

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
ARBITRATION RULES (1976)

ABDALLAH ANDRAOUS

Claimant

v.

KINGDOM OF THE NETHERLANDS

Respondent

PROCEDURAL ORDER NO. 2

**ANNEX B: DECISION ON RESPONDENT'S DOCUMENT PRODUCTION
REQUESTS**

Arbitral Tribunal

Ms. Claudia Salomon (Presiding Arbitrator)
Prof. Nassib G. Ziadé
Mr. José Emilio Nunes Pinto

Secretary of the Tribunal

Mr. Felipe Aragón

Representative of ICSID

Mr. Alex B. Kaplan

9 July 2024

1 INTRODUCTION

1. Pursuant to the procedural timetable included in Procedural Order No. 1, the Kingdom of the Netherlands hereby submits its request for the production of documents pertaining to the jurisdictional phase, which is set out in Section 2 below ("Request"). The Request is presented to Mr Abdallah Andraous ("Andraous") and is set out in table format, in which the Kingdom of the Netherlands provides a description of the documents (or categories of documents) sought, together with an explanation of their relevance to the jurisdictional phase of this arbitration and materiality of its outcome.
2. In accordance with para. 40 of the Procedural Order No. 1, in preparing the Request, the Kingdom of the Netherlands has been guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2020) ("IBA Rules").
3. Any capitalized terms not otherwise defined have the meaning given to them in the Kingdom of the Netherlands' Statement of Defence on Jurisdiction dated 22 May (the "SoD").
4. The following shall apply to the Kingdom of the Netherlands' Request:
 - (i) "Document(s)" has the meaning set out in the IBA Rules, namely "a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means". For greater certainty, the term "Document(s)" includes, but is not limited to, any of the following, regardless whether exchanged internally, externally or not exchanged and regardless whether typed or handwritten, whether final or drafts: letters, presentations, facsimiles, notes, memoranda, communications, correspondence, minutes of meeting(s), reports, records, lists, data, SMS messages, e-mails, briefing notes, matrices, drawing, sketches, and/or messages exchanged through virtual multiplatform messaging applications (such as WhatsApp or Signal);
 - (ii) the Document(s) requested should be produced with any attachments, enclosures or annexes. Where the Document produced is a translation, it should be marked as such and produced together with the original;
 - (iii) the terms "correspondence" or "communications" mean any occasion on which information was conveyed from one person (whether as an individual or as a representative of an entity) to another, including without limitation: (a) by means of a document, including any annexes to that document; (b) by means of electronic transmission, including, without limitation, by means of electronic mail and any attachments to such electronic mail, of the Internet, or of electronic messaging; and/or (c) by any other means;
 - (iv) "include", "includes", and "including" shall be construed to mean a reference to a particular category that does not limit the scope of the requests, so as to give the broadest possible meaning to requests and definitions containing those words;

- (v) "relating to" or "regarding" means consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, prepared in connection with, used in preparation for, or being in any way legally, factually, or logically concerned with the matter or Document described, referred to, or discussed or having any connection, association, or concern with, or any relevance, pertinence, or applicability to, or any implication for or bearing upon the subject of the matter of the request;
 - (vi) whenever reference is made to a body or entity, such reference includes any representative, officer, agent and/or employee of such body or entity; and
 - (vii) all electronic Documents are requested to be produced in their native format with metadata intact.
5. The Documents requested are reasonably believed to exist and to be in Andraous' possession, custody, or control. The fact that a request is made and the corresponding information that may be obtained therefrom should not be interpreted as an acknowledgment that the Kingdom of the Netherlands carries the burden of proof in any particular respect.

2 OVERARCHING REMARKS REGARDING ANDRAOUS' RESPONSES AND/OR OBJECTIONS TO THE REQUEST FOR PRODUCTION OF DOCUMENTS

6. The Kingdom of the Netherlands respectfully submits the following replies to Andraous' Responses and/or Objections to the Request for Production of Documents ("Andraous' Response").¹ A few overarching remarks are warranted at the outset.
7. First, the Kingdom of the Netherlands notes that Andraous does not object to the relevance, materiality and proportionality of the requests set out below. Parties are thus in agreement that the requests are relevant, material, and proportionate.²
8. However, Andraous' Response fails to comply with the standards set by the IBA Rules. In his responses, Andraous (i) fails to appropriately address the requests by misrepresenting or ignoring a given request's scope and content, (ii) alleges that documentation is in the possession, custody, or control of the Kingdom of the Netherlands without any further substantiation, or (iii) raises other irrelevant and inapposite objections. The Kingdom of the Netherlands further observes that at least eight of the twelve responses formulated by Andraous are factually incorrect.³
9. Second, the Kingdom of the Netherlands has taken note of the two "observations" in Andraous' counsel's cover email dated 19 June 2024, transmitted to the Tribunal and the Kingdom of the Netherlands by Ms Geraldine Rebeca Fischer on 20 June 2024. As to

¹ For Andraous' Response, see sub-sections C ("Summary of Disputing Party's Objections to Production") for each of the Document Request tables in Section 3 below.

² The only exception relates to a subset of Request No. 5, which Andraous contends is "immaterial".

³ Document Request Nos. 1, 2, 3, 7, 8, 9, 10, and 11.

Andraous' first observation, he attempts, once again, to present the circumstances surrounding the adoption of the Emergency Regulation as a hostile takeover involving an unauthorized retention of Andraous' files at Ennia's office. As already addressed in the Kingdom of the Netherlands' response to Andraous' Request No. 1, Andraous visited said office, along with [REDACTED] and [REDACTED] on 25 February 2021, during which visit [REDACTED] and [REDACTED] requested and duly received their personal files. By contrast, at no point did Andraous request access to any of his personal files or complain that any alleged personal files were not returned to him; not (a) prior to the commencement of these proceedings in his letters dated 3 May 2022,⁴ 29 July 2022,⁵ or 10 October 2022,⁶ or (b) in his NoA, nor (c) in his Statement of Claim on Jurisdiction and Merits ("SoC").

10. As to Andraous' second observation, it is difficult to believe that every document requested was destroyed by Hurricane Irma in 2017, including digital files. This is particularly so given that Andraous does appear to have managed to safeguard and, indeed, exhibit files pertaining to the issues in dispute with his SoC.⁷ Regardless, many of the Kingdom of the Netherlands' requests in any event also refer to Documents postdating 2017, or to Documents that can be reasonably obtained from third parties (for example, as the case may be, from public authorities, banks, fellow shareholders, family members, etc.).
11. The Kingdom of the Netherlands therefore respectfully requests the Tribunal to disregard these two observations by Andraous' counsel.

⁴ Exhibit C-003.

⁵ Exhibit C-019.

⁶ Exhibit C-004.

⁷ See e.g. Exhibits C-040, C-041, and C-085.

3 DOCUMENT REQUESTS

Document Request No.	1
A. Documents Requested	Documents relating to any insurance policies entered into by Andraous (e.g. health, life, travel, or liability insurance) in the Kingdom of the Netherlands as of 1984 (when he allegedly moved to the Kingdom of the Netherlands) until and including February 2023 (when he submitted the NoA).
B. Relevance and Materiality	<p>As set out in its SoD, a key jurisdictional objection put forth by the Kingdom of the Netherlands is that Andraous is not a qualifying 'investor' within the meaning of the BIT given that – as a Dutch-Lebanese national – Andraous' dominant and effective nationality is not Lebanese.⁸</p> <p>In that regard, Andraous argues that "social security insurance" is one of the factors that tribunals have considered in the application of the dominant and effective nationality test.⁹ In his Personal Statement, Andraous emphasizes [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]¹¹ Andraous' presentation of the facts is selective since he has taken out insurance in the Kingdom of the Netherlands.¹² Moreover, in his Statement of Claim on Jurisdiction and Merits ("SoC"), Andraous argues that he did request health insurance at Ennia, without providing further explanation or substantiation.¹³</p> <p>A review of Andraous' insurance policies is thus relevant to assess the extent to which his reliance on this criterion gives any indication of his dominant and effective nationality. This is compounded by Andraous' sole reliance on his own Personal Statement for the assertion regarding his insurance policies, without providing any underlying documentation.¹⁴ This information is, accordingly, relevant and material.</p>

⁸ SoD, paras. 2-5.
⁹ SoC, para. 141.
¹⁰ Personal Statement, para. 17(4).
¹¹ SoC, para. 144(xi).
¹² SoD, para. 130.
¹³ SoC, para. 144(xi).
¹⁴ SoC, fn. 407.

<p>C. Summary of Disputing Party's Objections to Production</p>	<p>As Respondent seems to admit, the mentioned (private) health insurance at Ennia should be, like most documents requested by Respondent, in the possession, custody or control of Respondent (see e.g. Exhibit R-034-DUTCH). Claimant has not taken out any other insurance policy in the Kingdom of the Netherlands.</p>
<p>D. Reply</p>	<p>Andraous' response to Request No. 1 is unclear and incorrect.</p> <p>First, it is difficult to believe that Andraous has not taken out any other type of insurance in the Kingdom of the Netherlands despite having resided in Curaçao and/or Sint Maarten for decades (having declared at least ten residential addresses throughout the years¹⁵), and on his own account at least between 1984 and 1989.¹⁶ There was, accordingly, ample scope for Andraous to arrange for further insurance policies either in respect of his person or assets in the period 1984 up to and including February 2023.</p> <p>Second, Andraous admits to having taken out "the mentioned (private) health insurance at Ennia", and should in any event furnish this underlying evidence.¹⁷</p> <p>Third, it is clear that Andraous has taken out other insurance policies, as reflected in the life insurance already on the record as Exhibit R-034-DUTCH, as well as the construction insurance concluded in relation to a residential property in his name in 2018.¹⁸ The Kingdom of the Netherlands has also become aware of Andraous having taken out a household contents insurance policy and a car insurance in the Kingdom of the Netherlands.</p> <p>For the avoidance of doubt: no other insurance information other than the aforementioned examples is in the possession, custody, or control of the Kingdom of the Netherlands.</p> <p>The Kingdom of the Netherlands thus requests the Tribunal to order Andraous to produce Documents providing a full overview of the insurance policies</p>

¹⁵ SoD, paras. 140 and 141.

¹⁶ SoC, para. 14; Personal Statement, paras. 8-9.

¹⁷ SoC, para. 144 (xi).

¹⁸ SoD, para. 152 and Exhibit R-049-DUTCH.

	entered into in the Kingdom of the Netherlands from 1984 until and including February 2023.
E. Decision of the Tribunal	<p>The Tribunal considers that the documents requested seem <i>prima facie</i> relevant and material.</p> <p>Mr. Andrauos is ordered to produce documentation relating to insurance policies entered into in the Kingdom of the Netherlands from 1984 until and including February 2023, other than the one produced with Exhibit R-034, to the extent that such documentation exists and may be reasonably identified and located.</p>

Document Request No.	2
A. Documents Requested	Documents relating to Andrauos' real estate ownership or acquisitions, including rental and lease agreements or contracts, in the Kingdom of the Netherlands from 1984 until and including February 2023.
B. Relevance and Materiality	<p>As set out in its SoD, a key jurisdictional objection put forth by the Kingdom of the Netherlands is that Andrauos is not a qualifying 'investor' within the meaning of the BIT given that – as a Dutch-Lebanese national – Andrauos' dominant and effective nationality is not Lebanese.¹⁹</p> <p>On Andrauos' own account, habitual residence and one's centre of economic interests are relevant factors for the determination of a claimant's dominant and effective nationality.²⁰ The Kingdom of the Netherlands agrees that the centre of economic interests and habitual residence are key factors in the assessment of one's dominant and effective nationality.²¹ In his SoC, Andrauos contends to have acquired Dutch nationality as "a simple practicality to travel to and from Curaçao without a visa"²² and to have only habitually resided in the Kingdom of the Netherlands for five years, from 1984 to 1989.²³ Andrauos' presentation of the facts is selective, since he has, <i>inter alia</i>, declared as</p>

¹⁹ SoD, paras. 2-5.

²⁰ SoC, paras. 141 and 144(ii).

²¹ SoD, Sections 3.3.1, 3.3.2.1, and 3.3.2.4.

²² SoC, para. 144(iii).

²³ SoC, para. 144(ii).

	<p>residences at least ten different addresses over the relevant period, and has owned real estate in the Kingdom of the Netherlands.²⁴</p> <p>A review of documents pertaining to Andraous' real estate ownership or acquisitions, including rental and lease agreements or contracts, in the Kingdom of the Netherlands is therefore relevant to allow for a further assessment as to Andraous' ties to the Kingdom of the Netherlands in the application of the dominant and effective nationality test. This is compounded by Andraous' sole reliance on his own Personal Statement without providing a full factual account of the extent of his ties to the Kingdom of the Netherlands.²⁵ This information is, accordingly, relevant and material.</p>
<p>C. Summary of Disputing Party's Objections to Production</p>	<p>Unlike Respondent alleges, Claimant only has a property interest in the Kingdom in relation to [REDACTED] [REDACTED] St Maarten, which is owned by [REDACTED] [REDACTED] (of which Claimant is the sole beneficiary, see Respondent's Document Request No. 10). All other residences were leased by Ennia.</p>
<p>D. Reply</p>	<p>Andraous' response to Request No. 2 is unclear and incorrect.</p> <p>First, Andraous provides no substantiation, nor any underlying evidence, in support of his assertion that each and every one of his multiple declared residences,²⁶ with the exception of [REDACTED] [REDACTED], were leased by Ennia. As set out in the SoD, Andraous has, at a minimum, resided at ten different addresses in the Kingdom of the Netherlands over the years, namely: (i) [REDACTED], (ii) [REDACTED] [REDACTED], (iii) [REDACTED], (iv) [REDACTED] [REDACTED], (v) [REDACTED], (vi) [REDACTED] [REDACTED], (vii) [REDACTED] [REDACTED] (viii) [REDACTED] (all in Sint Maarten); (ix) [REDACTED], and (x) [REDACTED] [REDACTED] (in Curaçao).</p>

²⁴ SoD, Section 3.3.2.4.
²⁵ SoC, fns. 18-20, 386-388.
²⁶ SoD, p. 53.

Even if true, for the purposes of the application of the dominant and effective nationality test, it suffices for Andraous to have resided at those properties in the Kingdom of the Netherlands, which is not contested in his response.

Second, Andraous' suggestion that he "only has a property interest in the Kingdom in relation to ██████████" is false. The Kingdom of the Netherlands has already presented evidence in its SoD that Andraous took out mortgages in the Kingdom of the Netherlands, *inter alia*, for ██████████, and he also took out construction insurance for a villa lot in 2018.²⁷

Third, Andraous' response is at odds with his letter to ██████████ dated 6 October 2017,²⁸ in which he states as follows: "In view of the destruction of my house in Sint Maarten, which was almost completed, by Hurricane Irma, I would appreciate your financial support with an additional compensation for my services to the Group during the past years".²⁹ The mentioned house is not ██████████, which was at that time already completed, and is moreover not a house but an apartment. It also follows from the letter that Andraous owned the purportedly destroyed house, which was hence not leased through Ennia.

Fourth, and more generally, Andraous' Response appears to refer only to his current property interests, while ignoring the temporal scope of the request, starting from 1984 when he moved to the Kingdom of the Netherlands. This precedes the commencement of his work for Ennia by decades. In that initial timeframe, Andraous had already declared multiple residences in the Kingdom of the Netherlands, also in the context of his naturalization process.³⁰ Those residences could not have been leased by Ennia, as Andraous only started working at Ennia in 2006.

As a final remark, the Kingdom of the Netherlands notes that Andraous has not objected on the basis that the production of the requested Documents would be unreasonably burdensome.

²⁷ See Exhibits R-044, Exhibit R-045-DUTCH, and Exhibit R-049-DUTCH.

²⁸ SoD, para. 150.

²⁹ See Exhibit R-048-FRENCH.

³⁰ SoD, p. 53 and para. 143.

	<p>For all of these reasons, the Kingdom of the Netherlands requests the Tribunal to order Andraous to produce all Documents relating to real estate ownership or acquisitions – including rental and lease agreements or contracts – in the Kingdom of the Netherlands from 1984 until and including February 2023.</p>
E. Decision of the Tribunal	<p>The Tribunal considers that the documents requested seem <i>prima facie</i> relevant and material.</p> <p>The Tribunal acknowledges Claimant's representation that at present, he only has a property interest in the Kingdom relating to [REDACTED].</p> <p>The Kingdom's request, however, seeks information regarding Claimant's real state ownership or leases in the Kingdom of the Netherlands from 1984 until and including February 2023.</p> <p>The Kingdom has produced sufficient indicia to suggest that, at some point in between 1984 and 2023, Mr. Andraous could have owned real estate or hold rental or lease agreements in the Kingdom.</p> <p>In light of the above, the Tribunal orders Mr. Andraous to produce documentation relating to real estate ownership or acquisitions – including rental and lease agreements or contracts – in the Kingdom of the Netherlands from 1984 until and including February 2023 to the extent that such documentation exists and may be reasonably identified and located.</p>

Document Request No.	3
A. Documents Requested	Documents relating to Andraous' employment and professional assignments in the Kingdom of the Netherlands (including all employment and professional assignment contracts) from 1984 until and including February 2023.
B. Relevance and Materiality	As set out in its SoD, a key jurisdictional objection put forth by the Kingdom of the Netherlands is that Andraous

	<p>is not a qualifying 'investor' within the meaning of the BIT given that – as a Dutch-Lebanese national – Andraous' dominant and effective nationality is not Lebanese.³¹</p> <p>On Andraous' own account, the place of profession/employment, as well as economic and financial relations and interests in the relevant State, are pertinent factors in the application of the dominant and effective nationality test.³² The Kingdom of the Netherlands agrees that the centre of economic interests is a key factor in the assessment of one's dominant and effective nationality.³³ In his SoC, Andraous asserts that he was employed in the Kingdom of the Netherlands as of 1984, and that, for instance, "from 1984 to 1989, he worked as Internal Auditor and later as Chief Financial Officer at SunResorts"³⁴, but does not furnish any of the underlying employment contract(s).</p> <p>A review of documents pertaining to all of Andraous' employment and professional assignments in the Kingdom of the Netherlands, including those unrelated to Ennia, is thus relevant in the application of the dominant and effective nationality test. This is compounded by Andraous' sole reliance on his own Personal Statement without providing satisfactory underlying documentation.³⁵ This information is, accordingly, relevant and material at this juncture.</p>
<p>C. Summary of Disputing Party's Objections to Production</p>	<p>Claimant's agreement with ██████ was, as was usual, a verbal one (made over 40 years ago). Claimant reiterates that any other information on its employment and professional relationship with Ennia is in the possession, custody or control of Respondent.</p>
<p>D. Reply</p>	<p>Andraous' response to Request No. 3 is unclear, incorrect, and lacking in substantiation.</p> <p>First, it is unclear to which "agreement with ██████" Andraous refers in his response. In any event, the Kingdom of the Netherlands requests the Tribunal to order Andraous to produce not only Documents pertaining to his employment agreement at SunResorts,</p>

³¹ SoD, paras. 2-5.
³² SoC, paras. 141-142.
³³ SoD, Sections 3.3.1 and 3.3.2.1.
³⁴ SoC, para. 14.
³⁵ SoC, fn. 14.

	<p>or even only at Ennia, but rather pertaining to all of Andraous' employment and professional assignments in the Kingdom of the Netherlands from 1984 until and including February 2023. As explained in the SoD, it is clear that Andraous, for instance, served as director or board member of a number of non-Ennia entities in the Kingdom of the Netherlands (such as ██████████ ██████████ ██████████).³⁶</p> <p>Second, it is also difficult to believe that Andraous and ██████████ only had one verbal agreement – from over 40 years ago – that covered all positions held by Andraous at various entities under ██████████'s control over the years. For one thing, Andraous would presumably have relied on an employment agreement regarding SunResorts (normally evidenced in writing) to obtain a residence permit in the Kingdom of the Netherlands as of 1984, prior to his naturalization, as well as for other protections as an employee.</p> <p>For the avoidance of doubt: the requested information is not in the possession, custody, or control of the Kingdom of the Netherlands.</p>
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<p>E. Decision of the Tribunal</p>	<p>The Tribunal considers that the documents requested seem <i>prima facie</i> relevant and material.</p> <p>Claimant is ordered to produce documents relating to his employment and professional assignments in the Kingdom of the Netherlands (including all employment and professional assignment contracts) from 1984 until and including February 2023, to the extent that they are reasonably identified and located.</p>
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<p>Document Request No.</p>	<p>4</p>
<p>A. Documents Requested</p>	<p>Documents relating to Andraous' other economic and business interests in the Kingdom of the Netherlands from 1984 until and including February 2023.</p>
<p>B. Relevance and Materiality</p>	<p>As set out in its SoD, a key jurisdictional objection put forth by the Kingdom of the Netherlands is that Andraous</p>

³⁶ SoD, para. 29.

	<p>is not a qualifying 'investor' within the meaning of the BIT given that – as a Dutch-Lebanese national – Andraous' dominant and effective nationality is not Lebanese.³⁷</p> <p>On Andraous' own account, economic and financial relations with, and interests in, the relevant State, is one of the factors to be considered in the application of the dominant and effective nationality test.³⁸ The Kingdom of the Netherlands agrees that the centre of economic interests is a key factor in the assessment of one's dominant and effective nationality.³⁹</p> <p>A review of documents pertaining to Andraous' economic and business interests in the Kingdom of the Netherlands in terms of, for example (a) assets held in the Kingdom of the Netherlands or (b) legal or equitable interests held in legal persons or partnerships constituted under the laws of any of the constituent parts of the Kingdom of the Netherlands (which includes shareholdings), is thus relevant in the application of the dominant and effective nationality test. This information is, accordingly, relevant and material.</p>
<p>C. Summary of Disputing Party's Objections to Production</p>	<p>Claimant reiterates that it has no other economic and/or business interests in the Kingdom of the Netherlands other than through Parman/Ennia and [REDACTED] [REDACTED] (and its bank account mentioned at Respondent's Document Request No. 6).</p>
<p>D. Reply</p>	<p>Andraous' response to Request No. 4 is incomplete and lacking in substantiation.</p> <p>First, once again, Andraous appears to ignore the substantive and temporal scope of the present request. As explained above in relation to Request No. 3 and in the SoD, it is known that – aside from PIBV/Ennia and [REDACTED] – Andraous has at the very least also served as director or board member of a number of other entities in the Kingdom of the Netherlands, such as [REDACTED] [REDACTED] [REDACTED]</p> <p style="text-align: right;">40</p>

³⁷ SoD, paras. 2-5.
³⁸ SoC, paras. 141-142.
³⁹ SoD, Sections 3.3.1 and 3.3.2.1.
⁴⁰ SoD, para. 29.

	<p>Second, Andraous fails to substantiate his acknowledged economic and/or business interests in PIBV/Ennia and [REDACTED]. In fact, as explained extensively in the SoD, as well as in the context of this document production phase, Andraous has failed to adduce adequate evidence to prove his purported ownership of the shares in PIBV, which form the alleged 'investment' in dispute. As for his business interests in [REDACTED], which Andraous has omitted to address until the present document production request, production of these Documents is also requested pursuant to Request No. 10 below. This includes Documents demonstrating the nature, amount, and location of the assets of [REDACTED].</p> <p>Third, having resided in the Kingdom of the Netherlands for decades, Andraous can also be expected to have had other economic and/or business interests, including, <i>inter alia</i>, real estate (see also Request No. 2 above), bank accounts (see also Request No. 6 below), cars, other legal entities, or stocks.</p> <p>The Kingdom of the Netherlands thus requests the Tribunal to order Andraous to produce the requested Documents pertaining to his economic and business interests in the Kingdom of the Netherlands from 1984 until and including February 2023.</p>
<p>E. Decision of the Tribunal</p>	<p>The Tribunal considers that the documents requested seem <i>prima facie</i> relevant and material.</p> <p>The Tribunal, however, narrows down the scope of documents to be produced.</p> <p>Mr. Andraous is ordered to produce documents relating to (a) assets held in the Kingdom of the Netherlands or (b) legal or equitable interests held in legal persons or partnerships constituted under the laws of any of the constituent parts of the Kingdom of the Netherlands (which includes shareholdings, from 1984 until and including February 2023), to the extent that they are reasonably identified and located.</p>

<p>Document Request No.</p>	<p>5</p>
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<p>A. Documents Requested</p>	<p>Documents relating to Andraous and his family members' travel to and from the Kingdom of the Netherlands (such as plane and ferry tickets) from 1984 until and including February 2023, to the extent these could have been received digitally or that Andraous has otherwise kept these documents in archive.</p>
<p>B. Relevance and Materiality</p>	<p>As set out in its SoD, a key jurisdictional objection put forth by the Kingdom of the Netherlands is that Andraous is not a qualifying 'investor' within the meaning of the BIT given that – as a Dutch-Lebanese national – Andraous' dominant and effective nationality is not Lebanese.⁴¹</p> <p>On Andraous' own account, habitual residence and one's economic interests are relevant factors for the determination of a claimant's dominant and effective nationality.⁴² Moreover, Andraous lists "the place of family life"⁴³, the amount of time spent in the relevant State, and "Claimant's visits to the [Kingdom of the] Netherlands" as relevant factors in the application of the dominant and effective nationality test.⁴⁴ The Kingdom of the Netherlands agrees that one's centre of economic interests and habitual residence are key factors in assessing dominant and effective nationality.⁴⁵ As confirmed in the case law, other personal and subjective factors are of lesser relevance, and, in this case, in any event do not lead to the conclusion that Andraous' dominant and effective nationality is Lebanese.⁴⁶</p> <p>In the SoC, Andraous emphasizes that "none of his two married children were married in the Netherlands or under Dutch law"⁴⁷ and that his "extended family (three uncles, four aunts, ten first degree cousins) is all in Lebanon".⁴⁸ He also contends that, "since the [t]akeover in 2018, Claimant visited Curaçao only twice for a couple of days (in 2019 and 2020) for the purpose of court hearings".⁴⁹ In his Personal Statement, he asserts that</p>

⁴¹ SoD, paras. 2-5.

⁴² SoC, paras. 141 and 144 (ii).

⁴³ SoC, para. 141.

⁴⁴ SoC, para. 144.

⁴⁵ SoD, Sections 3.3.1, 3.3.2.1 and 3.3.2.4.

⁴⁶ SoD, Section 3.3.2.5.

⁴⁷ SoC, para. 144(viii).

⁴⁸ SoC, para. 144(vi).

⁴⁹ SoC, para. 144(xii).

	<p>he has been to Curaçao and Sint Maarten solely when it was needed for business and for court proceedings.⁵⁰</p> <p>However, as detailed in the SoD, Andraous omits key information, including that his immediate family has resided or is currently residing in the Kingdom of the Netherlands, and notably that his wife, parents, and all children have naturalized as Dutch.⁵¹ In fact, Andraous' parents naturalized as early as 1996 and lived in Sint Maarten until their passing.⁵²</p> <p>Contemporaneous evidence, official documentation, and public social media posts also show Andraous as residing at various properties in the Kingdom of the Netherlands, and attending family gatherings and events there, throughout the years.⁵³</p> <p>A review of documents pertaining to these categories is thus relevant in the application of the dominant and effective nationality test. This is compounded by Andraous' sole reliance on his own Personal Statement, without providing further underlying documentation.⁵⁴ This information is, accordingly, relevant and material.</p>
<p>C. Summary of Disputing Party's Objections to Production</p>	<p>Claimant will furnish all airplane tickets in its possession - there being no ferry between France and St Maarten. As Respondent seems to be aware, it is virtually impossible to furnish copies of all airplane tickets, especially for the period before it was common to receive these digitally.</p> <p>Further, Claimant's children's whereabouts are immaterial.</p>
<p>D. Reply</p>	<p>First, the Kingdom of the Netherlands acknowledges that Andraous will furnish all available airplane tickets in his possession. To the extent that this warrants clarification, the Kingdom of the Netherlands notes that this request did not refer to ferry tickets between continental France and Sint Maarten, but to any travel to and from the Kingdom of the Netherlands (including, as the case may be, ferries) from any destination.</p>

⁵⁰ Personal Statement, para. 20.

⁵¹ SoD, para. 159.

⁵² SoD, para. 160.

⁵³ SoD, Sections 3.3.2.4 and 3.3.2.5.

⁵⁴ SoC, fns. 392, 402, and 408.

	<p>Second, as to Andraous' assertion that his children's "whereabouts are immaterial", the Kingdom of the Netherlands finds this unsubstantiated statement difficult to follow. On Andraous' own account, his "family ties and the locus of family life"⁵⁵ are relevant factors for the application of the dominant and effective nationality test. Moreover, Andraous himself emphasises in his SoC, <i>inter alia</i>, the place where his extended family lives, where his children were born, and even where his oldest son's marriage was celebrated.⁵⁶ As explained above in Section B of this request, the relevance and materiality of this information is therefore clear. The Kingdom of the Netherlands thus requests the Tribunal to order Andraous to furnish the requested information also in relation to his family members, the production of which Andraous does not argue would be unreasonably burdensome.</p>
E. Decision of the Tribunal	<p>The Tribunal takes note that Claimant will voluntarily produce all available airplane tickets in his possession within the relevant period.</p>

Document Request No.	6
A. Documents Requested	Documents relating to Andraous' bank accounts and corresponding bank statements in the Kingdom of the Netherlands from 1984 until and including February 2023.
B. Relevance and Materiality	<p>As set out in its SoD, a key jurisdictional objection put forth by the Kingdom of the Netherlands is that Andraous is not a qualifying 'investor' within the meaning of the BIT given that – as a Dutch-Lebanese national – Andraous' dominant and effective nationality is not Lebanese.⁵⁷</p> <p>In that regard, Andraous argues that "claimant's bank accounts" and one's economic and financial interests are relevant factors in the application of the dominant and effective nationality test.⁵⁸ The Kingdom of the Netherlands agrees that the centre of one's economic</p>

⁵⁵ SoC, para. 141 and 144 (vi).
⁵⁶ SoC, para. 144(vi) and 144(viii).
⁵⁷ SoD, paras. 2-5.
⁵⁸ SoC, para. 144.

	<p>interests is a key factor in the application of the dominant and effective nationality test.⁵⁹</p> <p>A review of Andraous' bank accounts and corresponding bank statements is thus relevant in the application of the dominant and effective nationality test. This is compounded by Andraous' sole reliance on his own Personal Statement without providing further underlying documentation.⁶⁰ This information is, accordingly, relevant and material.</p>
<p>C. Summary of Disputing Party's Objections to Production</p>	<p>Claimant's sole bank account in the Kingdom of the Netherlands is at [REDACTED], which is subject to a lien by the CBCS. Claimant submits the bank statements requested are in the possession, custody or control of Respondent (similar statements on behalf of Parman were submitted to the Curaçao courts). Since 2019, Claimant has no digital access to his bank account at [REDACTED].</p>
<p>D. Reply</p>	<p>Andraous' response to Request No. 6 is insufficient and lacking in substantiation.</p> <p>Andraous contends that from 1984 – when he first moved to the Kingdom of the Netherlands – until February 2023, he has had only one bank account in the Kingdom of the Netherlands. While this is once again difficult to believe, Andraous also fails to substantiate why he would not be able, or why it would be unreasonably burdensome, to request his own bank account information from the bank, regardless of whether, since 2019, he has had digital access.</p> <p>In addition, the Kingdom of the Netherlands is also aware that [REDACTED] has resolved that Andraous was to open an account at [REDACTED] (with himself as signatory to the account).</p> <p>For the avoidance of doubt: these Documents pertaining to the account at [REDACTED] of Sint Maarten, and any other Documents pertaining to Andraous' bank accounts, held directly or indirectly, and corresponding bank statements, are not in the possession, custody, or control</p>

⁵⁹ SoD, paras. 105-114.
⁶⁰ SoC, fns. 403 and 404.

	<p>of the Kingdom of the Netherlands – hence the present request.</p> <p>The Kingdom of the Netherlands thus requests the Tribunal to order Andraous to furnish the requested Documents.</p>
E. Decision of the Tribunal	<p>The Tribunal considers that the documents requested seem <i>prima facie</i> relevant and material.</p> <p>Claimant is ordered to produce documents relating to his bank accounts and corresponding bank statements in the Kingdom of the Netherlands from 1984 until and including February 2023, to the extent that they are reasonably identified and located.</p>

Document Request No.	7
A. Documents Requested	Documents relating to ██████'s purported 'promise' to Andraous regarding the allotment of shares in PIBV for work allegedly conducted by Andraous almost a decade prior.
B. Relevance and Materiality	<p>As set out in its SoD, a key jurisdictional objection put forth by the Kingdom of the Netherlands is that Andraous does not have a qualifying 'investment' because the allotment of a 1% shareholding in PIBV, allegedly for work provided almost a decade prior, remains unproven, and in any event does not amount to the 'making' of an 'investment' through an act of investing or a contribution aimed at attaining those shares, as required by the BIT.⁶¹ Rather, on his own account, his alleged 1% shareholding in PIBV was merely allotted to him on 28 December 2011 – an allotment that was supposedly in exchange for work he claims to have provided for his employer, ██████, almost a decade prior.⁶²</p> <p>Andraous has failed to furnish any evidence that the alleged work was provided for the purpose of obtaining the shares, and there is nothing on record confirming any such 'promise' by ██████.⁶³ Documents relating to ██████'s purported 'promise' to Andraous regarding the allotment of shares in PIBV are relevant for the</p>

⁶¹ SoD, Chapter 4.
⁶² Personal Statement, para. 14.
⁶³ SoD, paras. 6 and 171.

	<p>determination as to whether Andraous holds a qualifying 'investment'.⁶⁴ This is compounded by Andraous' sole reliance on his own Personal Statement for this assertion, without providing further underlying documentation.⁶⁵ Further evidence in this regard is, accordingly, relevant and material.</p>
<p>C. Summary of Disputing Party's Objections to Production</p>	<p>Claimant's agreement with Mr ██████ was, again, a verbal one. In any case, the share transfer itself suffices as there is no reason why this would be done gratuitously.</p>
<p>D. Reply</p>	<p>Andraous' response to Request No. 7 is unclear and incorrect.</p> <p>The Kingdom of the Netherlands notes, first of all, Andraous' admission that there is no proof of ██████'s purported 'promise' regarding the allotment of shares in PIBV, allegedly in exchange for Andraous' work conducted almost a decade prior. It is worth emphasizing that Andraous bears the burden of proof to satisfy the jurisdictional hurdles in this arbitration – a burden he fails to discharge. Furthermore, it is unclear whether this reference to a verbal agreement is the same as mentioned in his response to Request No. 3 above (i.e. the one allegedly made 40 years ago), or a different verbal agreement.</p> <p>Moreover, Andraous' remark that "there is no reason" why the share transfer would be done gratuitously is left without further elaboration and is particularly unconvincing in view of the lack of evidence provided in that regard. The Kingdom of the Netherlands notes that such informal financial arrangements between ██████ and Andraous were not unusual. For example, Andraous requested from ██████ "an additional compensation for my services to the Group during the past years" in order to purchase a property after Hurricane Irma in 2017.⁶⁶ Andraous furthermore admits in his response to Request No. 12 below that he received financial support from ██████: "no other financial dealings and/or funding arrangements exist apart from some financial support in 2018-2020".</p>

⁶⁴ SoD, Chapter 4.
⁶⁵ SoC, fn. 28.
⁶⁶ SoD, para. 188.

	<p>Lastly, the Kingdom of the Netherlands disputes Andraous' allegation that "the share transfer itself suffices". As explained extensively in the SoD, the alleged share transfer itself is insufficient to satisfy the requirement of the 'making' of an 'investment' under the BIT.⁶⁷</p>
<p>E. Decision of the Tribunal</p>	<p>The Tribunal acknowledges Claimant's representation that his agreement with ██████ regarding the allotment of shares was a verbal one.</p> <p>In any case, Claimant is ordered to make a reasonable search for any documentation that may exist relating to this agreement and produce it should it be located.</p>

<p>Document Request No.</p>	<p>8</p>
<p>A. Documents Requested</p>	<p>Documents relating to the alleged allotment of Andraous' shares in PIBV on 28 December 2011, including any monetary contribution by any third-party.</p>
<p>B. Relevance and Materiality</p>	<p>As set out in its SoD, a key jurisdictional objection put forth by the Kingdom of the Netherlands is that Andraous does not have a qualifying 'investment' because the allotment of a 1% shareholding in PIBV, allegedly for work provided almost a decade prior, remains unproven, and in any event does not amount to the 'making' of an 'investment' through an act of investing or the a contribution aimed at attaining those shares, as required by the BIT.⁶⁸</p> <p>Andraous alleges to have been allotted shares in PIBV on 28 December 2011.⁶⁹ Andraous has failed to provide details or satisfactory documentary evidence with regard to the allotment of shares in PIBV, including as regards any monetary contribution paid for the shares. Although the evidence provided by Andraous suggests that USD ██████ was paid as contribution for the shares, he did not furnish underlying documentation regarding this payment.⁷⁰ Furthermore, it is not clear if this payment was made by ██████ or any other third party.</p>

⁶⁷ SoD, Chapter 4.

⁶⁸ SoD, Chapter 4.

⁶⁹ SoC, para. 19; Personal Statement, para. 14.

⁷⁰ Exhibit C-040, Parman International B.V. Stock Register, p. 4.

	<p>Documents relating to the alleged allotment of Andraous' shares in PIBV in December 2011, including any monetary contribution by any third party, are a key piece of information in determining whether Andraous holds a qualifying 'investment'. A review of the requested documents is, accordingly, relevant and material.</p>
<p>C. Summary of Disputing Party's Objections to Production</p>	<p>The main evidence as to the respective shareholdings has been provided (Exhibit C-040). Respondent's assumption that Claimant, or any other third party, at some point paid USD [REDACTED] is wrong. The shareholding is reflected in Ennia's UBO statements in the possession, custody or control of Respondent (Claimant's Document Request No. 4)</p>
<p>D. Reply</p>	<p>Andraous' response to Request No. 8 is incorrect and unclear.</p> <p>Regarding Andraous' remark that "the main evidence as to the respective shareholdings has been provided" (which, as made clear by the Kingdom of the Netherlands in the SoD and throughout this document production phase, it has not), the Kingdom of the Netherlands notes that the present request specifically concerns the circumstances surrounding the alleged allotment of shares in 2011 and goes to the question of whether an 'investment' was 'made' for the purposes of the BIT to begin with, on which it has been established that no evidence has been provided (see also Request No. 7 above).</p> <p>Moreover, the Kingdom of the Netherlands does not "assume" that payment of USD [REDACTED] was made for the shares in PIBV in this request. It is Andraous' Exhibit C-040 which suggests that this amount has been paid on his behalf, which requires clarification.</p> <p>Meanwhile, Andraous' remark regarding the UBO statements misses the point. Such UBO statements would not say anything about the manner in which the shares were allotted to him to begin with, which is the subject of the present request. In this respect, the Kingdom of the Netherlands also refers to its objection to Andraous' Request No. 4, in which it explains that such UBO statements would not evidence Andraous' alleged 1% shareholding in Ennia, since 1% shareholders do not</p>

	qualify as ultimate beneficial owners for the purposes of such UBO statements submitted to banks.
E. Decision of the Tribunal	<p>The Tribunal acknowledges Claimant’s representation that “the main evidence as to the respective shareholdings has been provided (Exhibit C-040)”.</p> <p>In any case, Claimant is ordered to make a reasonable search for any documentation that may exist relating to the allotment of Mr. Andraous’ shares in PIBV on 28 December 2011 and produce it should it be located.</p>

Document Request No.	9
A. Documents Requested	All Dutch and French tax statements relating to Andraous’ income, assets, and shareholdings for the years 1984 until 2023.
B. Relevance and Materiality	<p>As set out in its SoD, it is the position of the Kingdom of the Netherlands that Andraous is not a qualifying ‘investor’ within the meaning of the BIT given that – as a Dutch-Lebanese national – Andraous’ dominant and effective nationality is not Lebanese.⁷¹ Moreover, Andraous does not have a qualifying ‘investment’ because he has not demonstrated his ownership of shares in PIBV at the relevant points in time, namely as of when the events he complains of allegedly occurred (in 2018).⁷²</p> <p>On Andraous’ own account, the place of taxation and one’s economic interests are relevant factors for the determination of a claimant’s dominant and effective nationality.⁷³ Further evidence in this regard is relevant and material to determining whether Andraous qualifies as an ‘investor’ with a qualifying ‘investment’.</p> <p>In addition, Andraous’ purported shareholding in PIBV would have had to be reflected in his tax statements for the years 2011 to 2015, namely until the moment when the shares were sold to ██████████ in December 2015.⁷⁴ In this regard, the Kingdom of the Netherlands notes that the tax return form for 2015</p>

⁷¹ SoD, paras. 2-5.
⁷² SoD, Chapter 4.
⁷³ SoC, paras. 141 and 144(ii).
⁷⁴ SoD, para. 193.

	<p>submitted by Andraous does not mention either dividends or his purported shareholding in PIBV.⁷⁵</p> <p>A review of Andraous' tax statements is thus relevant to allow for an analysis of his economic ties to the Kingdom of the Netherlands and to, in parallel, assess whether he has in fact been the owner of the shares at all the relevant moments in time. Andraous' tax statements showing his income, assets and/or shareholdings in the Kingdom of the Netherlands are relevant and material to determine whether Andraous is a qualifying 'investor' with a qualifying 'investment'.</p>
<p>C. Summary of Disputing Party's Objections to Production</p>	<p>Respondent is, or should be, in possession of all tax statements filed by or on behalf of Claimant. It would be overly burdensome for Claimant to produce these. Claimant has no objection to producing French tax statements as these are most likely not in the possession, control or custody of Respondent.</p>
<p>D. Reply</p>	<p>Andraous' response to Request No. 9 is misleading and incorrect.</p> <p>First, as explained in its objection to Andraous' Request No. 5, the legal representatives of the Kingdom of the Netherlands do not possess, and are legally impeded from obtaining, Andraous' tax statements. These constitute strictly confidential documentation protected by privacy laws. According to these laws, the tax authorities are not permitted to share tax return forms of an individual with other organs of the State without the explicit consent of the individual concerned. Therefore, the legal representatives of the Kingdom of the Netherlands are unable to obtain Andraous' tax return forms. For this reason, the Kingdom of the Netherlands requests that Andraous produce these statements himself. The contention that "Respondent is, or should be, in possession of all tax statements filed by or on behalf of Claimant" is accordingly incorrect.</p> <p>Second, Andraous offers no substantiation as to his allegation that producing these tax statements would be 'overly burdensome'. Andraous can be expected to keep records of his own tax return forms. Regardless, Andraous</p>

⁷⁵

See Exhibit C-085.

	<p>could contact the relevant Dutch tax authorities (e.g. in Sint Maarten) and request to be provided with copies of his tax return forms. Alternatively, if Andraous engaged the services of a professional tax adviser, the tax return forms could be obtained through them. Indeed, the Kingdom of the Netherlands is aware that Andraous is likely to have engaged PwC Sint Maarten to prepare his income tax forms. Requesting the Documents from the relevant Dutch tax authorities or his professional advisers should not be any more burdensome than producing the French tax statements, to the production of which Andraous does not object.</p> <p>The Kingdom of the Netherlands thus requests the Tribunal to order Andraous to produce the requested Documents.</p>
<p>E. Decision of the Tribunal</p>	<p>The Tribunal considers that the documents requested seem <i>prima facie</i> relevant and material.</p> <p>Further, the Tribunal takes note that Claimant has himself requested the production of his Dutch tax return forms to the Kingdom of the Netherlands (Claimant’s Request No.5).</p> <p>Claimant argues that the Kingdom has access to the Dutch tax return forms and requiring him to produce them would be excessively burdensome. In its Reply, the Kingdom argues that it cannot get access to these records as tax information is confidential and only subject to disclosure prior consent of the respective individual.</p> <p>Because both Parties agree that the Dutch tax returns should be available in this arbitration, the Tribunal invites the Parties to cooperate and endeavor to fulfill the procedural formalities to obtain Mr. Andraous’ Dutch tax records for disclosure and use in this arbitration as the Parties consider appropriate.</p> <p>Further, the Tribunal acknowledges Claimant’s willingness to produce his French tax records.</p>
<p>Document Request No.</p>	<p>10</p>

A. Documents Requested	Documents relating to any relationship between Andraous and [REDACTED].
B. Relevance and Materiality	<p>As set out in its SoD, a key jurisdictional objection put forth by the Kingdom of the Netherlands is that Andraous does not have a qualifying 'investment' because he has not demonstrated his ownership of shares in PIBV at the relevant points in time, namely when the events he complains of allegedly occurred.⁷⁶</p> <p>Andraous has failed to adduce evidence of his ownership of the shares in PIBV. In fact, the evidence that Andraous has provided shows the opposite, namely that on 1 December 2015 he sold the shares to a separate legal entity – [REDACTED] – long before the events of which he complains occurred (2018 onwards) and the initiation of this arbitration (7 February 2023).⁷⁷ This transfer of ownership of the shares allegedly constituting Andraous' 'investment' remains unmentioned and unexplained throughout the SoC and the Personal Statement. Based on his own evidence, Andraous does not hold an 'investment' in Ennia.⁷⁸</p> <p>Since Andraous presents a misleading narrative by omitting or otherwise not substantiating crucial facts for the purposes of this dispute and, most crucially, on points which are central to the determination of the Tribunal's jurisdiction,⁷⁹ documents related to the relationship, if any, between Andraous and [REDACTED] are relevant and material.</p>
C. Summary of Disputing Party's Objections to Production	Claimant is the ultimate beneficial owner of [REDACTED]. Respondent knows this, as it is in the custody and control of Claimant's documents (see also Claimant's Document Request No. 4). The manner in which Claimant holds the investment is inapposite. In any case, the alleged sale never materialised and is therefore immaterial.
D. Reply	Andraous' response to Request No. 10 is unclear and incorrect.

⁷⁶ SoD, Chapter 4.

⁷⁷ SoD, paras. 192-193; Exhibit C-040, Parman International B.V. Stock Register, p. 4.

⁷⁸ SoD, Section 4.2; Exhibit C-040, Parman International B.V. Stock Register, p. 4.

⁷⁹ SoD, paras. 7 and 11.

First, Andraous does not assert that he does not possess the documentation relating to his relationship, if any, with [REDACTED], nor does he assert that producing said documentation would be unduly burdensome. Indeed, Andraous is yet to furnish any evidence of either his ownership of the shares or the relationship between him and [REDACTED].⁸⁰ Moreover, if Andraous would indeed have a relationship with [REDACTED], he should be able to request these documents from the civil law notary, lawyer, or trust services provider who helped him in establishing such relationship.

Second, Andraous' indication that the "manner" in which he "holds the investment is inapposite" misses the point of the present request. The issue in question is whether he has held or holds the alleged 'investment' at all. As also explained above, Andraous bears the burden of proof to show that he held the alleged 'investment' at the time when the events of which he complains occurred (2018 onwards) until the time of commencement of this arbitration (7 February 2023). Andraous fails to discharge that burden of proof.

On the contrary, Exhibit C-040, the only document listing Andraous as a shareholder of PIBV,⁸¹ includes a note referring to a sale of shares to [REDACTED] in December 2015. Without any further substantiation, it is insufficient for Andraous to barely note that "the alleged sale never materialised and is therefore immaterial".

Third, to the extent relevant, there is no evidence that Andraous would be "the ultimate beneficial owner of [REDACTED]". The Kingdom of the Netherlands explicitly reserves its rights to contest this allegation.

It is in any event unclear why Ennia's UBO statements – which are the subject of Andraous' Request No. 4 referenced in his response – would shed light on his relationship as an alleged ultimate beneficiary owner of [REDACTED] – particularly if, as he contends, the sale of his shares to [REDACTED] never materialized to begin with.

⁸⁰ See Exhibit C-040, p. 5, mentioning both Andraous and [REDACTED]. This remains unclear.
⁸¹ See SoD, Section 4.2 and fn. 353.

	<p>The Kingdom of the Netherlands thus requests the Tribunal to order Andraous to produce the requested Documents shedding light on his relationship with [REDACTED] (including those pertaining to the – allegedly failed – sale of the shares in PIBV) and, in so doing, his purported shareholding in PIBV.</p>
<p>E. Decision of the Tribunal</p>	<p>The request seems <i>prima facie</i> relevant and material.</p> <p>Claimant is ordered to produce documents relating to any relationship between Mr. Andraous and [REDACTED] to the extent that such documentation exists and may be reasonably identified and located.</p>

<p>Document Request No.</p>	<p>11</p>
<p>A. Documents Requested</p>	<p>Documents relating to PIBV board resolutions approving dividend distributions to Andraous in the years 2011 until 2015.</p>
<p>B. Relevance and Materiality</p>	<p>In his SoC, Andraous contends that, in the period 2013 to 2015, "Claimant received dividends on a yearly basis, for a total amount of USD 784,000" stemming from his purported 1% shareholding in PIBV.⁸² The only exhibit Andraous submits in support of these receivables is unsatisfactory to demonstrate that these were dividend distributions to Andraous in his capacity as a shareholder of PIBV. The exhibit merely shows that funds have been wired to Andraous by PIBV.</p> <p>A review of PIBV board resolutions and related documentation is thus relevant to allow for an analysis as to whether Andraous has, in fact, been the owner of the shares in PIBV, as well as whether the payments were indeed dividend distributions.</p> <p>In light of Andraous' failure to adduce evidence in this regard, the request is relevant and material to determine if Andraous is a qualifying 'investor' with a qualifying 'investment'.⁸³ This is compounded by the fact that</p>

⁸² SoC, para. 19.
⁸³ SoD, Chapter 4.

	Andraous failed to discharge his burden of proof regarding his purported shareholding in PIBV. ⁸⁴
C. Summary of Disputing Party's Objections to Production	There are no board resolutions regarding the dividends at the level of Parman. The Ennia shareholders resolution regarding dividends was signed by Parman as sole shareholder, and Parman, as the holding company was the channel to pass the dividend to its shareholders. All bank statements are already in the possession, custody or control of Respondent as these were presented to the Curaçao courts.
D. Reply	<p>Andraous' response to Request No. 11 is misleading and incorrect.</p> <p>First, company law and Articles of Association habitually require a board resolution to be passed in order for a dividend distribution to be allowed and processed. Accordingly, board resolutions must exist regarding the approval of dividend distributions at the level of PIBV. As a PIBV shareholder, Andraous could only have received dividend distributions in his capacity as shareholder following a resolution passed by the executive management of PIBV. To that end, the Kingdom of the Netherlands has in fact been able to identify two PIBV board resolutions dated 2012 and signed by Andraous himself. The Kingdom of the Netherlands thus requests the Tribunal to order Andraous to produce the requested Documents relating to PIBV board resolutions approving dividend distributions to Andraous.</p> <p>In any event, Andraous should be required to produce the "Ennia shareholders" resolutions he himself mentions. In that regard, Andraous does not assert that he does not have these Documents in his possession, or that they would be unduly burdensome to produce. These Documents, as explained, are necessary to substantiate that the amounts received by Andraous were indeed dividend distributions based on his alleged shareholding in the relevant period.</p> <p>Second, the relevance of Andraous' reference to bank statements is unclear, as such bank statements would not adequately reflect the information requested, i.e. to demonstrate that monies were wired to an individual in</p>

⁸⁴ SoD, Chapter 4; SoC, fns. 28 and 29.

	their capacity as a shareholder of PIBV. In any event, said bank statements are not in the Kingdom of the Netherlands' possession (see also Request No. 6), nor is it clear how these bank statements would reflect the information requested.
E. Decision of the Tribunal	<p>The Tribunal considers that the documents requested seem <i>prima facie</i> relevant and material.</p> <p>Claimant is ordered to produce documents relating to Parman resolutions or documentation approving dividend distributions to Mr. Andraous in the years 2011 until 2015.</p>

Document Request No.	12
A. Documents Requested	Documents relating to financial dealings and/or funding arrangements between Andraous and ██████ from 2017 until present day.
B. Relevance and Materiality	<p>As set out in its SoD, the Kingdom of the Netherlands has detailed how arrangements between ██████ and Andraous, with the former financially supporting or incentivizing the latter, were not unusual.⁸⁵ Moreover, recent communications on behalf of ██████ directed to the Kingdom of the Netherlands suggest that ██████ is indirectly involved or otherwise has an interest in these arbitration proceedings.</p> <p>To that end, documents regarding financial dealings, funding arrangements and/or money flows from ██████ to Andraous are relevant and material for the sake of transparency towards the Tribunal and the Kingdom of the Netherlands.</p>
C. Summary of Disputing Party's Objections to Production	This is simply another spurious inquiry into Claimant's funding arrangements, and is subject to legal privilege. Apart from its obligation in Procedural Order No. 1 (at para. 41), Claimant does not have to disclose its fee arrangements. No other financial dealings and/or funding

⁸⁵ SoD, para. 188 ("It is notable that in the present case, Andraous was merely 'allotted' the shares allegedly based on an unsubstantiated promise by ██████ for services rendered many years prior. [...] It is worth noting that such *ad hoc* arrangements between Andraous and ██████ were not unusual. As mentioned in Section 3.3.2 above, in 2017, for instance, Andraous requested 'an additional compensation for my services to the Group during the past years' in order to purchase a property.").

	<p>arrangements exist apart from some financial support in 2018-2020 because of the CBCS's Takeover.</p>
<p>D. Reply</p>	<p>Andraous' response to Request No. 12 is misleading and lacking in substantiation.</p> <p>First, Andraous' objection on grounds of legal privilege is difficult to follow. The burden of proof is on the party claiming privilege.⁸⁶ In order for the Tribunal to determine whether the grounds for legal privilege under Article 9.2(b) of the IBA Rules apply, Andraous is required to explain why the requested Documents should be considered privileged. No such explanation is provided. From Andraous' vaguely formulated objection, it is unclear why Documents relating to "funding arrangements" between Andraous and ██████ neither of whom is a lawyer, would give rise to any legal privilege issues.</p> <p>Moreover, it is unclear what Andraous means by "fee arrangements" and how they differ from "funding arrangements" (i.e. arrangements with funders enabling Andraous to pay fees and costs incurred in these proceedings). To the extent "fee arrangements" refer to arrangements between Andraous and his counsel on how much to pay for their fees, Andraous' statement that he "does not have to disclose [his] fee arrangements" is irrelevant to the question as to whether he should disclose his funding arrangements.</p> <p>In any event, even where legal privilege grounds apply, the Tribunal may determine production of a document subject to redaction. Thus, Andraous' response is insufficient to resist production of these Documents.</p> <p>Second, Andraous appears to admit the existence of financial dealings and/or funding arrangements by ██████ including – as may be derived, <i>inter alia</i>, from his reference to legal privilege – for the purposes of these proceedings. If so, this would be contrary to Andraous' confirmation in para. 41 of the Procedural Order No. 1 that "his costs are not being met by any third party in relation to this arbitration".</p>

⁸⁶ Roman Khodykin, Carol Mulcahy, et al., *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* (OUP, 2019), para. 12.144.

	<p>This matter should be clarified. Either (a) there is no funding arrangement, in which case it is not understood why Andraous is invoking legal privilege to resist disclosure of an arrangement that does not exist to begin with, or (b) there is a funding arrangement, in which case Andraous' confirmation in para. 41 of the Procedural Order No. 1 is false.</p> <p>Third, Andraous acknowledges that he received "some financial support in 2018-2020", once again without further substantiation.</p> <p>Lastly, the Kingdom of the Netherlands notes that Andraous' contention that "some financial support in 2018-2020" is the only funding arrangement between him and ██████ is, in any event, incorrect, since it is known – as mentioned above – that other arrangements existed between the two outside of that period.⁸⁷</p> <p>For all of these reasons, the Kingdom of the Netherlands requests the Tribunal to order Andraous to produce the requested Documents relating to financial dealings and/or funding arrangements between Andraous and ██████ from 2017 until present day.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is denied.</p> <p>The Tribunal is satisfied with Claimant's representation under para. 41 of Procedural Order No. 1 that his claim in this arbitration is not being funded by a third party.</p>

⁸⁷ SoD, para. 188.