 2024, the Arbitral Tribunal issued Procedural Order [**“PO”**] No. 1, which resolved a number of issues related to the management of the case, including the **“Procedural Calendar”**, and established a series of rules applicable to document production.
3. On 8 April 2024, Respondent filed its Request for Document Production on Preliminary Objections in the form of a Redfern Schedule [**“Requests”**].
4. On 18 April 2024, Claimant filed its response to the Requests.
5. On 25 April 2024, Respondent filed observations on Claimant’s objections to Document Requests Nos. 18 and 29.
6. This Order has been issued pursuant to Section 16 of and Annex B to PO No. 1, which establish the rules and the time limit for the Tribunal to resolve the Parties’ requests for the production of documents.

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**1. GUIDELINES FOR RESOLVING THE REQUESTS**

7. Paragraph 20.1 of PO No. 1 establishes that the Tribunal may refer to other rules that may be relevant, to the extent that they do not conflict with the ICSID Convention, the ICSID Arbitration Rules or the ICSID Administrative and Financial Regulations. Furthermore, it is established in paragraph 16.7 that the Tribunal may take into consideration Articles 3 and 9 of the IBA (International Bar Association) Rules on the Taking of Evidence in International Arbitration (2020) [**“IBA Rules”**], as well as such other instruments as may serve as a reference.
8. This section summarizes the guidelines provided by the IBA Rules for the production of documents, on the basis of which decisions on Respondent’s Requests are made.

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**1.1 DEFINITION OF DOCUMENT**

9. The “Definitions” section of the IBA Rules includes the following definition of the term “Document”:

“‘Document’ means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means.”

10. The Tribunal has used this very same definition to resolve the Requests.

**1.2 REQUIREMENTS**

11. The Tribunal will grant any Requests for the Production of Documents that meet the following cumulative requirements:

**A. Identification of each Document or description of a narrow and specific category**<sup>1</sup>

12. Respondent is required to have provided details of the requested Document sufficient to identify it. When the request referred to a category of Documents, the Tribunal has considered the following additional requirements:

- a clear and well-defined description has been provided of a narrow and specific category;
- circumstantial evidence of the putative existence of the category has been provided;
- the name of the person, authority or entity that has issued the category of Documents has been provided.

**B. Relevant and material**<sup>2</sup>

13. Respondent has proved that the Documents are relevant to the case and material to its outcome, identifying why it alleges that evidentiary support is necessary through the production of documents.
14. As a general rule, the documents referred to in other Documents have been considered relevant.
15. It is not for Respondent to rebut, by way of the document requests submitted to Claimant, allegations for which Claimant<sup>3</sup> has the burden of proof, since failure to meet such burden will in

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<sup>1</sup> PO No. 1, para. 16.3.1. IBA Rules, Art. 3.3 (a) (i) and (ii).

<sup>2</sup> PO No. 1, para. 16.3.2. IBA Rules, Arts. 3.3 (b) and 9.2 (a).

<sup>3</sup> PO No. 1, paragraph 16.2.

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itself result in dismissal. The production of documents in order to rebut Claimant’s allegations will only be ordered in exceptional circumstances.

16. Any analysis by the Tribunal of the relevance and materiality of the requested Documents shall be made on a *prima facie* basis, without prejudging any final decision that the Tribunal may make as to the relevance, probative value or weight to be attributed to a Document once all the evidence has been furnished.

**C. Not in Respondent’s possession, custody or control**<sup>4</sup>

17. Respondent is required to have stated that the Documents requested are not in its possession, custody or control.
18. Requests have been denied when the Documents are in the offices or under the control of a third party to which Respondent has access. Similarly, a Document shall be deemed to be in Respondent’s possession if it is already kept on the arbitration record or if it is publicly available (and Claimant is not in a significantly more favourable position to obtain such Document). For the avoidance of doubt, “publicly available” means that a Document is in the public domain and easily accessible.
19. Documents that are on the premises or under the control of a third party, to which Claimant has access, will generally be deemed to be in its “possession, custody or control,” unless otherwise proved by Claimant.

**1.3 OBJECTIONS**

20. The IBA Rules provide for a number of objections to the production of documents. In addition to alleging non-compliance with any of the previously established requirements, Claimant could object to Respondent’s requests on certain grounds, including, *inter alia*<sup>5</sup>:

**A. Confidentiality**

21. Claimant may allege legal impediment or privilege with respect to the Documents prepared by or addressed to legal counsel, related to the provision of legal advice, and delivered or received with the expectation that such Documents would be kept confidential<sup>6</sup>:

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<sup>4</sup> IBA Rules, Art. 3.3 (c) (i) and (ii).

<sup>5</sup> IBA Rules, Art. 3.5.

<sup>6</sup> IBA Rules, Art. 9.2(b).

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22. Claimant may also request that a Document not be produced alleging compelling grounds of commercial or technical confidentiality.<sup>7</sup>
23. If Claimant raises an objection under this paragraph and, if challenged, it is upheld by the Tribunal, the requested Party shall submit a privilege and confidentiality log listing the documentary evidence that allegedly contain privileged, confidential or highly sensitive information, including its description, date, author and addressee.

**B. The production of the document would be unreasonably burdensome**<sup>8</sup>

24. Claimant may object to the production of certain Documents on the basis that any such production would be unreasonably burdensome. In making its decision, the Tribunal will weigh the time and cost of producing the Documents against their expected probative value. Where appropriate, the Tribunal will also reduce the scope of production in order to avoid unreasonable burden.

**C. The production would affect the fairness or equality of the proceeding**<sup>9</sup>

25. The production of documents will not be ordered if the Arbitral Tribunal determines that there are compelling considerations of procedural economy, proportionality, fairness or equality of the Parties.

**2. DECISION OF THE ARBITRAL TRIBUNAL**

26. The Tribunal has resolved each of the requests for production of documents set forth in Annex A hereto, which forms an integral part of this PO No. 2.

**3. NEXT STEPS**

27. Claimant shall produce the Documents ordered to be produced no later than 9 May 2024, in accordance with the Procedural Calendar<sup>10</sup>.
28. The documents to be produced shall be electronically transmitted (via email, file sharing platform or USB device) directly to the requesting party without copying the Tribunal, the Assistant to the Tribunal or the Secretary of the Tribunal<sup>11</sup>. Such documents shall not be considered part of the

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<sup>7</sup> IBA Rules, Art. 9.2(e).

<sup>8</sup> IBA Rules, Art. 9.2(c).

<sup>9</sup> IBA Rules, Art. 9.2(g).

<sup>10</sup> PO No. 1, para. 16.9.

<sup>11</sup> PO No. 1, para. 16.10.

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record unless the requesting party submits them as exhibits in accordance with the Procedural Calendar.<sup>12</sup>

On behalf of the Tribunal,

[Signed]

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Deva Villanúa  
President of the Tribunal  
Date: 29 April 2024

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<sup>12</sup> PO No. 1, para. 16.11.

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**ANNEX A**

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ANNEX A – TRIBUNAL’S DECISION AS TO THE REQUESTS

| Document Request 1  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>The Limited Liability Agreement of BA Desarrollos LLC dated 3 October 2017, including any amendments, modifications, supplements or other documents related to said Limited Liability Agreement between 3 October 2017 and the date of the filing of the Request for Arbitration (inclusive).</p>  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant states that BA Desarrollos LLC is a US investor protected under the Treaty simply because it is a limited liability company incorporated under the laws of the State of Delaware that, as Claimant argues, conducts its business activities within the US (Memorial on the Merits, ¶ 123-124).</p> <p>Thus, the requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Arbitral tribunals have considered that in order to determine whether a company has substantial activities in a certain State a tribunal must analyze the nature of the company’s business and the corporate functions conducted by such company in the State. <i>IC Power Ltd. y Kenon Holdings Ltd. v. Republic of Peru</i>, ICSID Case No. ARB/19/19, Award 3 October de 2023 ¶ 225.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29. Memorial on the Merits, ¶¶ 52, 123.</p> |
| <b>C. Objections to Document Request (max. 500 words)</b>   | <p>The documents requested are already in Argentina’s possession.</p> <p>The Amended and Restated Limited Liability Company Agreement of BA Desarrollos was submitted with BA Desarrollos’s Request for Arbitration (C-3) on 23 June 2023. The Limited Liability Company Agreement of BA</p>  |



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| <b>Document Request 1</b>                              |   |
|--|---|
|  | <p>Desarrollos dated 3 October 2017 was submitted with the Memorial (C-121) on 29 March 2024.</p> <p>Moreover, Argentina has had both requested documents in its possession since before the initiation of these proceedings. As explained in the Memorial, in May 2023, Argentina’s Public Prosecutor sent a notice to Fideicomiso BAP’s trustee, requesting <i>inter alia</i> corporate information about BA Desarrollos. Fideicomiso BAP’s trustee promptly complied with the request and submitted BA Desarrollos’s limited liability agreement and amendment. <i>See</i> Memorial on the Merits, para 115; Witness Statement of ██████████, para 83.</p> |
| <b>D. Decision of the Tribunal on Document Request</b> | <p>The Tribunal takes note of Claimant’s confirmation that the Documents that respond to Respondent’s request are already on the record. The Tribunal issues no further orders in this regard at this stage.</p>  |

| <b>Document Request 2</b>   |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>All minutes of Shareholders’ and Board of Directors’ Meetings of BA Desarrollos LLC for the period between 3 October 2017 and the date of the filing of the Request for Arbitration (inclusive).</p>  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant states that BA Desarrollos LLC is a US investor protected under the Treaty simply because it is a limited liability company incorporated under the laws of the State of Delaware that, as Claimant argues, conducts its business activities within the US (Memorial on the Merits, ¶¶ 123-124).</p> <p>Thus, the requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Arbitral tribunals have considered that for a company to have substantial business activities, “[i]t will usually have a</p> |

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| <b>Document Request 2</b>  |   |
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|  | <p>board of directors, board minutes, a continuous physical presence and a bank account.” <i>Pac Rim Cayman LLC v. The Republic of El Salvador</i>, ICSID Case No. ARB/09/12, Decision on the Respondent’s Jurisdictional Objections, 1 June 2012, ¶ 4.72.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 123-124.</p>   |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>As explained in the Memorial, BA Desarrollos is a limited liability company (<i>LLC</i>) incorporated under the laws of Delaware. Unlike corporations, Delaware <i>LLCs do not have a board of directors</i> and <i>LLCs therefore do not prepare or issue any board minutes</i>. Thus, BA Desarrollos does not issue board minutes.</p> <p>In addition, since BA Desarrollos is not a corporation, BA Desarrollos <u>does not have “shareholders”</u> and it does not issue “shareholders’ meeting minutes”. The owners of an LLC under Delaware law are called “Members”. Delaware law does not require LLCs or their Members to hold annual meetings nor are such meetings common where the LLC is owned by a single Member, as is the case of BA Desarrollos.<sup>13</sup></p> <p><i>See</i> Memorial on the Merits, paras 50-52, and fn 91, Witness Statement of [REDACTED], paras 14-16. <i>See also</i> 6 Delaware Code (excerpt), <b>C-119</b>, §§ 18-101(10) and (13), 18-301, 18-402; Real Estate Law Corporation, “Member-Managed Vs. Manager-Managed LLCs”, <b>C-120</b>, p 002.</p> |
| <p><b>D. Decision of the Tribunal on Document Request</b></p>    | <p>The Tribunal takes note of Claimant’s statement that there are no Documents related to Request 2 since BA Desarrollos</p>  |

<sup>13</sup> See Inc Now, “What is a Delaware LLC?”, **C-205**.

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| <b>Document Request 2</b> |  |
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|                           | has no board of directors or shareholders. The Tribunal issues no further orders in this regard at this stage. |

| <b>Document Request 3</b>   |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | Financial Statements of BA Desarrollos LLC for all fiscal years between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).   |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Financial statements are documents that provide information on the economic activities of the company, which include explanatory notes from management together with details of the company’s annual accounts that allow to identify the amount of the company’s assets, liabilities, and shareholders’ equity, its income statement and statement of cash flow, among other relevant information. Financial statements must be audited by the respective government agencies and accountants to ensure accuracy and for tax, financing, or investing purposes.</p> <p>Arbitral tribunals have considered that financial statements are relevant evidence to determine if a company has substantial activities in a State. <i>Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine</i>, SCC Case No. V 2015/092, Final Award, 4 February 2021, ¶¶ 632, 634.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 123-124.</p> |

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| <b>Document Request 3</b>                                 |  |
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| <b>C. Objections to Document Request (max. 500 words)</b> | <p>BA Desarrollos disagrees with the assertions made by Argentina to justify its request, as well as the timeframe requested.</p> <p>Nevertheless, BA Desarrollos agrees to voluntarily produce its financial statements for the years available, [REDACTED]. The financial statements are not audited given that BA Desarrollos is a privately-owned company.</p> |
| <b>D. Decision of the Tribunal on Document Request</b>    | <p>The Tribunal takes note of Claimant’s agreement to produce its financial statements for the years [REDACTED]. Claimant shall produce such documents no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p>   |

| <b>Document Request 4</b>   |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>BA Desarrollos LLC’s official tax certificates showing the payment of all applicable taxes, <i>e.g.</i> residents’ income tax, social insurance mandatory payments (for the staff employed), franchise tax, income taxes, property taxes, property and use taxes, between 3 October 2017 and the date of the filing of the Request for Arbitration (inclusive).</p>  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant states that BA Desarrollos LLC is a US investor protected under the Treaty simply because it is a limited liability company incorporated under the laws of the State of Delaware that, as Claimant argues, conducts its business activities within the US (Memorial on the Merits, ¶ 123-124).</p> <p>Thus, the requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Arbitral tribunals have considered that the payment of taxes is a relevant element to assess the existence of substantial activities in the territory of a certain State. <i>See</i></p> |

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| <b>Document Request 4</b>  |  |
|--|--|
|  | <p><i>Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine</i>, SCC Case No. V 2015/092, Final Award, 4 February 2021, ¶ 617.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, ¶¶ 123-124.</p>   |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos disagrees with the assertions made by Argentina to justify its request, as well as the timeframe requested.</p> <p>Nevertheless, BA Desarrollos agrees to voluntarily produce its US corporate income tax returns and proof of Delaware franchise tax payments from [REDACTED].</p> <p>BA Desarrollos further notes that, as explained in the Memorial, BA Desarrollos is managed by EMS Capital—a limited partnership constituted in Delaware with its principal office in New York. EMS Capital is empowered “to do anything and everything it deems necessary or appropriate to carry on the business and purposes of [BA Desarrollos].” <i>See</i> Limited Liability Company Agreement of BA Desarrollos LLC, 3 October 2017, C-121, Art 4; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC, [REDACTED], C-3, Art 5. As BA Desarrollos has explained, EMS Capital provides the back-office capabilities for BA Desarrollos, including by employing staff who carry out business activities for BA Desarrollos. Therefore, BA Desarrollos does not directly pay “social insurance mandatory payments (for the staff employed).” <i>See</i> Memorial on the Merits, paras 50, 52, 124, and fn 91; Witness Statement of [REDACTED], paras 14-19.</p> |
| <p><b>D. Decision of the Tribunal on Document Request</b></p>    | <p>The Tribunal takes note of the fact that Claimant has agreed to produce its US corporate income tax returns and proof of Delaware franchise tax payments from [REDACTED].</p>   |

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| <b>Document Request 4</b> |  |
|---------------------------|--|
|                           | <p>The Tribunal also acknowledges that Claimant states [REDACTED] that it is not in possession of proof of social security mandatory payments, as these are made by EMS Capital pursuant to Section 4 of the Limited Liability Company Agreement (C-121).</p> <p>The Tribunal issues no further orders in this regard at this stage.</p> |

| <b>Document Request 5</b>   |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Documents sufficient to identify BA Desarrollos LLC’s bank accounts in the US, and account statements of each of those bank accounts, between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).</p>  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant states that BA Desarrollos LLC is a US investor protected under the Treaty simply because it is a limited liability company incorporated under the laws of the State of Delaware that, as Claimant argues, conducts its business activities within the US (Memorial on the Merits, ¶¶ 123-124).</p> <p>Thus, the requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>The requested documents are a common source of records reflecting substantial activities in the US, such as payments received by or paid to customers/clients, suppliers and contractors, salary payments to payroll personnel, tax payments, shareholder contributions, cash receipts from bank loans, transfers to third parties, etc.</p> <p>Arbitral tribunals have considered the existence of bank accounts to be relevant to assess the existence of substantial activities in a State: “a holding company has substantive business operations in its State of incorporation as long as it</p> |

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| <b>Document Request 5</b>  |   |
|--|---|
|  | <p>conducts core corporate functions, rents office spaces, has full-time locally-based employees and bank accounts there.” <i>IC Power Ltd. y Kenon Holdings Ltd. v. Republic of Peru</i>, ICSID Case No. ARB/19/19, Award, 3 October de 2023, ¶ 225.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 123-124.</p>  |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos partially objects to this request.</p> <p>(a) Notwithstanding BA Desarrollos’s disagreement with the assertions made by Argentina to justify its request, including the dates relevant to establishing substantial business activities under Article I(2) of the Treaty, BA Desarrollos agrees to voluntarily produce documents that are sufficient to identify BA Desarrollos’s bank account in the US, namely a certificate from [REDACTED] identifying the bank account held by BA Desarrollos in the United States.</p> <p>(b) BA Desarrollos objects to Argentina’s request to produce all of its bank account statements. Argentina’s request is excessively broad, irrelevant to this case and immaterial to its outcome (Articles 3(3)(a), 9(2)(a) of the IBA Rules on the Taking of Evidence in International Arbitration (<i>IBA Rules</i>)). To establish that BA Desarrollos has substantial business activities in the US, it is unnecessary to disclose all of the individual payments made by BA Desarrollos.</p> <p>In any event, Argentina’s request is duplicative with Request 3, as BA Desarrollos’s financial statements, which BA Desarrollos is agreeing to voluntarily produce, will show the information requested by Argentina (namely the amounts going in and out of the company). It should therefore also be denied on the basis of Article 9(2)(g) of the IBA Rules.</p> |

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| <b>Document Request 5</b>                              |  |
|--|--|
|  | <p>Finally, regarding Argentina’s assertion that BA Desarrollos’s bank account statement will show “salary payments to payroll personnel,” BA Desarrollos notes that, as explained in the Memorial and above, BA Desarrollos is managed by EMS Capital—a limited partnership constituted in Delaware with its principal office in New York—which provides back-office capabilities for BA Desarrollos, including staff. <i>See</i> Memorial on the Merits, paras 50, 52, 124, and fn 91; Witness Statement of [REDACTED], paras 14-19.</p>   |
| <b>D. Decision of the Tribunal on Document Request</b> | <p>The Tribunal takes note of Claimant’s agreement to produce a certificate from [REDACTED] identifying the bank account held by BA Desarrollos in the United States. Claimant shall produce such document no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> <p>As to the bank statements between 3 October 2017 and 23 June 2023, the Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to evaluate BA Desarrollos’ business activity in the United States. Therefore, Claimant shall find and produce any Documents responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

| <b>Document Request 6</b>  |  |
|--|--|
| <b>A. Document(s) or category of document(s) requested</b>                     | <p>Documents sufficient to show ownership and registration of BA Desarrollos LLC’s assets in the US, including but not limited to real estate properties, vehicles, and inventory, between 3 October 2017 and the date of the filing of the Request for Arbitration (inclusive).</p> |
| <b>B. Relevance and materiality, including (i) references to paragraphs of</b> | <p>Claimant states that BA Desarrollos LLC is a US investor protected under the Treaty simply because it is a limited liability company incorporated under the laws of</p>   |



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| <b>Document Request 6</b>                                   |   |
|---|---|
| <b>the pleadings; (ii) statement on custody and control</b> | <p>the State of Delaware that, as Claimant argues, conducts its business activities within the US (Memorial on the Merits, ¶ 123-124).</p> <p>Thus, the requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, ¶¶ 123-124.</p>  |
| <b>C. Objections to Document Request (max. 500 words)</b>   | <p>BA Desarrollos objects to this request.</p> <p>Any assets owned by BA Desarrollos would be reflected in BA Desarrollos’s financial statements, which BA Desarrollos is voluntarily agreeing to produce. <i>See</i> Response to Document Request 3.</p> <p>In any event, the requested documents are irrelevant to the case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules). Argentina cites to no caselaw to support its assertion that the registration of assets in the US such as real estate properties, vehicles and “inventory” is relevant for establishing that BA Desarrollos has “substantial business activities in the territory of” the US. As explained by the tribunal in <i>9REN Holding v Spain</i>, “[t]he test of substantial business activities must take its colour from the nature of the business.”<sup>14</sup> In this case, BA Desarrollos was constituted to develop real estate projects in Argentina. <i>See</i> Memorial on the Merits, paras 50-54. As BA Desarrollos has explained, it has taken all of the major business decisions on the development of the</p> |

<sup>14</sup> *9REN Holding Sarl v Kingdom of Spain* (ICSID Case No ARB/15/15) Award, 31 May 2019, CL-71, para 182.

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| <b>Document Request 6</b>                              |   |
|--|---|
|  | Catalinas Norte II Project from the United States. See Witness Statement of [REDACTED], paras 17-19.  |
| <b>D. Decision of the Tribunal on Document Request</b> | The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce the requested Documents no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1. |

| <b>Document Request 7</b>   |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | All rental contracts for office spaces of BA Desarrollos LLC in the US entered into between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant states that BA Desarrollos LLC is a US investor protected under the Treaty simply because it is a limited liability company incorporated under the laws of the State of Delaware that, as Claimant argues, conducts its business activities within the US (Memorial on the Merits, ¶¶ 123-124).</p> <p>Thus, the requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Arbitral tribunals have considered that “a holding company has substantive business operations in its State of incorporation as long as it conducts core corporate functions, rents office spaces, has full-time locally-based employees and bank accounts there.” <i>IC Power Ltd. y Kenon Holdings Ltd. v. Republic of Peru</i>, ICSID Case No. ARB/19/19, Award, 3 October de 2023, ¶ 225; see also <i>Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine</i>, SCC Case No. V 2015/092, Final Award, 4 February 2021, ¶ 630.</p> |

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| <b>Document Request 7</b>  |   |
|--|---|
|  | <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 123-124.</p>                                |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos confirms that it does not directly rent any office space, but EMS Capital LP, the manager of BA Desarrollos, does rent office space in New York which is used for BA Desarrollos’s business activities. <i>See</i> Memorial on the Merits, paras 50, 52, and fn 91; Witness Statement of [REDACTED], paras 14-19; <i>see</i> above Response to Request 4.</p> |
| <p><b>D. Decision of the Tribunal on Document Request</b></p>    | <p>The Tribunal takes note of Claimant’s statement that there are no Documents related to Request 7 since EMS Capital LP oversees renting office space on behalf of BA Desarrollos. Therefore, BA Desarrollos does not directly rent any office space. The Tribunal issues no further orders in this regard at this stage.</p>  |

| <b>Document Request 8</b>  |  |
|--|--|
| <p><b>A. Document(s) or category of document(s) requested</b></p>  | <p>Documents sufficient to identify BA Desarrollos LLC’s employees (either part-time or full-time employees), their position and entry-departure dates, and BA Desarrollos LLC’s payments of salaries or any other amounts in Delaware between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).</p> |
| <p><b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b></p> | <p>Claimant states that BA Desarrollos LLC is a US investor protected under the Treaty simply because it is a limited liability company incorporated under the laws of the State of Delaware that, as Claimant argues, conducts its business activities within the US (Memorial on the Merits, ¶¶ 123-124).</p>  |

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| <b>Document Request 8</b>  |  |
|--|--|
|  | <p>Thus, the requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Indeed, payroll is one of the major expenses for most businesses and is generally deductible from income tax lowering the company’s taxable income.</p> <p>Arbitral tribunals have considered that “a holding company has substantive business operations in its State of incorporation as long as it conducts core corporate functions, rents office spaces, has full-time locally-based employees and bank accounts there.” <i>IC Power Ltd. y Kenon Holdings Ltd. v. Republic of Peru</i>, ICSID Case No. ARB/19/19, Award, 3 October de 2023, ¶ 225; <i>see also Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine</i>, SCC Case No. V 2015/092, Final Award, 4 February 2021, ¶ 630.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 123-124.</p> |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>As explained in the Memorial and above, the requested documents do not exist as BA Desarrollos is managed by EMS Capital and, in that capacity, EMS Capital hires employees who undertake BA Desarrollos’s business activities. <i>See</i> Memorial on the Merits, paras 50, 52, 124, and fn 91; Witness Statement of [REDACTED], paras 14-19.</p> <p>In addition, Argentina requests that BA Desarrollos provide documents sufficient to identify BA Desarrollos’s payments of “any other amounts in Delaware between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).” Such a request is, on its face, excessively broad and fails to identify “a narrow and specific category of documents,” and should therefore be rejected. Also, it is not clear why payments made in Delaware would be relevant or</p>   |

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| <b>Document Request 8</b>                              |   |
|--|---|
|  | material for this case (they are not). <i>See</i> Procedural Order No. 1, Section 16.3.1. <i>See also</i> Article 3(3)(a)(ii) of the IBA Rules. In any event, BA Desarrollos agrees to produce documents of Delaware invoices and the Delaware franchise tax.   |
| <b>D. Decision of the Tribunal on Document Request</b> | <p>The Tribunal takes note of Claimant’s statement that there are no Documents related to the hiring of staff since BA Desarrollos does not hire employees directly.</p> <p>Additionally, the Tribunal acknowledges that Claimant has agreed to produce the invoices issued in Delaware and the Documents related to the Delaware franchise tax. Claimant shall produce such documents no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> <p>The Tribunal issues no further orders in this regard at this stage.</p> |

| <b>Document Request 9</b>   |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | Employment contracts or documents sufficient to identify employment relationships between BA Desarrollos LLC and its employees (either part-time or full-time) in the US between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).   |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Arbitral tribunals have considered that “a holding company has substantive business operations in its State of incorporation as long as it conducts core corporate functions, rents office spaces, has full-time locally-based employees and bank accounts there.” <i>IC Power Ltd. y Kenon Holdings Ltd. v. Republic of Peru</i>, ICSID Case No. ARB/19/19, Award, 3 October de 2023, ¶ 225; <i>see also Littop Enterprises</i></p> |

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| <b>Document Request 9</b>                                 |  |
|---|--|
|   | <p><i>Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine</i>, SCC Case No. V 2015/092, Final Award, 4 February 2021, ¶ 630.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 52, 123.</p> |
| <b>C. Objections to Document Request (max. 500 words)</b> | BA Desarrollos notes that this request is duplicative with Request 8 and refers to its response there.   |
| <b>D. Decision of the Tribunal on Document Request</b>    | The Tribunal takes note of Claimant’s statement that there are no Documents related to the hiring of staff since BA Desarrollos does not hire employees directly. The Tribunal issues no further orders in this regard at this stage.  |

| <b>Document Request 10</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | Invoices for internet services and for office utilities and related expenses paid by Claimant for its “place of business” in Delaware from the date of incorporation of BA Desarrollos LLC (3 October 2017) to the date of the filing of the Request for Arbitration (inclusive).   |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Arbitral tribunals have considered that evidence of expenditure in office utilities and related expenses is relevant to determine if a company has substantial activities in a certain State. <i>Aris Mining Corporation (formerly known as GCM Mining Corp. and Gran Colombia Gold Corp.) v. Republic of Colombia</i>, ICSID Case No. ARB/18/23,</p> |

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| <b>Document Request 10</b>                                |  |
|---|--|
|   | <p>Decision on the Bifurcated Jurisdictional Issue, 23 November 2020, ¶ 139.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 52, 123.</p>      |
| <b>C. Objections to Document Request (max. 500 words)</b> | <p>As already explained, BA Desarrollos is managed by EMS Capital and it is EMS Capital that rents office space in New York, which is used to carry out the business activities of BA Desarrollos. It is therefore EMS Capital which incurs related office space expenses, including utilities expenses and IT expenses. <i>See</i> Memorial on the Merits, paras 50, 52, and fn 91; Witness Statement of ██████████, paras 14-19.</p> |
| <b>D. Decision of the Tribunal on Document Request</b>    | <p>The Tribunal takes note of Claimant’s statement that there are no Documents related to Request 10 since the related office expenses are allegedly incurred by EMS Capital. Therefore, the Tribunal issues no further orders in this regard at this stage.</p>   |

| <b>Document Request 11</b>  |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Documents sufficient to identify BA Desarrollos LLC’s annual purchases of goods and services in the U.S., including but not limited to accounting and advisory services, legal services, IT services, and liability policies, between 3 October 2017 and the date of the filing of the Request for Arbitration (inclusive).</p> |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant states that BA Desarrollos LLC is a US investor protected under the Treaty simply because it is a limited liability company incorporated under the laws of the State of Delaware that, as Claimant argues, conducts its business activities within the US (Memorial on the Merits, ¶ 123-124).</p>                     |

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| <b>Document Request 11</b>                                |  |
|---|--|
|   | <p>Thus, the requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Arbitral tribunals have considered that evidence of purchase of goods and services connected with the core business purpose of a company is relevant to determine if there are substantial activities in a certain State. <i>Aris Mining Corporation (formerly known as GCM Mining Corp. and Gran Colombia Gold Corp.) v. Republic of Colombia</i>, ICSID Case No. ARB/18/23, Decision on the Bifurcated Jurisdictional Issue, 23 November 2020, ¶ 139.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 123-124.</p> |
| <b>C. Objections to Document Request (max. 500 words)</b> | <p>BA Desarrollos disagrees with the assertions made by Argentina to justify its request, as well as the timeframe requested.</p> <p>Nevertheless, BA Desarrollos agrees to voluntarily produce the services contracts it has entered into.</p>  |
| <b>D. Decision of the Tribunal on Document Request</b>    | <p>The Tribunal takes note of the fact that BA Desarrollos has agreed to produce the services contracts it has entered into. If BA Desarrollos has contracts for the purchase of goods, they should also be produced. Claimant shall produce such documents no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1. The Tribunal issues no further orders in this regard at this stage.</p>  |



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| <b>Document Request 12</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Documents and communications sufficient to identify all instances in which Claimant has appointed, given orders or instructed Claimant’s directors regarding its management, operations, budget, finances, or any other aspect of Claimant’s business from the date of incorporation of BA Desarrollos LLC (3 October 2017) to the date of the filing of the Request for Arbitration (inclusive).</p>  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT. Indeed, the requested documents are relevant and material to determine what activities, if any, BA Desarrollos LLC’s directors conduct in the US.</p> <p>Arbitral tribunals have considered that “a holding company has substantive business operations in its State of incorporation as long as it conducts core corporate functions, rents office spaces, has full-time locally-based employees and bank accounts there.” <i>IC Power Ltd. Y Kenon Holdings Ltd. V. Republic of Peru</i>, ICSID Case No. ARB/19/19, Award, 3 October de 2023, ¶ 225; <i>see also Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine</i>, SCC Case No. V 2015/092, Final award, 4 February 2021, ¶ 630.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 52, 123.</p> |
| <b>C. Objections to Document Request (max. 500 words)</b>   | <p>As explained in the Memorial and above in response to Request 2, BA Desarrollos is an LLC incorporated under the laws of Delaware and it <u>does not have a board of directors</u>. Instead, EMS Capital, the manager of BA Desarrollos, carries out the business and purposes of BA Desarrollos. Argentina’s request ignores the legal and operational</p>  |

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| <b>Document Request 12</b>                             |   |
|--|---|
|  | structure of BA Desarrollos although BA Desarrollos has explained all of this in its Memorial.  |
| <b>D. Decision of the Tribunal on Document Request</b> | The Tribunal takes note of Claimant’s statement that there are no Documents related to Request 12 since BA Desarrollos has no board of directors. The Tribunal issues no further orders in this regard at this stage. |

| <b>Document Request 13</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | Timesheets, payroll slips, or other records of daily time spent by all employees (either part-time or full-time) of BA Desarrollos LLC in Delaware between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the request for Arbitration (inclusive).  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Arbitral tribunals have considered that “a holding company has substantive business operations in its State of incorporation as long as it conducts core corporate functions, rents office spaces, has full-time locally-based employees and bank accounts there.” <i>IC Power Ltd. Y Kenon Holdings Ltd. V. Republic of Peru</i>, ICSID Case No. ARB/19/19, Award, 3 October de 2023, ¶ 225; <i>see also Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine</i>, SCC Case No. V 2015/092, Final award, 4 February 2021, ¶ 630.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request of Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 52, 123.</p> |

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| <b>Document Request 13</b>                                |  |
|---|--|
| <b>C. Objections to Document Request (max. 500 words)</b> | This request is duplicative with Requests 8 and 9. BA Desarrollos refers to its Response to Request 8.   |
| <b>D. Decision of the Tribunal on Document Request</b>    | <p>The Tribunal takes note of Claimant’s statement that there are no Documents related to Request 13 since BA Desarrollos does not hire employees directly.</p> <p>The Tribunal issues no further orders in this regard at this stage.</p> |

| <b>Document Request 14</b>  |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | Documents sufficient to identify BA Desarrollos LLC’s full shareholding structure, including but not limited to share registers and details of the stakeholders of BA Desarrollos LLC and the number of shares held by each of them, as well as documents sufficient to show the chain of shareholding up until Claimant’s ultimate controlling party, the place of incorporation of each entity or the nationality of the natural persons in the shareholding structure, between the date of incorporation of BA Desarrollos LLC (October 3, 2017) and the date of the filing of the Request for Arbitration (inclusive). |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material in light of the “control” element of Article 1(2) of the Argentina-US BIT.</p> <p>██████████ (one of the entities in the so-called EMS Group) constituted BA Desarrollos LLC, a limited liability company incorporated under the laws of Delaware to act as the special purpose vehicle for the Catalina’s Norte II project (<i>see</i> Memorial on the Merits, ¶ 52). In ██████████, all of ██████████ membership interests in BA Desarrollos seem to have been assigned to ██████████ (<i>see</i> Memorial on the Merits, fn. 94).</p>                              |

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| <b>Document Request 14</b>                                       |  |
|--|--|
|  | <p>Claimant refers to the so-called EMS Group (<i>see</i> Witness Statement of [REDACTED], ¶¶ 14, 17), which is not known to be a shareholder, and implies that it would be part of the corporate chain of BA Desarrollos. Also, Mr. Safra, an Italian and Brazilian national according to Claimant (Memorial on the Merits, fn. 92), seems to be the ultimate owner of the so-called EMS Group (<i>see</i> Witness Statement of [REDACTED], ¶ 20).</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, ¶¶ 52, 123-124, fns. 92, 94; Witness Statement of [REDACTED], ¶ 20.</p> |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos objects to this request.</p> <p>The request is irrelevant to the case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules).</p> <p>As BA Desarrollos has explained, BA Desarrollos was owned by [REDACTED], an entity incorporated in the Cayman Island from October 2017 [REDACTED]. As of [REDACTED], BA Desarrollos is owned by [REDACTED], an entity incorporated in the British Virgin Islands. Neither entity is a US national.<sup>15</sup></p> <p>As BA Desarrollos has also explained, BA Desarrollos is ultimately owned by Mr. Safra, an Italian and Brazilian national. <i>See</i> Memorial on the Merits, para 51, fn 92;</p>   |

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<sup>15</sup> [REDACTED] is an entity incorporated in the Cayman Islands and [REDACTED] is an entity incorporated in the British Virgin Islands.

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| <b>Document Request 14</b>                             |   |
|--|---|
|  | <p>Witness Statement of [REDACTED], para 14, fn 4, and para 18.</p> <p>BA Desarrollos further confirms that there is no entity in its chain of ownership that is a US national.</p>   |
| <b>D. Decision of the Tribunal on Document Request</b> | <p>The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document that is response to the request no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

| <b>Document Request 15</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Incorporation Agreement of EMS Opportunity Ltd. or similar instruments under which EMS Opportunity Ltd. was constituted, including all of its schedules, supplements or other documents containing provisions as to the conduct of the business and affairs of EMS Opportunity Ltd.</p>  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant argues that EMS Opportunity Ltd. [REDACTED] (Memorial on the Merits, [REDACTED]). It appears that at the time of its incorporation [REDACTED] EMS Opportunity Ltd (Amended and Restated [REDACTED] Agreement [REDACTED], first recital, [REDACTED]), a company incorporated in [REDACTED].</p> <p>The requested documents are relevant and material to know the place of incorporation and the registration details of EMS Opportunity Ltd. [REDACTED], in light of the [REDACTED] Argentina-US BIT.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the</p> |

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| Document Request 15  |  |
|--|--|
|  | <p>potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, [REDACTED]; Witness Statement of [REDACTED], ¶ 18.</p>  |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos objects to this request.</p> <p>The request is irrelevant to the case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules). It is not in dispute that at the time [REDACTED] was EMS Opportunity Ltd. <i>See</i> [REDACTED], Preamble, first paragraph. It is also not in dispute that EMS Opportunity is incorporated in the [REDACTED]. <i>See</i> Witness Statement of [REDACTED], para 14, fn 4.</p> <p>Furthermore, as noted above, it is not in dispute that [REDACTED], EMS Opportunity [REDACTED], Preamble, second paragraph. Accordingly, the nationality of EMS Opportunity, while undisputed, is also irrelevant and immaterial.</p> |
| <p><b>D. Decision of the Tribunal on Document Request</b></p>    | <p>The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to the request no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p>  |

| Document Request 16   |  |
|---|--|
| <p><b>A. Document(s) or category of document(s) requested</b></p> | <p>Documents sufficient to identify [REDACTED] shareholding structure, including but not limited to share registers and details of the stakeholders of [REDACTED] and the number of shares held by each of them, as well</p> |

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| <b>Document Request 16</b>   |   |
|--|---|
|  | <p>as all BA Desarrollos LLC shares owned by [REDACTED], if any, between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).</p>  |
| <p><b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b></p> | <p>Claimant argues that BA Desarrollos LLC was incorporated in Delaware (Request for Arbitration, ¶¶ 1, 27-29) and that it was constituted by [REDACTED] (Memorial on the Merits, ¶ 52); however, it has not submitted documents regarding its chain of ownership or its managers.</p> <p>The requested documents are relevant and material to know the partner(s), member(s), shareholder(s) or owner(s) of [REDACTED], as the apparent original sole and immediate shareholder (“member”) of BA Desarrollos LLC, in light of the “control” element of Article 1(2) of the Argentina-US BIT.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 52, 123-124.</p> |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p>   | <p>BA Desarrollos objects to this request.</p> <p>The request is irrelevant to the case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules). The identity of [REDACTED] shareholders is irrelevant and immaterial since, as of [REDACTED] no longer owns BA Desarrollos.</p> <p>In any event, as BA Desarrollos has already explained, there is no entity in its chain of ownership that is a US national. BA Desarrollos refers to its Response to Request 14.</p>  |
| <p><b>D. Decision of the Tribunal on Document Request</b></p>  | <p>The Tribunal does not consider the requested Documents to be relevant for the period after [REDACTED], as [REDACTED] was not the owner of BA Desarrollos thereafter.</p>   |

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| <b>Document Request 16</b> |  |
|----------------------------|--|
|                            | <p>Therefore, the Tribunal decides that this request should be reduced to:</p> <p style="padding-left: 40px;"><i>“Documents sufficient to identify [REDACTED] shareholding structure, including but not limited to share registers and details of the stakeholders of [REDACTED] and the number of shares held by each of them, as well as all BA Desarrollos LLC shares owned by [REDACTED], if any, between the date of incorporation of BA Desarrollos LLC (3 October 2017) and [REDACTED] (inclusive).”</i></p> <p>The Tribunal considers that the (reduced) request is <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

| <b>Document Request 17</b>   |   |
|--|---|
| <p><b>A. Document(s) or category of document(s) requested</b></p>  | <p>Financial statements of EMS Opportunity Ltd. for all fiscal years between [REDACTED] and the date of the filing of the Request for Arbitration (inclusive).</p>  |
| <p><b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b></p> | <p>The requested documents are relevant and material in light of [REDACTED] the Argentina-US BIT, considering that Claimant asserts that EMS Opportunity Ltd., [REDACTED] (Memorial on the Merits, [REDACTED]), and that EMS Opportunity Ltd [REDACTED] (Amended and Restated [REDACTED] Agreement [REDACTED], first recital, [REDACTED]).</p> <p>Financial statements are documents that provide information on the economic activities of the company, which include explanatory notes from management together with details of the company’s annual accounts that allow to identify the amount of the company’s assets, liabilities, and</p> |



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| <b>Document Request 17</b>                                       |   |
|--|---|
|  | <p>shareholders' equity, its income statement and statement of cash flow, among other relevant information. Financial statements must be audited by the respective government agencies and accountants to ensure accuracy and for tax, financing, or investing purposes.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, [REDACTED].</p>                             |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos objects to this request.</p> <p>The request is excessively broad as EMS Opportunity [REDACTED] since [REDACTED] (Article 3(3)(a) of the IBA Rules). Argentina argues that the financial statements of EMS Opportunity would show the “assets”, “liabilities” and “cash flow[s]” of EMS Opportunity and that these documents [REDACTED]. All of these elements are irrelevant and immaterial to establishing whether [REDACTED] (Article 9(2)(a) of the IBA Rules).</p>  |
| <p><b>D. Decision of the Tribunal on Document Request</b></p>    | <p>The Tribunal does not consider EMS Opportunity's financial statements after [REDACTED] to be relevant, as EMS Opportunity [REDACTED] thereafter. Therefore, the Tribunal resolves that this request should be reduced to:</p> <p><i>“Financial statements of EMS Opportunity Ltd. for all fiscal years between [REDACTED] and [REDACTED] (inclusive).”</i></p> <p>The Tribunal considers that the (reduced) request is <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Documents responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

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| <b>Document Request 18</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Assignment Agreement [REDACTED] between [REDACTED], as assignor, and [REDACTED] as assignee, whereby the former assigned to the latter 100% of its membership interest in BA Desarrollos LLC, including any amendments, modifications, supplements or other documents related to said Assignment Agreement.</p>  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material to determine whether BA Desarrollos LLC conducts “substantial business activities in the territory of” the US, in light of Article 1(2) of the Argentina-US BIT.</p> <p>Claimant argues that BA Desarrollos LLC was incorporated in Delaware (Request for Arbitration, ¶¶ 1, 27-29); however, it has not submitted documents regarding its chain of ownership or its managers.</p> <p>The requested documents are relevant and material to understand the circumstances and terms under which the alleged original sole shareholder (“member”) assigned 100% of the membership to the alleged current sole shareholder (“member”) of BA Desarrollos LLC.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, fn. 94; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC dated [REDACTED], second recital (C-003).</p> |
| <b>C. Objections to Document Request (max. 500 words)</b>   | <p>BA Desarrollos objects to this request.</p> <p>First, Argentina has a copy of the Assignment Agreement dated [REDACTED] in its possession (Article 3(3)(c) of the IBA Rules). As BA Desarrollos explained in the Memorial, in May 2023, Argentina’s Public Prosecutor sent a notice to Fideicomiso BAP’s trustee, requesting <i>inter alia</i> corporate information about BA Desarrollos. Fideicomiso BAP’s trustee promptly complied with the request and submitted</p>  |

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| <b>Document Request 18</b>                             |  |
|--|--|
|  | <p>the Assignment Agreement that Argentina now requests. <i>See Memorial on the Merits</i>, para 115; Witness Statement of [REDACTED], para 83.</p> <p>Second, and in any event, the Assignment Agreement is irrelevant to this case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules). Contrary to Argentina’s assertions, the Assignment Agreement transferring ownership in BA Desarrollos [REDACTED] [REDACTED] has no bearing on whether BA Desarrollos has substantial business activities in the US.</p>   |
| <b>D. Decision of the Tribunal on Document Request</b> | <p>The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case.</p> <p>The Tribunal also takes note of Claimant’s statement that the Documents responding to this request were furnished to Argentina’s Federal Public Prosecutor in response to a request dated May 2023. However, on 25 April 2024, Argentina notified that its attempts to obtain the documents from the Federal Public Prosecutor had been unsuccessful.</p> <p>The Tribunal recognizes the particularity of the situation, where the requested Documents are in the possession of an office of Respondent, but Respondent has no access to it. However, the Tribunal does not consider that the production of these Documents imposes an unreasonable burden on Claimant to the extent it has produced them before.</p> <p>Therefore, and in view of the fact that Respondent has been unable to obtain the requested Documents, Claimant shall produce them before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

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

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| Document Request 19                                    |   |
|--|---|
|  | <p>[REDACTED] is irrelevant</p> <p>In any event, it is not in dispute that EMS Continuation is incorporated in [REDACTED]. See Witness Statement of [REDACTED], para 14, fn 4. It is also not in dispute [REDACTED]. EMS Continuation is [REDACTED].</p>  |
| <b>D. Decision of the Tribunal on Document Request</b> | <p>The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to the request no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

| Document Request 20  |   |
|--|---|
| <b>A. Document(s) or category of document(s) requested</b> | <p>Documents sufficient to show the shareholding structure of [REDACTED], including but not limited to share registers and details of the stakeholders of [REDACTED] and the number of shares held by each of them, as well as all BA Desarrollos LLC shares owned by [REDACTED], if any, between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).</p> |

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

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| <b>Document Request 20</b> |  |
|----------------------------|--|
|                            | <p>BA Desarrollos at that time. Therefore, the Tribunal resolves that this request should be reduced to:</p> <p><i>“Documents sufficient to show the shareholding structure of [REDACTED], including but not limited to share registers and details of the stakeholders of [REDACTED] and the number of shares held by each of them, as well as all BA Desarrollos LLC shares owned by [REDACTED], if any, between [REDACTED] and the date of the filing of the Request for Arbitration (inclusive).”</i></p> <p>The Tribunal considers that the (reduced) request is <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

| <b>Document Request 21</b>  |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | Financial statements of EMS Continuation S.A. for all fiscal years between the date of [REDACTED] and the date of the filing of the Request for Arbitration (inclusive).   |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material in light of the [REDACTED] Argentina-US BIT, considering that it seems that EMS Continuation S.A. [REDACTED]</p> <p>[REDACTED], a company incorporated in the [REDACTED] and also registered in [REDACTED] as a company domiciled abroad.</p> <p>Financial statements are documents that provide information on the economic activities of the company,</p> |

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| <b>Document Request 21</b>                                       |  |
|--|--|
|  | <p>which include explanatory notes from management together with details of the company’s annual accounts that allow to identify the amount of the company’s assets, liabilities, and shareholders’ equity, its income statement and statement of cash flow, among other relevant information. Financial statements must be audited by the respective government agencies and accountants to ensure accuracy and for tax, financing, or investing purposes.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, [REDACTED].</p> |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos objects to this request.</p> <p>The request is excessively broad as EMS Continuation has [REDACTED] (Article 3(3)(a) of the IBA Rules). Argentina argues that the financial statements of EMS Continuation would show the “assets”, “liabilities” and “cash flow[s]” of EMS Continuation and that these documents “are relevant and material [REDACTED] [REDACTED]. All of these elements are irrelevant and immaterial [REDACTED] [REDACTED] (Article 9(2)(a) of the IBA Rules).</p>  |
| <p><b>D. Decision of the Tribunal on Document Request</b></p>    | <p>The Tribunal does not consider EMS Continuation’s financial statements prior [REDACTED] to be relevant, as it [REDACTED]. Therefore, the Tribunal resolves that this request should be reduced to:</p> <p><i>“Financial statements of EMS Continuation S.A. for all fiscal years between [REDACTED] the date of the filing of the Request for Arbitration (inclusive).”</i></p>   |



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| <b>Document Request 21</b> |  |
|----------------------------|--|
|                            | <p>The Tribunal considers that the (reduced) request is <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

| <b>Document Request 22</b>   |   |
|--|---|
| <p><b>A. Document(s) or category of document(s) requested</b></p>  | <p>Certificate of incorporation of EMS Capital LP with the company registry of the jurisdiction concerned.</p>  |
| <p><b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b></p> | <p>The requested document is relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US and is controlled by nationals of a third country, in light of Article 1(2) of the Argentina-US BIT.</p> <p>The requested document is germane to the role of EMS Capital LP in connection with BA Desarrollos LLC. Claimant indicates that EMS Capital LP is the manager of BA Desarrollos (Request for Arbitration, ¶ 8; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC [REDACTED], second recital (C-003); Memorial on the Merits, ¶ 52), and that BA Desarrollos “conducts its business activities” purportedly “via its manager, EMS Capital” (Memorial on the Merits, ¶ 124).</p> <p>Argentina confirms that it does not possess, have custody over, or control the requested document, save for any potentially responsive document submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 8, 27-29; Memorial on the Merits, ¶¶ 52, 124.</p> |

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| <b>Document Request 22</b>                                |   |
|---|---|
| <b>C. Objections to Document Request (max. 500 words)</b> | <p>BA Desarrollos objects to this request.</p> <p>BA Desarrollos has already established that EMS Capital is constituted in Delaware and has its principal place of business in New York. <i>See</i> EMS Capital LP, SEC Form 13F, 2022, C-118, p 003.</p>  |
| <b>D. Decision of the Tribunal on Document Request</b>    | <p>The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

| <b>Document Request 23</b>  |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Incorporation Agreement of EMS Capital LP or similar instruments under which the company was constituted, including all of its schedules, supplements or other writings containing provisions as to the conduct of the business and affairs of EMS Capital LP.</p>  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US and is controlled by nationals of a third country, in light of Article 1(2) of the Argentina-US BIT.</p> <p>The requested documents are germane to the role of EMS Capital LP in connection with BA Desarrollos LLC. Claimant indicates that EMS Capital LP is the manager of BA Desarrollos (Request for Arbitration, ¶ 8; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC [REDACTED], second recital (C-003); Memorial on the Merits, ¶ 52), and that BA Desarrollos “conducts its business activities” purportedly “via its manager, EMS Capital” (Memorial on the Merits, ¶ 124).</p> |

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| <b>Document Request 23</b>                                       |  |
|--|--|
|  | <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 8, 27-29; Memorial on the Merits, ¶¶ 52, 124.</p>  |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos objects to this request.</p> <p>It irrelevant to the case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules). The constituting instrument of EMS Capital is irrelevant as to the scope of activities that EMS Capital undertakes for BA Desarrollos. Rather, as BA Desarrollos has explained, BA Desarrollos’s Company Agreement and amendment set out in great detail the broad scope of activities that EMS Capital undertakes for BA Desarrollos. <i>See</i> Limited Liability Company Agreement of BA Desarrollos LLC, 3 October 2017, <b>C-121</b>, Art 4; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC, [REDACTED], <b>C-3</b>, Art 5.</p> <p>Moreover, since EMS Capital is a limited partnership and not a corporation, it does not have an incorporation agreement.</p> |
| <p><b>D. Decision of the Tribunal on Document Request</b></p>    | <p>The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. The Tribunal recognizes Claimant’s statement that EMS Capital does not have an incorporation agreement. Therefore, Claimant shall find and produce any other similar Document that responds to this request before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> <p>The Tribunal does not consider the “<i>schedules, supplements or other writings containing provisions as to the conduct of the business and affairs of EMS Capital LP</i>” to be relevant and material for the purposes of establishing</p>  |

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| <b>Document Request 23</b> |  |
|----------------------------|--|
|                            | <p>jurisdiction. Therefore, the Tribunal resolves that this request should be reduced to:</p> <p><i>“Incorporation Agreement of EMS Capital LP or similar instruments under which the company was constituted”.</i></p> <p>The Tribunal considers that the (reduced) request is <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

| <b>Document Request 24</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Documents sufficient to identify EMS Capital LP’s shareholding structure, including but not limited to share registers and details of the stakeholders of EMS Capital LP and the number of shares held by each of them, between the date of incorporation of BA Desarrollos LLC (October 3, 2017) and the date of the filing of the Request for Arbitration (inclusive).</p>   |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US and is controlled by nationals of a third country, in light of Article 1(2) of the Argentina-US BIT.</p> <p>The requested documents are germane to the role of EMS Capital LP in connection with BA Desarrollos LLC. Claimant indicates that EMS Capital LP is the manager of BA Desarrollos (Request for Arbitration, ¶ 8; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC [REDACTED], second recital (C-003); Memorial on the Merits, ¶ 52), and that BA Desarrollos “conducts its business activities” purportedly “via its manager, EMS Capital” (Memorial on the Merits, ¶ 124).</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the</p> |

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| <b>Document Request 24</b>                                       |  |
|--|--|
|  | <p>potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 8, 27-29; Memorial on the Merits, ¶¶ 52, 124.</p>  |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos objects to this request.</p> <p>It is irrelevant to this case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules).</p> <p>The identity of the “shareholders” of EMS Capital is irrelevant to establishing whether EMS Capital is a US entity and to establish the activities that EMS Capital performs in the US. As BA Desarrollos has explained, the scope of the activities that EMS Capital performs for BA Desarrollos are set out in BA Desarrollos’s Company Agreement and amended agreement. <i>See</i> Limited Liability Company Agreement of BA Desarrollos LLC, 3 October 2017, <b>C-121</b>, Art 4; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC, [REDACTED], <b>C-3</b>, Art 5. <i>See also</i> Witness Statement of [REDACTED], paras 1, 8, 17-19.</p> <p>Finally, BA Desarrollos notes that EMS Capital is a limited partnership, not a corporation. It therefore does not have shareholders or a shareholding structure. For the avoidance of doubt, BA Desarrollos confirms that Mr. Safra is the ultimate owner of EMS Capital.</p> |
| <p><b>D. Decision of the Tribunal on Document Request</b></p>    | <p>The Tribunal takes note of Claimant’s statement that EMS Capital is a limited partnership and, accordingly, has neither shareholders nor a shareholding structure. In light of the foregoing, the Tribunal resolves that this request should be reduced to:</p> <p><i>“Documents sufficient to identify EMS Capital LP’s ownership structure between the date of incorporation of BA Desarrollos (3 October 2017) and the date of the filing of the Request for Arbitration.”</i></p> <p>The Tribunal considers that the (reduced) request is specific and that the underlying Documents appear to be</p>   |

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| <b>Document Request 24</b> |   |
|----------------------------|---|
|                            | <p><i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

| <b>Document Request 25</b>   |   |
|--|---|
| <p><b>A. Document(s) or category of document(s) requested</b></p>  | <p>Financial statements of EMS Capital LP for all fiscal years between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the request for Arbitration (inclusive).</p>  |
| <p><b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b></p> | <p>The requested documents are relevant and material to determine whether BA Desarrollos LLC has “substantial business activities in the territory of” the US and is controlled by nationals of a third country, in light of Article 1(2) of the Argentina-US BIT.</p> <p>The requested documents are germane to the role of EMS Capital LP in connection with BA Desarrollos LLC. Claimant indicates that EMS Capital LP is the manager of BA Desarrollos (Request for Arbitration, ¶ 8; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC [REDACTED], second recital (C-003); Memorial on the Merits, ¶ 52), and that BA Desarrollos “conducts its business activities” purportedly “via its manager, EMS Capital” (Memorial on the Merits, ¶ 124).</p> <p>Financial statements are documents that provide information on the economic activities of the company, which include explanatory notes from management together with details of the company’s annual accounts that allow to identify the amount of the company’s assets, liabilities, and shareholders’ equity, its income statement and statement of cash flow, among other relevant information. Financial statements must be audited by the respective government agencies and accountants to ensure accuracy and for tax, financing, or investing purposes.</p> <p>Arbitral tribunals have considered that financial statements are relevant evidence to determine if a company has</p> |

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| <b>Document Request 25</b>                                       |   |
|--|---|
|  | <p>substantial activities in a State. <i>Littop Enterprises Limited, Bridgemont Ventures Limited and Bordo Management Limited v. Ukraine</i>, SCC Case No. V 2015/092, Final Award, 4 February 2021, ¶¶ 632, 634.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 27-29; Memorial on the Merits, ¶ 52.</p>  |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos objects to this request.</p> <p>It is irrelevant to the case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules).</p> <p>BA Desarrollos has established that EMS Capital is the manager of BA Desarrollos. BA Desarrollos's Company Agreement and amended agreement set out in great detail the broad scope of activities that EMS Capital undertakes for BA Desarrollos. <i>See</i> Limited Liability Company Agreement of BA Desarrollos LLC, 3 October 2017, <b>C-121</b>, Art 4; Amended and Restated Limited Liability Company Agreement of BA Desarrollos LLC, [REDACTED], <b>C-3</b>, Art 5. <i>See also</i> Witness Statement of [REDACTED], paras 1, 8, 17-19.</p> <p>Moreover, Argentina's request is excessively broad. As BA Desarrollos has explained, EMS Capital acts as the investment manager for a large base of assets owned by the EMS Group. <i>See</i> Memorial on the Merits, paras 50-51; Witness Statement of [REDACTED], paras 1, 14. <i>See also</i> EMS Capital LP, "Real Estate Portfolio", June 2022, <b>C-117</b>, pp 002-004; EMS Capital, SEC Form 13F, 2022, <b>C-118</b>, pp 006-007. It is irrelevant and excessively broad to produce information about the entire base of assets managed by EMS Capital. <i>See</i> Section 16.3.1 of Procedural Order No. 1 and Article 3(3)(a)(ii) of the IBA Rules.</p> |

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| <b>Document Request 25</b>                             |  |
|--|--|
|  | BA Desarrollos is voluntarily producing its own financial statements. <i>See</i> Response to Request 3.  |
| <b>D. Decision of the Tribunal on Document Request</b> | The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to the request no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1. |

| <b>Document Request 26</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | Certificate of incorporation of EMS Capital Holding Inc.  |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant argues that BA Desarrollos LLC was incorporated in Delaware (Request for Arbitration, ¶¶ 1, 27-29); however, it has not submitted documents regarding its chain of ownership or its managers.</p> <p>The requested document is relevant and material considering that EMS Capital LP (the purported manager of BA Desarrollos LLC, <i>see</i> Memorial on the Merits, ¶¶ 52, 124) seems to be controlled by EMS Capital Holding Inc. (<i>see, e.g.,</i> <a href="https://www.sec.gov/Archives/edgar/data/1763731/000110465920122469/tm2035066-2_sc13da.htm">https://www.sec.gov/Archives/edgar/data/1763731/000110465920122469/tm2035066-2_sc13da.htm</a>), in light of the “control” element of Article 1(2) of the Argentina-US BIT.</p> <p>Argentina confirms that it does not possess, have custody over, or control the requested document, save for any potentially responsive document submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.,</i> Request for Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 52, 123-124.</p> |



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| <b>Document Request 26</b>                                |   |
|---|---|
| <b>C. Objections to Document Request (max. 500 words)</b> | <p>BA Desarrollos objects to this request.</p> <p>BA Desarrollos confirms that EMS Capital Holding Inc. is the general partner of EMS Capital and that EMS Capital Holding Inc. is incorporated in Delaware. This is confirmed in the SEC filing that Argentina cites to in its justification for the request, so no additional documents are warranted.<sup>16</sup></p> |
| <b>D. Decision of the Tribunal on Document Request</b>    | <p>The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to the request no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p>               |

| <b>Document Request 27</b>  |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Incorporation Agreement of EMS Capital Holding Inc. or similar instruments under which EMS Capital Holding Inc. was constituted, including all of its schedules, supplements or other documents containing provisions as to the conduct of the business and affairs of EMS Capital Holding Inc.</p>   |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant argues that BA Desarrollos LLC was incorporated in Delaware (Request for Arbitration, ¶¶ 1, 27-29); however, it has not submitted documents regarding its chain of ownership or its managers.</p> <p>The requested documents are relevant and material considering that EMS Capital LP (the purported manager of BA Desarrollos LLC, <i>see</i> Memorial on the Merits, ¶¶ 52, 124) seems to be controlled by EMS Capital Holding Inc. (<i>see</i>, <i>e.g.</i>, <a href="https://www.sec.gov/Archives/edgar/data/1763731/000110">https://www.sec.gov/Archives/edgar/data/1763731/000110</a></p> |

<sup>16</sup> BA Desarrollos has highlighted the relevant portions of the SEC filing. *See* Replay Acquisition Corp., SEC Form 13D, 26 October 2020, C-206 (annotated by the Claimant).

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| <b>Document Request 27</b>                                |   |
|---|---|
|   | <p>465920122469/tm2035066-2_sc13da.htm), in light of the “control” element of Article 1(2) of the Argentina-US BIT.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 52, 123-124.</p> |
| <b>C. Objections to Document Request (max. 500 words)</b> | <p>BA Desarrollos objects to this request.</p> <p>This request is duplicative with Request 26. BA Desarrollos refers to its Response to that Request.</p>   |
| <b>D. Decision of the Tribunal on Document Request</b>    | <p>The Tribunal considers that the request is narrow and specific, and that the requested Documents appear to be <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to the request no later than 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p>   |

| <b>Document Request 28</b>  |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Documents sufficient to identify EMS Capital Holding Inc.’s shareholding structure, including but not limited to share registers and details of the shareholders of EMS Capital Holding Inc. and the number of shares held by each of them, between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).</p> |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant argues that BA Desarrollos LLC was incorporated in Delaware (Request for Arbitration, ¶¶ 1, 27-29); however, it has not submitted documents regarding its chain of ownership or its managers.</p> <p>The requested documents are relevant and material considering that EMS Capital LP (the purported manager of BA Desarrollos LLC, <i>see</i> Memorial on the Merits, ¶¶ 52,</p>     |

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| <b>Document Request 28</b>                                |  |
|---|--|
|   | <p>124) seems to be controlled by EMS Capital Holding Inc. (<i>see, e.g.,</i> <a href="https://www.sec.gov/Archives/edgar/data/1763731/000110465920122469/tm2035066-2_sc13da.htm">https://www.sec.gov/Archives/edgar/data/1763731/000110465920122469/tm2035066-2_sc13da.htm</a>), in light of the “control” element of Article 1(2) of the Argentina-US BIT.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.,</i> Request for Arbitration, ¶¶ 1, 29; Memorial on the Merits, ¶¶ 52, 123-124.</p> |
| <b>C. Objections to Document Request (max. 500 words)</b> | <p>BA Desarrollos objects to this request. The document that Argentina refers to in the justification of its request (the SEC filing) establishes that Mr. Safra is the sole shareholder of EMS Capital Holding Inc. In turn, the same document establishes that EMS Capital Holding is the general partner of EMS Capital, so no additional documents are warranted. <i>See C-206</i> (annotated by the Claimant).</p>  |
| <b>D. Decision of the Tribunal on Document Request</b>    | <p>The Tribunal takes note of Claimant’s confirmation that the Documents that respond to Respondent’s request are already on the record. The Tribunal issues no further orders in this regard at this stage.</p>   |

| <b>Document Request 29</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>                  | <p>Documents sufficient to show the nationality and residence of Mr. Edmond Safra between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive), including but not limited to copies of the passports used by Mr. Edmond Safra, and tax returns filed by Mr. Edmond Safra pursuant to the applicable laws on income tax.</p> |
| <b>B. Relevance and materiality, including (i) references to paragraphs</b> | <p>Claimant argues that BA Desarrollos LLC was incorporated in Delaware (Request for Arbitration, ¶¶ 1, 27-</p>   |

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| <b>Document Request 29</b>                                     |  |
|--|--|
| <b>of the pleadings; (ii) statement on custody and control</b> | <p>29); however, it has not submitted documents regarding its chain of ownership or its managers.</p> <p>Claimant also argues that “Mr. Safra is a national of Brazil and Italy” but it has not provided any evidence to support that assertion (Memorial on the Merits, fn. 92).</p> <p>The requested documents are relevant and material considering that Mr. Edmond Safra seems to be the president of EMS Capital LP (the purported manager of BA Desarrollos LLC, <i>see</i> Memorial on the Merits, ¶¶ 52, 124) and the ultimate owner of BA Desarrollos LLC (Witness Statement of ██████████, ¶¶ 7, 20), in light of the “control” element of Article 1(2) of the Argentina-US BIT.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Memorial on the Merits, fn. 92; Witness Statement of ██████████, ¶¶ 7, 20.</p> |
| <b>C. Objections to Document Request (max. 500 words)</b>      | <p>BA Desarrollos objects to this request.</p> <p>Argentina complains that BA Desarrollos has not provided evidence of Mr. Safra’s Brazilian and Italian nationality, but Argentina already possesses evidence of all of this and in particular a copy of Mr. Safra’s passport and nationality information. Mr. Safra provided this to Argentina when it requested a ██████████. <i>See</i> Article 3(3)(c)(i) of the IBA Rules.</p> <p>In addition, Mr. Safra’s <u>personal</u> tax returns or his tax residence are not relevant to the case or material to its outcome, and Argentina has not established otherwise. <i>See</i> Article 9(2)(a) of the IBA Rules. Also, Argentina’s request for Mr. Safra’s personal tax returns makes no mention of any jurisdiction; it thus not only irrelevant but also overly broad. <i>See</i> Section 16.3.1 of Procedural Order No. 1 and Article 3(3)(a)(ii) of the IBA Rules.</p>   |

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| <b>Document Request 29</b>                             |  |
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|  | <p>Finally, Argentina states that “Claimant also argues that ‘Mr. Safra is a national of Brazil and Italy’ but it has not provided any evidence to support that assertion.” However, as indicated in Procedural Order No. 1, document production “may not be grounded on the need to prove allegations by the other Party. Such issues shall be determined by the Tribunal based on the rules on burden of proof.” <i>See</i> Section 16.2 of Procedural Order No. 1.</p>  |
| <b>D. Decision of the Tribunal on Document Request</b> | <p>The Tribunal does not consider Mr. Safra’s tax returns to be relevant and material for the purposes of establishing jurisdiction. Therefore, the Tribunal resolves that this request should be reduced to:</p> <p><i>“Documents sufficient to show the nationality and residence of Mr. Edmond Safra between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive), including but not limited to copies of the passports used by Mr. Edmond Safra.”</i></p> <p>The Tribunal considers that the (reduced) request is <i>prima facie</i> relevant and material to the outcome of the case. Therefore, Claimant shall find and produce any Document responsive to such order before 9 May 2024, in accordance with Annex B to Procedural Order No. 1.</p> |

| <b>Document Request 30</b>                                 |   |
|--|---|
| <b>A. Document(s) or category of document(s) requested</b> | <p>Correspondence between Mr. Edmond Safra and Claimant or any of the direct or indirect partner(s), member(s), or shareholder(s) or owner(s) of Claimant concerning the operation or management of Claimant or any of the direct or indirect partner(s), member(s), or shareholder(s) or owner(s) of Claimant, between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive).</p> |

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| <b>Document Request 30</b>  |  |
|---|--|
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material considering that Mr. Edmond Safra seems to be the president of EMS Capital LP (the purported manager of BA Desarrollos LLC, <i>see</i> Memorial on the Merits, ¶¶ 52, 124) and the ultimate owner of BA Desarrollos LLC (Witness Statement of ██████████, ¶¶ 7, 20), in light of the “control” element of Article 1(2) of the Argentina-US BIT.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Memorial on the Merits, fn. 92; Witness Statement of ██████████ ¶¶ 7, 20.</p>  |
| <b>C. Objections to Document Request (max. 500 words)</b>   | <p>BA Desarrollos objects to this request.</p> <p>It is irrelevant to this case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules) and is excessively broad (Procedural Order No. 1, Section 16.3.1. <i>See also</i> Article 3(3)(a)(ii) of the IBA Rules).</p> <p>It is not in dispute that Mr. Safra is: (i) the President of EMS Capital LP (<i>see, e.g.</i>, C-3, p 006); and (ii) the ultimate owner of BA Desarrollos.</p> <p>It is also not in dispute that in his capacity as President of EMS Capital, Mr. Safra, along with the staff at EMS Capital, undertakes the business of BA Desarrollos. <i>See</i> Witness Statement of ██████████, paras 37, 61.</p> <p>Moreover, Argentina requests that BA Desarrollos produce correspondence exchanged “between Mr. Edmond Safra and Claimant <u>or any of the direct or indirect partner(s), member(s), or shareholder(s) or owner(s) of Claimant</u>” <u>in relation to “the operation or management of Claimant or any of the direct or indirect partner(s), member(s), or shareholder(s) or owner(s) of Claimant”</u> during a six-year period. Such an indefinite request is, on its face, excessively broad and fails to identify “a narrow and specific category of documents.”</p> |

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| <b>Document Request 30</b>                             |   |
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| <b>D. Decision of the Tribunal on Document Request</b> | The Tribunal considers that Request 30 is not <i>prima facie</i> sufficiently narrow nor specific. Therefore, this request is rejected. |

| <b>Document Request 31</b>  |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | Quarterly accounting reports of Fideicomiso BAP sufficient to identify funds received by Fideicomiso BAP and their allocation, between 3 October 2017 and the date of the filing of the Request for Arbitration (inclusive).   |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant states that “BA Desarrollos holds a protected investment in Argentina under the Treaty represented, <i>inter alia</i>, by the following ... Claimant’s equity and debt contributions in Fideicomiso BAP ... Claimant’s interest and rights in Fideicomiso BAP and in Fideicomiso BAP’s assets (including the Plots), which derive from the Claimant’s contributions” (Request for arbitration, ¶ 31 (a) (b)).</p> <p>The Trust Agreement of Fideicomiso BAP states that the trustee must provide a quarterly report to the beneficiary (BA Desarrollos LLC) on funds received by Fideicomiso BAP and their allocation (Trust Agreement, Section 10.5, (C-023)).</p> <p>The requested documents are relevant and material to know the effective crediting and inflow of the funds in the trust, which are relevant to the discussion on <i>ratione materia</i> jurisdiction of this Tribunal.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 30-31; Memorial on the Merits, ¶¶ 53-54.</p> |

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| <b>Document Request 31</b>                                |  |
|---|--|
| <b>C. Objections to Document Request (max. 500 words)</b> | <p>BA Desarrollos objects to this request.</p> <p>It is out of scope, as well as irrelevant to this case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules).</p> <p>For the reasons explained in the introduction above, any requests relating to the Tribunal’s jurisdiction <i>ratione materiae</i> fall outside the scope of the limited document production phase on preliminary objections authorized by the Tribunal and for that reason alone should be denied.</p> <p>In any event, BA Desarrollos has submitted Fideicomiso BAP’s audited financial statements [REDACTED] (C-190 to C-194), Fideicomiso BAP’s ledger information [REDACTED] (C-195 to C-199), the Loan Agreements between Fideicomiso BAP and BA Desarrollos (C-32, C-32A and C-32B), BA Desarrollos’s Participation Certificates in Fideicomiso BAP (C-33bis) and BA Desarrollos’s Trust Debt Titles in Fideicomiso BAP (C-62). This information is amply sufficient to identify the funds received by Fideicomiso BAP “and their allocation.”</p> |
| <b>D. Decision of the Tribunal on Document Request</b>    | <p>The Tribunal takes note of Claimant’s confirmation that the Documents that respond to Respondent’s request are already on the record. The Tribunal issues no further orders in this regard at this stage.</p>   |

| <b>Document Request 32</b>  |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Financial statements of Fideicomiso BAP between 3 October 2017 and the date of the filing of the Request for Arbitration (inclusive).</p>   |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>Claimant states that “BA Desarrollos holds a protected investment in Argentina under the Treaty represented, <i>inter alia</i>, by the following ... Claimant’s equity and debt contributions in Fideicomiso BAP ... Claimant’s interest and rights in Fideicomiso BAP and in Fideicomiso BAP’s assets (including the Plots), which derive from the</p> |



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| <b>Document Request 32</b>                                |   |
|---|---|
|   | <p>Claimant’s contributions” (Request for Arbitration, ¶ 31 (a) (b)).</p> <p>The Trust Agreement of Fideicomiso BAP states that the trustee is responsible for keeping the accounts and presenting the financial statements of the trust on an annual basis (Trust Agreement, Sections 10.5 and 10.6, C-023).</p> <p>The requested documents are relevant to know the effective crediting and inflow of the funds in the trust, which are relevant to the discussion on <i>ratione materiae</i> jurisdiction of this Tribunal.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 30-31; Memorial on the Merits, ¶ 126.</p> |
| <b>C. Objections to Document Request (max. 500 words)</b> | <p>The documents requested are in Argentina’s possession. BA Desarrollos has already submitted into the record Fideicomiso BAP’s audited financial statements [REDACTED] (C-190 to C-194).</p>  |
| <b>D. Decision of the Tribunal on Document Request</b>    | <p>The Tribunal takes note of Claimant’s confirmation that the Documents that respond to Respondent’s request are already on the record. The Tribunal issues no further orders in this regard at this stage.</p>  |

| <b>Document Request 33</b>                                 |  |
|--|--|
| <b>A. Document(s) or category of document(s) requested</b> | <p>Documents related to the preparation and submission of the administrative claims of 22 September 2020 (C-45) and 30 December 2020 (C-46), presented by [REDACTED] in its capacity as trustee of Fideicomiso BAP (<i>see</i> C-23) to the <i>Agencia de Administración de Bienes del Estado</i> (“AABE”), and Exhibits C-38, C-55, C-56, C-57, C-58, C-59 y C-60, which are communications between Fideicomiso BAP’s trustee and the AABE concerning</p> |

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| <b>Document Request 33</b>   |  |
|--|--|
|  | <p>alleged problems with the Plots (including, but not limited to, high voltage power lines, pollutants, railroads, pipelines, telecommunications wiring, and water quality). For the sake of completeness, this request includes domestic claims and requests, communications, memoranda, internal reports and meeting transcripts or minutes regarding the status of such claims, both in drafts and in final form.</p>  |
| <p><b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b></p> | <p>The requested documents are relevant and material in light of the fork-in-the-road clause contained in Article VII of the Treaty, considering the different claims or requests pursued in connection with Claimant’s alleged investment.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 15, 17-19, fns. 39(d) and 48, Memorial on the Merits, ¶¶ 9, 12, 76-77, 82, 106, 108, 113, 128, 131, 152 and 183; Witness Statement of ██████████, ¶¶ 42-43, 74, 76 and 79.</p>  |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p>   | <p>BA Desarrollos objects to this request.</p> <p>For the reasons explained in the introduction above, this request relating to Argentina’s potential fork-in-the road objection falls outside the scope of the limited document production phase on preliminary objections authorized by the Tribunal and for that reason alone should be denied.</p> <p>In any event, Argentina’s request is irrelevant to this case and immaterial to its outcome (Article 9(2)(a) of the IBA Rules). “Documents related to the <u>preparation and submission</u>” of the administrative claim filed by Fideicomiso BAP (C-46) or the administrative requests and communications (C-38, C-45, C-55, C-56, C-57, C-58, C-59 and C-60) are irrelevant to determining whether the fork-in-the-road provision contained in Article VII of the Treaty has been triggered. At most, only the submissions themselves, which are already in the record, could be relevant in making that determination.</p> |

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| <b>Document Request 33</b>                             |   |
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|  | <p>Moreover, Argentina requests a wide range of documents relating to the preparation of nine submissions and fails to identify a specific time range or even a minimal description of the documents it is requesting. Such a request is excessively broad and fails to identify “a narrow and specific category of documents.” <i>See</i> Procedural Order No. 1, Section 16.3.1. <i>See also</i> Article 3(3)(a)(ii) of the IBA Rules.</p> <p>Finally, given that the request relates to the preparation of formal submissions made by Fideicomiso BAP before administrative authorities domestically as well as internal documents concerning “the status of such claims,” the requested documents were created with input from local counsel and would therefore be privileged (Articles 9(2)(b) and 9(4)(a) of the IBA Rules).</p> |
| <b>D. Decision of the Tribunal on Document Request</b> | <p>The Tribunal considers that Request 33 is not <i>prima facie</i> sufficiently narrow nor specific. Furthermore, the requested Documents relating to the “<i>preparation</i>” of the administrative claims do not appear to be <i>prima facie</i> relevant and material for the purposes of establishing jurisdiction. Therefore, this request is rejected.</p>   |

| <b>Document Request 34</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Documents related to the preparation and analysis of potential administrative or judicial claims before Argentine administrative or judicial authorities in relation to Claimant’s alleged investment, including but not limited to those to be submitted by Fideicomiso BAP’s trustees.</p>   |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant in light of the fork-in-the-road clause contained in Article VII of the Treaty.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> |

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| <b>Document Request 34</b>                                       |  |
|--|--|
|  | <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶¶ 19 and 39(d), fn. 48; Memorial on the Merits, ¶¶ 76-77, 82, 106, 108, 111-113, 128, 131, 152 and 183; Witness Statement of [REDACTED], ¶¶ 42-43, 74, 76 and 79.</p>   |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos objects to this request.</p> <p>For the reasons explained in the introduction above, this request relating to Argentina’s potential fork-in-the road objection falls outside the scope of the limited document production phase on preliminary objections authorized by the Tribunal and on that ground alone should be denied.</p> <p>Moreover, “[d]ocuments related to the preparation and analysis of <u>potential</u> administrative or judicial claims” (emphasis added) are irrelevant to determining whether the fork-in-the-road provision contained in Article VII of the Treaty has been triggered. Accordingly, this request is irrelevant to this case and immaterial to its outcome. <i>See</i> Article 9(2)(a) of the IBA Rules.</p> <p>Furthermore, Argentina’s request fails to identify a specific time range or even a minimal description of the documents it is requesting. Such a request is excessively broad and fails to identify “a narrow and specific category of documents.” <i>See</i> Procedural Order No. 1, Section 16.3.1. <i>See also</i> Article 3(3)(a)(ii) of the IBA Rules.</p> <p>Finally, given that the requested documents relate to the preparation and analysis of potential claims before Argentine administrative or judicial authorities, the requested documents were created with input from local counsel and would therefore be privileged (Articles 9(2)(b) and 9(4)(a) of the IBA Rules).</p> |
| <p><b>D. Decision of the Tribunal on Document Request</b></p>    | <p>The Tribunal considers that Request 34 is not <i>prima facie</i> sufficiently narrow nor specific. Furthermore, the requested Documents relating to the “<i>preparation and analysis</i>” of the “<i>potential... claims</i>” do not appear to be <i>prima facie</i> relevant and material for the purposes of establishing jurisdiction. Therefore, this request is rejected.</p>  |

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| <b>Document Request 35</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | <p>Documents sufficient to show that Claimant has complied with Argentine laws and regulations, between 2016 and the date of the filing of the request for Arbitration (inclusive), in particular:</p> <ul style="list-style-type: none"> <li>• All affidavits submitted by Fideicomiso BAP before the <i>Inspección General Justicia</i> (“IGJ”), including but not limited to the affidavits required by Articles 511 and 518 of IGJ’s General Resolution No. 7/15, amended by IGJ’s General Resolution No. 9/15;</li> <li>• Certificates of registration of all trust agreements (<i>contratos de fideicomiso</i>) and their amendments, and termination and/or substitution of trustees, filed by Fideicomiso BAP;</li> <li>• The relevant pre-qualifying reports;</li> <li>• Minutes of the management and assembly bodies submitted before the IGJ; and</li> <li>• Certificates of registration of all trust agreements (<i>contratos de fideicomiso</i>) and their amendments, and termination and/or substitution of trustees, filed by Fideicomiso BAP, pursuant to Article 1669 of the Argentine Civil and Commercial Code, which imposes a general rule of registration for trust agreements, Article 36.4.e. of Annex “A” of the IGJ’s General Resolution No. 7/15, as amended by IGJ’s General Resolution No. 9/15, and IGJ’s Resolution No. 33/2020, which imposes the registration requirement to all trust agreements whose trustee is domiciled in the City of Buenos Aires.</li> </ul> <p>This request includes provisory and permanent registration certificates of each of the above-mentioned documents.</p> |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>In its Request for Arbitration the Claimant argues that it holds an investment protected by the Treaty on the basis of its participation in the Fideicomiso BAP, submitting as evidence the participation certificates in the trust (Exhibit C-33).</p>  |

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| Document Request 35  |   |
|--|---|
|  | <p>The requested documents are relevant and material to know whether Claimant made an investment in accordance with Argentine laws and regulations, which is relevant to the discussion on <i>ratione materia</i> jurisdiction of this Tribunal. <i>See Phoenix Action Ltd v. Czech Republic</i>, ICSID Case No. ARB/06/5, Award, 15 April 2009, ¶ 114.</p> <p>Other than the <i>Inscripción de Contrato de Fideicomiso Urgente</i> filed with the IGJ and such documents filed with Argentine authorities that Claimant may point to in response to this document request, Argentina does not possess, have custody over, or control the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration; ¶ 31, Memorial on the Merits ¶ 54; Witness Statement of ██████, ¶ 24.</p>  |
| <p><b>C. Objections to Document Request (max. 500 words)</b></p> | <p>BA Desarrollos objects to this request on various grounds.</p> <p>First, for the reasons explained in the introduction above, this request falls outside the scope of the limited document production phase on the denial of benefits objection authorized by the Tribunal, and on that ground alone should be denied.</p> <p>Second, the request is excessively broad. It covers documents from the time before BA Desarrollos was even constituted and until 2023 without identifying why such a broad timeframe would be relevant. Procedural Order No. 1, Section 16.3.1. <i>See also</i> Article 3(3)(a)(ii) of the IBA Rules.</p> <p>Third, the requested documents are in Argentina’s possession, custody and control. <i>See</i> Article 3(3)(c)(i) of the IBA Rules. Argentina requests documents that were submitted before, filed with, or issued by the <i>Inspección General Justicia (IGJ)</i>. The IGJ is an Argentine federal authority, which reports to the Ministry of Justice.</p> |

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| <b>Document Request 35</b>                             |   |
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| <b>D. Decision of the Tribunal on Document Request</b> | The Tribunal considers that Request 35 is not <i>prima facie</i> sufficiently narrow nor specific. Furthermore, the Tribunal notes that the requested Documents should be in Respondent's possession, custody or control, for they all appear to refer to procedures filed with Argentine governmental offices. |

| <b>Document Request 36</b>  |   |
|---|---|
| <b>A. Document(s) or category of document(s) requested</b>  | Documents sufficient to show instructions, orders, guidance or recommendations between Fideicomiso BAP, Claimant or any of the Claimant's related companies and/or Mr. Edmond Safra [REDACTED], regarding Fideicomiso BAP's participation in the Catalinas Norte II auctions (Public Auction No. 33/17 (Plot 8, former plot 4), Public Auction No. 34/17 (Plot 7, former Plot 5), Public Auction No. 32/17 (Plot 5, former Plot 7 and Plot 6), Public Auction No. 3/18 (Plot 3), Public Auction No. 4/18 (Plot 2), Public Action 392-0045-SPU19 (Plot 1-D)) or any other auction in Argentina, including but not limited to documents regarding the extent of participation in each auction, scope of the bids to be made, and the reasons underlying the abstentions and absences in some of the auctions, if any, between 2016 and the date of the filing of the Request for Arbitration (inclusive). |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material to assess whether Claimant's alleged investment meets the requirements of the so-called <i>Salini</i> test.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶ 9.</p>   |
| <b>C. Objections to Document Request (max. 500 words)</b>   | BA Desarrollos objects to this request.   |

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**Document Request 36**

For the reasons explained in the introduction above, this request falls outside the scope of the limited document production phase on the denial of benefits objection authorized by the Tribunal, and on that ground alone should be denied.

In addition, Argentina’s request is excessively broad, irrelevant to this case and immaterial to its outcome. *See* Articles 3(3)(a)(ii) and Article 9(2)(a) of the IBA Rules; Procedural Order No. 1, Section 16.3.1.

Argentina requests a broad range of BA Desarrollos’s internal “documents regarding the extent of participation in each auction, scope of the bids to be made, and the reasons underlying the abstentions and absences in some of the auctions,” including in relation to auctions that BA Desarrollos did not win and that are not part of BA Desarrollos’s claim in the arbitration (*i.e.*, Public Auction No. 33/17 (Plot 8), Public Auction No. 34/17 (Plot 7), Public Auction No. 32/17 (Plots 5 and 6), and Public Action 392-0045-SPU19 (Plot 1C)). The request is overly broad and fails to identify “a narrow and specific category of documents.” *See* Procedural Order No. 1, Section 16.3.1. *See also* Article 3(3)(a)(ii) of the IBA Rules.

Moreover, it is not in dispute that BA Desarrollos participated in and was the successful winner of the Auctions that awarded BA Desarrollos the Plots. Therefore, the documents in relation to BA Desarrollos’s participation in the Auctions, or any other auction for other plots in the Catalinas Norte II area, is entirely irrelevant and immaterial to the dispute.

Finally, BA Desarrollos notes that Argentina has not even explained why the *Salini* test applies and even if it did apply, what element of the test purportedly underpins Argentina’s request. Such a vaguely justified request provides a further reason why it must be denied. *See* Procedural Order No. 1, Section 16.3.2; Article 3(3)(b) of the IBA Rules.



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| <b>Document Request 36</b>                             |   |
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| <b>D. Decision of the Tribunal on Document Request</b> | The Tribunal considers that Request 36 is not <i>prima facie</i> sufficiently narrow nor specific. Therefore, this request is rejected. |

| <b>Document Request 37</b>  |  |
|---|--|
| <b>A. Document(s) or category of document(s) requested</b>  | Documents sufficient to show any analysis prepared by or negotiations or agreements involving Fideicomiso BAP and/or Claimant and/or any of Claimant's related companies and/or Mr. Edmond Safrá [REDACTED] related to the transfer of BA Desarrollos' shares or any alleged rights of BA Desarrollos LLC as regards the present dispute, interests or any rights in Fideicomiso BAP, and any rights over Plots 2 and 3 or other property rights that Fideicomiso BAP may have acquired pursuant to the Catalinas Norte II auctions, between the date of incorporation of BA Desarrollos LLC (3 October 2017) and the date of the filing of the Request for Arbitration (inclusive). |
| <b>B. Relevance and materiality, including (i) references to paragraphs of the pleadings; (ii) statement on custody and control</b> | <p>The requested documents are relevant and material to assess whether Claimant's alleged investment meets the requirements of the so-called <i>Salini</i> test.</p> <p>Argentina confirms that it does not possess, have custody over, or control any of the requested documents, save for the potentially responsive documents submitted with the Memorial on the Merits that Claimant may identify.</p> <p>References: <i>see, e.g.</i>, Request for Arbitration, ¶ 3; Witness Statement of [REDACTED], ¶ 10, fn. 3.</p>  |
| <b>C. Objections to Document Request (max. 500 words)</b>   | <p>BA Desarrollos objects to this request.</p> <p>For the reasons explained in the introduction above, this request falls outside the scope of the limited document production phase on the denial of benefits objection authorized by the Tribunal and for this reason alone should be denied.</p> <p>In addition, Argentina's request is excessively broad, irrelevant to this case and immaterial to its outcome. <i>See</i></p>  |

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| <b>Document Request 37</b>                             |   |
|--|---|
|  | <p>Articles 3(3)(a) and 9(2)(a) of the IBA Rules; Procedural Order No. 1, Section 16.3.1.</p> <p>Argentina requests “documents” allegedly prepared by any number of entities regarding the alleged transfer of rights in Fideicomiso BAP. Argentina’s request fails to identify “a narrow and specific category of documents.” <i>See</i> Procedural Order No. 1, Section 16.3.1. <i>See also</i> Article 3(3)(a)(ii) of the IBA Rules.</p> <p>Moreover, Argentina’s request is irrelevant and immaterial to the dispute. BA Desarrollos confirms that it continues to own Fideicomiso BAP and that neither entity has assigned rights to the Plots.</p> <p>Finally, BA Desarrollos notes that Argentina has not even explained why the <i>Salini</i> test applies and even if it did apply, what element of the test purportedly underpins Argentina’s request. Such a vaguely justified request provides a further reason why it must be denied. <i>See</i> Procedural Order No. 1, Section 16.3.2; Article 3(3)(b) of the IBA Rules.</p> |
| <b>D. Decision of the Tribunal on Document Request</b> | <p>The Tribunal considers that Request 37 is not <i>prima facie</i> sufficiently narrow nor specific. Therefore, this request is rejected.</p>  |