

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Raymond Charles Eyre and Montrose Development (Private) Limited

v.

Democratic Socialist Republic of Sri Lanka

(ICSID Case No. ARB/16/25)

**PROCEDURAL ORDER NO. 3
DOCUMENT PRODUCTION**

Members of the Tribunal

Prof. Lucy Reed, President of the Tribunal

Prof. Julian D.M. Lew, Q.C., Arbitrator

Prof. Brigitte Stern, Arbitrator

Secretary of the Tribunal

Ms. Geraldine R. Fischer

Date: May 30, 2018

Procedural Order No. 3-Document Production

I. PROCEDURAL HISTORY

1. By email of April 22, 2018, the Tribunal approved the Parties' agreed modified procedural timetable.
2. On May 23, 2018, pursuant to the amended procedural timetable, the Respondent requested that the Tribunal make its determination with respect to the contested document requests contained in its Redfern Schedule. The Respondent also provided the Tribunal with an extract on "Waiver of Privilege" from a treatise on Documentary Evidence (12th edition) by Charles Hollander QC, which was referenced in the Respondent's Replies to Document Requests Nos. 6 and 11 in its Redfern Schedule.
3. On May 25, 2018, the Claimants sent a letter contesting the Respondent's privilege arguments contained in the Respondent's Replies to Documents Requests Nos. 6, 11 and 14.

II. DECISION

4. The Tribunal's decisions on the contested document requests are set out in the Respondent's Redfern Schedule attached to this Order.
5. In accordance with the amended procedural timetable, the ordered documents must be produced to the Respondent by June 6, 2018.
6. As set out in the Tribunal's decisions, if the Claimants wish to claim privilege for certain documents in the process of producing responsive documents, the Claimants must prepare a Privilege Log setting out the necessary details for each document: (i) title/reference; (ii) author; (iii) recipient; (iv) date; (v) length; and (vi) basis for the privilege claimed. Should the Claimants submit a Privilege Log, the Claimants must do so by June 6, 2018, and the Respondent will be invited to submit any comments by June 13, 2018. The Tribunal will make specific decisions on the basis of the Privilege Log, and any further objection from the Respondent.

Procedural Order No. 3-Document Production

On behalf of the Tribunal,

[signed]

Professor Lucy Reed
President of the Tribunal
Date: May 30, 2018

Annex A: The Respondent's Document Requests (Redfern Schedule)

IN THE MATTER OF AN ARBITRATION UNDER THE ICSID CONVENTION AND THE UNITED KINGDOM-SRI LANKA BIT

BETWEEN
(1) MR RAYMOND EYRE
(2) MONTROSE DEVELOPMENTS (PRIVATE) LIMITED
Claimants
and

THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Respondent

ICSID CASE NO ARB/16/25

**THE RESPONDENT'S DOCUMENT REQUESTS
BY WAY OF REDFERN SCHEDULE**

Tribunal Decisions

30 May 2018

9 May 2018

Preliminaries

This Request for Documents is made pursuant to Procedural Order No.2 dated 21 February 2018 (as amended on 22 April 2018).

References to the “IBA Rules” are to IBA Rules on the Taking of Evidence in International Arbitration (2010).

The documents requested below are not in the possession, custody or control of the Respondent within the meaning of Article 3(c) of the IBA Rules.

The Respondent further confirms that each of the Disclosure Requests is assumed to be in the possession, custody or control of the Claimants within the meaning of Article 3(c) of the IBA Rules, given the nature of the documents in question, being documents evidencing contentions as to alleged payments made and alleged trust relationships created.

A. Alleged Payments made by the First Claimant, Mr Eyre, in respect of his alleged investment and alleged acquisition of a beneficial interest

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
1.	<p>The documents containing and/or evidencing the alleged payment of USD 350,000 to Electro Holidays by Mr. Eyre by way of loan in 2007, including but not limited to the documents containing and/or evidencing:</p> <p>a) The terms of the loan arrangement and parties to the loan arrangement;</p> <p>b) The fact of and date of payment;</p> <p>c) The identity of the individual or corporate entity making payment;</p> <p>d) The fact that the funds, if not provided by Mr Eyre but some other entity, were sourced from Mr Eyre's personal funds;</p> <p>e) The tax return, accounts or other documents showing the treatment of the loan including the fact that it was not repaid.</p>	<p>Mr. Eyre's evidence is that part of the consideration for the acquisition of the Land by Montrose Sri Lanka was this unpaid loan¹ and that (inter alia) on the basis of this payment, Montrose Sri Lanka acquired the Land. It is further Mr Eyre's case and evidence that Montrose Sri Lanka was, from inception, his company, and that he was allegedly thereby in a position to direct that the shares of Montrose Sri Lanka, the company holding the Land, be held on beneficial trust for him.²</p> <p>The Claimants' case is (inter alia) that: (1) the shares of Montrose Sri Lanka were held on oral trust for Mr Eyre as beneficiary at the time of its acquisition and continuing thereafter when the shares were transferred to Montrose Singapore. The Claimants allege that this means that Montrose Sri Lanka satisfies the nationality requirements under the BIT and Article 25(2)(b) of the ICSID Convention and/or that Mr Eyre can claim in his own beneficial capacity as alleged owner of shares under the BIT;³ (2) through the alleged payments for the Land acquisition Mr Eyre</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	<p>No Decision Required</p>

¹ Eyre 1, paras 12, 14, 15; Eyre 2, para 14 referring back to his first statement.

² Eyre 1, paras 17-18.

³ Claimants' Memorial (11 Aug 17), paras 82, 89, 99, 114 and earlier at paras 32 and 52.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
		<p>made monetary contributions for the purposes of the BIT and Article 25(1) of the ICSID Convention; (3) Mr Eyre had beneficial title in the Land.⁴</p> <p>The Respondent denies the factual contentions underlying these legal contentions (which are also denied) and the documents requested are relevant and material to the requirements for the creation of such a trust relationship, including (inter alia but not limited to): (i) whether or not Mr Eyre could in fact create a beneficial interest in the Land or the shares in Montrose Sri Lanka; (ii) whether there was any intention on the part of Mr Eyre to create a beneficial interest; (iii) the alleged scope of the trust said to have been created and whether or not it meets the requirements of certainty; (iv) the alleged acceptance of the trustee to act as trustee.⁵</p> <p>The Tribunal's attention is additionally drawn to the fact that Mr Eyre's witness evidence on this issue has dramatically changed between his first and second witness statement in light of the fact that the Respondent challenged the evidence contained in his first statement by reference to the very few documents disclosed. Mr Eyre originally asserted that he paid Rs</p>			

⁴ Claimants' Memorial (11 Aug 2017), para 32.

⁵ Respondent's Preliminary Jurisdiction Objections (8 Dec 17) at paras 121 and earlier at 17-19, 91(a).

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
		<p>100,000,000 on or around the time of the acquisition of the Land on 4 August 2010.⁶ He now asserts that he made a payment of USD 400,055 in July 2012 two years after the Land transfer and that therefore he did not make payment and/or payment in full at the time of Land transfer.⁷ The Claimants submit in their submissions further that <i>"the payment of Rs 100,000,000 was never made."</i>⁸</p> <p>The documents requested are relevant and material to addressing the accuracy of these materially shifted contentions, which in turn are relevant to the matters identified above.</p> <p>Further, and for the avoidance of any doubt, the Respondent's contention is that the dates of any alleged payments (in this Request and the Requests below) are relevant and material to the issue of when any alleged beneficial interest in the shares in Montrose Sri Lanka is capable of arising and when, which is in turn relevant given the subsequent transfer of the shares in Montrose Sri Lanka to Montrose Singapore (addressed further below).</p> <p>Further and for the further avoidance of doubt, if any alleged payments were made, then their</p>			

⁶ Eyre 1, paras 16, 20.

⁷ Eyre 2, para 19.

⁸ Claimants' Counter Memorial (25 April 2018) at para 18.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
		<p>specific source is relevant. The Respondent contends that any alleged contribution by a corporate entity as opposed to Mr Eyre does not constitute risk or contribution by Mr Eyre for the purposes of alleged beneficial interest and alleged contribution.⁹ The Respondent observes further that Mr Eyre's own case is that <i>"The investment, whilst routed through the Montrose Group corporate structure for efficiency, was ultimately a personal endeavor. I remitted all funds ..."</i>¹⁰</p> <p>The documents are therefore relevant and material (under the IBA Rules) to the above identified issues.</p>			
2.	<p>The documents containing and/or evidencing the joint loan of USD 1.1 million alleged to have been made by Mr Eyre and his wife in 2003 to Electro Holidays including but not limited to the documents containing and/or evidencing:</p> <p>a) The terms of the loan arrangement and parties to the loan arrangement;</p>	<p>Mr Eyre's evidence is that part of the consideration for the alleged acquisition of the land by Montrose Sri Lanka was this unpaid loan¹¹ and that (inter alia), on the basis of this payment, Montrose Sri Lanka acquired the Land and Mr Eyre was thereby in a position to direct that the shares of Montrose Sri Lanka be held on beneficial trust for him.¹²</p> <p>None of the documents identified have been produced. The Respondent repeats the</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	<p>No Decision Required</p>

⁹ Respondent's Preliminary Jurisdictional Objections (8 Dec 17) at para 70 et seq.

¹⁰ Eyre 2, para 11.

¹¹ Eyre 1, paras 11, 14, 15; Eyre 2, para 14 referring back to his first statement.

¹² Eyre 1, para 18.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
	<p>b) The fact of and date of payment;</p> <p>c) The identity of the party (parties) or entity making payment;</p> <p>d) The fact that the funds, if not provided by Mr Eyre and Mrs Eyre themselves but some other entity, were sourced from their personal funds;</p> <p>e) The tax return, accounts or other documents showing the treatment of the loan including the fact that it was not repaid.</p>	<p>remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>	<p>prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>		
3.	<p>The documents containing and/or evidencing the fact that on or about 4 April 2011 or at any other later time and if so when, Mr. Eyre transferred the sum of Rs 100,000,000 (approximately USD 887,000) to Electro Holidays as the additional payment in respect of the alleged consideration to acquire the Land, including but not limited to the documents containing and/or evidencing:</p>	<p>Mr. Eyre's evidence in his first statement was that he transferred the sum of Rs 100,000,000 on or about 4 April 2011 to Electro Holidays, as the additional payment in respect of the alleged agreed consideration to acquire the Land.¹³ Mr Eyre's evidence in his second statement (as noted earlier) is that payment was made at a later date.</p> <p>However, documents showing payment of Rs 100,000,000 at any time, and if so when, have not been produced.</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	<p>No Decision Required</p>

¹³ Eyre 1, paras 16, 20.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
	<p>a) The terms on which the payment was allegedly made and the parties to that arrangement;</p> <p>b) The fact of and date of payment;</p> <p>c) The identity of the party making payment;</p> <p>d) The fact that the funds, if not provided by Mr Eyre but by some other entity, were sourced from Mr Eyre's personal funds.</p>	<p>The Respondent repeats the remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>	<p>Respondent's case or the purported justification for the request.</p>		
4.	<p>The documents containing and/or evidencing the reasons for Electro Holidays purporting to provide a receipt dated 4 April 2011 (C-44) stating that it had received USD 1 million from Montrose Singapore, including but not limited to any subsequent correspondence concerning the contents of the receipt from or on behalf of Mr Eyre and/or Montrose Sri Lanka.</p>	<p>In Mr Eyre's first witness statement he relies upon this document (C-44) as evidencing the alleged fact that Montrose Singapore made payment to Electro Holidays in respect of the purchase of the Land by Montrose Sri Lanka.¹⁴</p> <p>However, the contents of this documents are self-evidently untrue because:</p> <p>a) Montrose Singapore did not exist at this time, but was incorporated in September 2011 and was incapable of making this alleged payment¹⁵.</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	<p>No Decision Required</p>

¹⁴ Eyre 1, para 20.

¹⁵ Respondent's Preliminary Jurisdiction Objections (8 Dec 17) at §17(b) and R-3.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
		<p>b) The alleged agreed consideration was Rs 100,000,000 which is not the same as USD 1 million as Mr Eyre himself acknowledges.¹⁶</p> <p>c) The Claimants now admit in their submissions that no payment was made at this time and thereby admit that this document is untrue¹⁷ having previously relied upon it and asserting that payment was made on 4 April 2011.</p> <p>Therefore, this document was created for reasons ulterior to those stated on the document. The Request is therefore relevant and material to the question of whether or not Mr Eyre had any alleged interest in Montrose Sri Lanka or the Land at the time of acquisition, or whether in fact the Land remained beneficially with Electro Holidays.</p> <p>The Respondent repeats the remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>			

¹⁶ Eyre 1, para 16.

¹⁷ Claimants' Counter-Memorial (25 April 2018), para 18.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
5.	<p>The documents containing and/or evidencing the contractual or other arrangement pursuant to which the Deed of Transfer from Electro Holidays to Montrose Sri Lanka was executed on 4 August 2010 (C-35) including but not limited to the documents containing and/or evidencing:</p> <p>a) the terms of the arrangement;</p> <p>b) the consideration for the arrangement;</p> <p>c) whether the alleged loans referred to in Requests 1, 2 and 3 were part of the arrangement and/or consideration and if so in what way and on what terms;</p> <p>d) whether Electro Holidays or any other entity and/or individual retained any interest (and the nature of the interest) in the Land and, if so, on what conditions.</p>	<p>Mr Eyre's evidence is that because of the alleged outstanding loans due from Electro Holidays and in consideration for the payment of an additional Rs 100,000,000, Electro Holidays agreed to transfer the Land to Montrose Sri Lanka. Mr Eyre's case and evidence is also that, from inception, Montrose Sri Lanka was his company.¹⁸</p> <p>Mr Eyre has only disclosed the Deed of Transfer pursuant to which Electro Holidays unilaterally transferred the Land to Montrose Sri Lanka but not the contractual or other arrangement pursuant to which that Land was conveyed evidencing the terms of the arrangement.</p> <p>There must exist an agreed arrangement pursuant to which that Deed of Transfer was then executed. Indeed, Mr Eyre refers to a resolution of Electro Holidays preceding the Deed of Transfer (of 27 July 2010) (C-33) by which they resolved to sell the Land to Montrose Sri Lanka.</p> <p>The terms of that arrangement are relevant and material to the question of whether, as Mr Eyre asserts, he was even in a position to direct that the shares in Montrose Sri Lanka should be held on trust for him.</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	<p>No Decision Required</p>

¹⁸ Eyre 1, paras 15-21.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
		<p>The Respondent does not accept the assumption that Mr Eyre did have such legal capacity, which would depend upon the terms of the arrangement by which the Land was transferred to Montrose Sri Lanka. The absence of any evidence of payment reinforces the relevance and materiality of the terms of the arrangement.</p> <p>The Respondent repeats the remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>			
6.	<p>The documents containing and/or evidencing why Montrose Aircraft Leasing transferred USD 400,055 to Latec International on 5 July 2012 including but not limited to the documents containing and/or evidencing:</p> <p>a) The terms of the contract and/or arrangement pursuant to which this payment was made and whether it in fact related to the Land or some other arrangement with Latec International</p>	<p>Mr Eyre asserts in his second statement, that the additional payment in respect of the acquisition of the Land was the said payment of USD 400,055, he also relies upon this payment as being part of his personal contribution for acquisition of the Land.¹⁹</p> <p>However, no documents have been produced showing the circumstances in which that payment was made or that it is in fact referable to the sale of the Land to Montrose Sri Lanka.</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them, save for in respect of Request No. 6(c).</p> <p>Request No. 6(c) is not relevant or material to the issues in dispute in</p>	<p>Noted so far as Requests 6.a), b) and d) are concerned. The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p> <p>The Respondent maintains Request 6.c). Mr Eyre disclosed C-89 (email of 29 June 2012) to positively support the contention</p>	<p>No Decision Required as to a), b) and d)</p> <p>Request granted as to c), on grounds that if the Report at issue (C-89) was privileged, that privilege has been waived. C-89, as produced, sets out the substance of the Report, specifically that</p>

¹⁹ Eyre 2, paras 19-20.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
	<p>and/or Mr Wethasinghe and/or some other person or entity;</p> <p>b) The approval process referred to in Mr Eyre's email of 1 July 2012 (C-89) (the document states "<i>Nevertheless as a sign of good faith and to keep the approval process going</i>").</p> <p>c) The Reports (and/or opinions) on title attached to the email of 29 June 2012 (C-89) and referred to in the body of the email.</p> <p>d) The agreement between Mr Eyre and Mr Wethasinghe referred to in the email of 1 July 2012 (C-90) (the document states: "<i>As discussed and agreed this is not what we wanted or expected</i>").</p>	<p>As identified in the Request, the few emails produced do not identify the circumstances in which the payment was made and what it is referable to, but do identify issues and documents that would provide the relevant context, which therefore form part of the Request (though the Request is not limited to those specific documents).</p>	<p>the jurisdictional proceedings (see Article 9.2 (a) of the IBA Rules). The Respondent has not argued that Montrose Sri Lanka did not hold legal title to the Montrose Land. In any event, the requested documents, being attorney-client legal advice, are legally privileged.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>that the payment was "a contribution in respect of the Montrose Land (<i>the Additional Payment</i>)."²⁰ The email of 29 June 2012 is part of a sequence of emails on which Mr Eyre relies.</p> <p>The email of 29 June 2012 in terms refers to and summarises some of the substance of the enclosed reports (of which disclosure is sought). The responsive email of 1 July 2012 (also in C-89) states:</p> <p><i>"Ravi as discussed and agreed this is not what we want or expected. Nevertheless as a sign of good faith and to keep the approval process going I will wire US\$400,000."</i></p> <p>Having positively therefore relied upon this chain of emails to assert that the USD 400,000 was an additional payment in respect of the Land, the Claimants cannot cherry pick their disclosure. The attached Report will undoubtedly shed light on the context and circumstances in which the \$400,000 was paid, and what it was in respect of and whether or not it</p>	<p>it is a "sri lanka clean title report given to a client on a land" and "confirms land ownership and confirms title for over 30 years".</p>

²⁰ Eyre 2 at paras 19-20.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
				<p>was an Additional Payment for the Land as asserted by Mr Eyre, two years after the transfer of the Land. Privilege cannot be maintained in these circumstances because that would infringe the principle of fairness and allow the Claimants to cherry pick. What is more, the email of 29 June 2012 summarises some of the substance of the report and there is clear waiver of privilege in those circumstances. See Documentary Evidence, 12ed, Hollander at 23-02 (attached) on the English principles referring to the principles of fairness and cherry-picking underlying waiver: the fundamental question is whether in light of what has been disclosed and the context in which disclosure has occurred, it would be unfair to allow the party making disclosure not to reveal the whole of the relevant information because it would risk the court and the other party only having a partial and potentially misleading understanding of the material. This type of test (or for that matter any other test) would clearly be satisfied here.</p>	

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
7.	<p>The documents containing and/or evidencing the fact that the transfer of USD 400,055 from Montrose Aircraft Leasing on 5 July 2012 to Latec International was sourced from Mr Eyre's personal funds.</p>	<p>Mr Eyre asserts in his second statement, that the additional payment in respect of the acquisition of the Land was the said payment of USD 400,055, he also relies upon this payment as being part of his personal contribution for the acquisition by Montrose Sri Lanka of the Land.²¹</p> <p>However, although in his evidence Mr Eyre specifically distinguishes between his own resources and those of his companies,²² he has not produced any evidence to show that this payment was sourced from him personally.</p> <p>The Respondent repeats the remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimant has no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	No Decision Required
8.	<p>The documents containing and/or evidencing the accounting treatment of the payment of USD 400,055 by Montrose Aircraft Leasing in its accounts and/or management balance sheets including but not limited to whether or not it was treated as a</p>	<p>The relevance and materiality of this Request is justified by reference to Requests 1, 5 and 6 above.</p> <p>The Montrose Aircraft Leasing accounts and the treatment of this payment are relevant and material to Mr Eyre's contention that it was part</p>	<p>The Claimants object to this request. The Claimants have already provided the documents which are directly relevant to the US \$400,055 payment, which evidence that the payment was made and the purpose of this payment. In this regard, the</p>	<p>This Request is pursued.</p> <p>Mr Eyre asserts in unambiguous terms that this payment was "<i>a contribution in respect of the Montrose Land (the Additional Payment)</i>."²⁴ In the Counter-</p>	Request Granted

²¹ Eyre 2, paras 19-20.

²² Eyre 1, para 25.

²⁴ Eyre 2, para 19.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
	<p>payment in respect of the Land or for some other purpose.</p> <p>This Request would most likely be satisfied by the relevant year end accounts of Montrose Aircraft Leasing and/or relevant management balance sheets.</p>	<p>of the consideration for the acquisition of the land, some two years earlier.</p>	<p>Claimants have provided the bank statement which provides evidence of the transfer of the USD \$400,055 payment (C-91) and the email correspondence whereby the payment was discussed (C-89 and C-90) and acknowledged (C-92).</p> <p>The Claimants have also agreed to Requests No. 6 and 7 above²³ which concern this payment.</p> <p>Accordingly, the requested documents which concern the accounting treatment of the \$400,055 are not relevant or material to the matters in dispute in the jurisdictional proceedings (see Article 9.2 (a) of the IBA Rules). It is a fishing expedition for documents which have at most a tenuous connection with the disputed issues.</p> <p>The Respondent's attempt to justify this request is also misconceived. Mr Eyre does not assert that the</p>	<p>Memorial²⁵, the Claimants positively rely upon this supposed contribution in respect of the acquisition of the Montrose Land. Indeed, the Claimants do so specifically in response to the Respondent's pleaded point that there is no proof of actual payment in respect of the Land.²⁶</p> <p>How the payment was treated in the Montrose Aircraft Leasing accounts is therefore relevant and material to the question of whether or not this was a contribution to the acquisition of the Land as asserted. If no payment was made in respect of the acquisition of the Land, then the Respondent will and does assert that Montrose Sri Lanka does not have any beneficial interest in the Land and Mr Eyre is incapable of conferring upon himself a beneficial interest in either the Land or shares of Montrose Sri Lanka.²⁷ This is directly relevant and material to</p>	

²³ Excepting request 6(c) which the Claimants object to for the reasons outlined above.

²⁵ Claimant's Counter Memorial at paras 11-12.

²⁶ Respondent's Preliminary Jurisdiction Objections at paras 17-18.

²⁷ Respondent's Preliminary Objections at para 105 et seq.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
			<p>\$400,055 payment "was part of the consideration for the acquisition of the land" as the Respondent alleges but rather that it was a "contribution in respect of the Montrose Land" (see paragraph 19 of Mr Eyre's witness statement dated 25 April 2018).</p>	<p>whether or not therefore Mr Eyre can factually claim standing under the BIT as a beneficiary of shares (which is also legally denied).</p> <p>The Claimants appear to want to change their case, yet again. The evidence of Mr Eyre and the submissions referred to above are unambiguous in relying upon this alleged payment as part of the consideration for the acquisition of the Land and not merely some contribution not related to the acquisition of the Land. It is submitted that the Tribunal should proceed on the basis of what is actually alleged and not a purported change in response to Disclosure Requests.</p> <p>In any event, the document requested would remain relevant and material to the question of any reliance by the Claimants upon this payment as some form of "contribution" to the Land whether or not linked to the acquisition of the Land, if that is now their case. It would therefore be relevant for the reasons given under Request 1, and the Claimants' reliance upon</p>	

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
				this contribution as part of their alleged 'investment' under the BIT.	
9.	<p>The documents containing and/or evidencing whether and if so when the remainder of the consideration in respect of the acquisition of the Land was made, including but not limited to the documents containing and/or evidencing:</p> <p>a) The terms on which the payment was allegedly made and the parties to that arrangement;</p> <p>b) The fact of and date of payment;</p> <p>c) The identity of the party making payment;</p> <p>d) The fact that the funds, if not provided by Mr Eyre but by some other</p>	<p>According to Mr Eyre's second witness statement evidence, he allegedly made a payment of USD 400,055 out of a total consideration payable of USD 887,000 i.e. less than half of the consideration payable.²⁸</p> <p>The documents are relevant and material for the reasons set out in the justification for Request 1 and consequently the scope of Mr Eyre's alleged beneficial interest if any. On Mr Eyre's legal case (which is denied), Mr Eyre would have to have a majority beneficial interest to satisfy the nationality requirements under the BIT.</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	<p>No Decision Required</p>

²⁸ Eyre 1 at para 16.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
	entity, were sourced from Mr Eyre's personal funds.				

B. Alleged creation of trust beneficiary relationship between Mr Fernando and Mr Eyre

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
10.	<p>The documents containing and/or evidencing the fact that Mr Eyre requested and Mr Fernando agreed to act as trustee of the shares in Montrose Sri Lanka and the terms of that trust, including but not limited to the documents containing and/or evidencing:</p> <p>a) The instructions given by Mr Eyre to Mr Wijeratne;</p> <p>b) The instructions given by Mr Wijeratne to Mr Fernando;</p> <p>c) Mr Fernando's agreement to act as trustee and the scope of that agreement;</p>	<p>Mr Eyre's and Mr Wijeratne's evidence is that a beneficiary nominee trust relationship was created in respect of the shares of Montrose Sri Lanka, with Mr Eyre informing Mr Wijeratne of his intentions, Mr Wijeratne then approaching Mr Fernando to explain the arrangement, Mr Wijeratne then reporting back to Mr Eyre and Mr Wijeratne then instructing R&J (corporate secretary) to establish Montrose Sri Lanka on this basis.²⁹</p> <p>No documents have been produced in respect of this contention.</p> <p>What is more, the alleged beneficial interest was not registered in the shareholders' register, which the</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	<p>No Decision Required</p>

²⁹ Eyre 1, para 18; Mr Wijeratne, paras 4-7.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
	<p>d) Mr Wijeratne having confirmed to Mr Eyre that a nominee beneficiary relationship had been agreed;</p> <p>e) The instructions given by Mr Wijeratne to R&J regarding the establishment of Montrose Sri Lanka including but not limited to whether or not those instructions indicated that Mr Fernando was to have legal but not beneficial ownership of the shares;</p> <p>f) any other correspondence passing between R&J, Mr Fernando, Mr Eyre and/or Mr Wijeratne concerning: (i) the establishment of the trust; (ii) the terms of the trust; (iii) the scope of Mr Fernando's remuneration in respect of the trust;</p> <p>g) any correspondence passing between R&J, Mr Fernando, Mr Eyre and/or Mr Wijeratne and or any other relevant persons in which the issue of whether or not to register the alleged beneficial interest in the register of shareholders was raised or discussed.</p>	<p>Respondent asserts is required by section 129 of the Companies Act No.7 of 2007.³⁰</p> <p>The Respondent repeats the remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>			

³⁰ Respondent's Preliminary Jurisdiction Objections (8 Dec 17) at para 115(c).

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
11.	<p>The documents containing and/or evidencing the basis of Mr Eyre's alleged understanding that it was necessary for a Sri Lankan company to have a Sri Lankan national as the initial subscriber of shares and director to comply with local legal requirements.</p>	<p>Mr Eyre's evidence is that the reason why he set up a structure whereby the legal and beneficial interest in the shares was split, was because of his understanding at the time of Sri Lankan law requirements.³¹</p> <p>The documents are therefore relevant and material to Mr Eyre's understanding and alleged intentions consequent on that understanding and whether or not he ever intended to create a beneficial trust, being one of the legal requirements for the creation of such a trust.</p> <p>The Respondent repeats the remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>The Respondent's position is that privilege cannot be maintained as there has been clear waiver.</p> <p>Paragraph 18 of Mr Eyre's statement asserts:</p> <p>"My understanding at the time was that it was necessary for a Sri Lankan company to have a Sri Lankan national as the initial subscriber of shares and company director in order to <i>comply with local legal requirements.</i>"</p> <p>Mr Eyre cannot now claim privilege because he is positively relying upon the advice given to support his case (as to the way in which his alleged ownership was structured) and he has disclosed the substance of the alleged advice given. See Documentary Evidence, 12ed, Hollander at 23-05 to 23-06 (attached). This type of test (or for that matter any other test) would clearly be satisfied here.</p>	<p>No Decision Required</p> <p>If Claimants wish to claim privilege for certain documents in the process of producing responsive documents, Claimants must prepare a Privilege Log setting out the necessary details for each document: title/reference, author, recipient, date, length, basis for privilege claimed. The Tribunal will make specific decisions on the basis of the Privilege Log, and any further objection from Respondent.</p>

³¹ Eyre 1, para 18.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
12.	<p>The documents containing and/or evidencing:</p> <p>a) When and why Mr Eyre and Montrose Sri Lanka decided to treat the alleged payment by Mr Eyre in respect of the Land as a loan from Mr Eyre giving rise to a debt obligation from Montrose Sri Lanka;</p> <p>b) The terms of the alleged loan in respect of the said alleged payment.</p>	<p>The Montrose Sri Lanka 2012 accounts (R-2) state that Mr Eyre had directly settled the amount payable on the acquisition of the Land and this constituted a debt payable by Montrose Sri Lanka to Mr Eyre. The terms of that arrangement have not been disclosed.</p> <p>Furthermore, Mr Eyre's evidence is that he would have directed the recording of the debt in the Montrose Sri Lanka accounts at a point in time when the payment was transferred but provides no documents to identify when payment had been made or when he directed its recording as a loan and why he directed its recording as a loan.³²</p> <p>The Claimants' submissions assert that the book debt recorded in the 2012 Montrose Sri Lanka accounts reflected an anticipated payment i.e. no payment had in fact been made.³³</p> <p>The documents requested are relevant and material for the reasons given with respect to Request 1. For the avoidance of doubt, the Respondent's case is that this loan treatment is fundamentally</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	<p>No Decision Required</p>

³² Eyre 2, para 21.

³³ Claimants' Counter-Memorial (25 April 2018) at para 18.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
		<p>inconsistent with Mr Eyre's contentions as to beneficial interest and any intention to create a trust. The documents requested to understand the terms of the loan arrangement and when it was set up are therefore relevant and material to that issue of intentions.</p>			
13.	<p>The documents made available to and/or relied upon by R&J Associates in auditing Montrose Sri Lanka's 2012 year end accounts (R-5) and approving the recording of the alleged payment for the Land acquisition as a loan repayable to Mr Eyre.</p>	<p>In expressing the view that the Montrose Sri Lanka had maintained proper accounting records and that the financial statements gave a true and fair view of Montrose Sri Lanka's state of affairs, R&J Associates would or should have relied upon documents with respect to a) the alleged payment for the Land Acquisition and b) the alleged treatment of the payment as a loan.</p> <p>Those documents are relevant and material for the reasons given with respect to Request 1. For the avoidance of doubt, the Respondent's case is that this loan treatment is fundamentally inconsistent with Mr Eyre's contentions as to beneficial interest and any intention to create a trust.</p>	<p>The Claimants object to this request.</p> <p>This request is a fishing expedition. The Respondent has failed to demonstrate that the requested documents are relevant or material to the matters in dispute in the jurisdiction proceedings (see Article 9.2 (a) of the IBA Rules).</p> <p>The Claimants have already voluntarily provided the year-end accounts of Montrose Sri Lanka in response to document requests made by the Respondent on 3 November 2017. Further, the Claimants have not objected to Request No. 12 above, which also relates to the payment reflected in the 2012 year-end accounts.</p>	<p>The Request is maintained.</p> <p>It is for a narrow category of relevant and material documents.</p> <p>The Request is limited to those documents that were made available to R&J for the purposes of it specifically approving the treatment of alleged payment by Mr Eyre in respect of the acquisition of the Land as a loan.</p> <p>The Claimants in their Counter Memorial assert that the payment recorded in the 2012 accounts was "never made".³⁴ They also decline to grapple with the fact that it was dealt with by way of loan and therefore repayable.</p>	<p>Request Granted</p>

³⁴ Claimants' Counter Memorial at para 18.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
			<p>The 2012 year-end accounts provide a clear report from Montrose Sri Lanka's independent auditor, R&J Associates, that proper accounting records were maintained and that the financial statements give a true and fair view of the company's state of affairs. The diligence undertaken by R&J Associates before issuing this report is not in dispute and is not relevant to the issues arising in the jurisdiction proceedings.</p>	<p>The treatment of the alleged payment as a loan is fundamentally inconsistent with Mr Eyre's case today that it was his intention to create a beneficial interest. The documents on which R&J relied upon in auditing the accounts and determining that the loan treatment gave true and fair view of the company's affairs is therefore directly relevant and material to the question of whether there ever was any intention to create a beneficial interest.</p>	
14.	<p>The documents containing and/or evidencing:</p> <p>a) The reasons why the Board of Montrose Sri Lanka resolved to transfer Mr Fernando's shareholding in Montrose Sri Lanka to Mr Eyre by resolution of 10 October 2010 (C-35);</p> <p>b) The reasons why Mr Eyre wanted to have the shares transferred to him in circumstances where on his case he allegedly had the beneficial interest;</p>	<p>Mr Eyre's evidence is that he cannot recall why this share transfer was done, but does recall that he was advised that it was defective because written consent for the transfer was not provided from Mr Fernando or Mr Eyre and that it was not notified to the Registrar of Companies.³⁵</p> <p>The documents are relevant and material for the reasons set out in Request 1.</p> <p>For the avoidance of doubt, the rationale for this transfer and the instructions and advice given are relevant and material to</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the</p>	<p>Noted.</p> <p>Further and for the avoidance of doubt, the Respondent maintains that no privilege can be asserted in respect of Request 14c) since there has been clear waiver of privilege.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify</p>	<p>No Decision Required</p> <p>If Claimants wish to claim privilege for certain documents in the process of producing responsive documents, Claimants must prepare a Privilege Log setting out the necessary details for each document:</p>

³⁵ Eyre 2, para 22.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
	<p>c) The instructions given and advice received by Mr Eyre concerning the share transfer. Mr Eyre refers to such an advice in his evidence (as set out in the justification for this Request) and alleges that he was advised that the share transfer was defective for the alleged reasons he identifies. The Respondent seeks disclosure of that advice and any other advice sought and received concerning the implication of such share transfer;</p> <p>d) The reasons why Mr Eyre did not seek to correct the alleged defects in the share transfer.</p>	<p>any alleged prior intention to create a beneficial trust and the reason for the attempt to transfer legal title (on Mr Eyre's case) given the alleged prior existence of a beneficial interest. Further, the Respondent contends that one of the likely reasons why Mr Eyre did not go through with this share transfer and thereby create – for the first time - an interest in the shares is because of the sales tax that would have been engendered by reason of Mr Eyre's foreign citizenship.³⁶</p>	<p>Respondent's case or the purported justification for the request.</p>	<p>the scope of searches conducted and by whom.</p>	<p>title/reference, author, recipient, date, length, basis for privilege claimed. The Tribunal will make specific decisions on the basis of the Privilege Log, and any further objection from Respondent.</p>
15.	<p>The documents containing and/or evidencing the fact that Mrs Eyre agreed to forego any alleged beneficial interest that she would otherwise have out of her alleged joint contribution towards the contribution for the alleged acquisition of the Land by Montrose Sri Lanka.</p>	<p>Mr Eyre's evidence is that he and his wife allegedly jointly contributed towards the purchase price for the acquisition of the Land, by their alleged joint loan of USD 1.1 million. Mr Eyre's evidence is also that the shares in Montrose Sri Lanka are held on trust exclusively for him.³⁷ On Mr Eyre's case and evidence therefore, Mrs Eyre agreed to relinquish the alleged interest arising out of her alleged</p>	<p>The Claimants object to this request.</p> <p>The requested documents are not relevant or material to the disputed issues in the jurisdiction proceedings (see Article 9.2 (a) of the IBA Rules).</p> <p>Whether the monies came from Mr Eyre alone, or Mr Eyre and his wife jointly, this does not undermine the Tribunal's jurisdiction over the dispute.</p>	<p>The Claimants have missed the point of the Request and the Request is maintained.</p> <p>The Claimants' case is that part of the consideration for the acquisition of the Land was a joint contribution from Mr Eyre and Mrs Eyre. Yet, Mr Eyre asserts that he was capable of holding all the</p>	<p>Request Granted</p>

³⁶ Respondent's Preliminary Jurisdiction Objections (8 Dec 2017), paras 26, 111-112

³⁷ Eyre 1, para 10, 18.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
		<p>contribution so that he could have exclusive beneficial interest in the shares.</p> <p>The Respondent repeats the remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>		<p>shares in Montrose Sri Lankan on beneficial trust for himself.</p> <p>In order to so as a matter of basic legal principle, he would have had to reach an agreement with Mrs Eyre by which she agreed to forego the beneficial interest resulting from her contribution (her resulting trust entitlement).</p> <p>The documents requested are thus a narrow category of relevant and material documents.</p>	

C. Alleged creation of trust beneficiary relationship between Montrose Singapore and Mr Eyre

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
16.	The documents containing and/or evidencing the fact that and terms upon which Montrose Singapore agreed to hold upon trust for Mr Eyre the shares in Montrose Sri Lanka that were transferred by Mr Fernando to Montrose	Mr Eyre's case and evidence and that of Mr Wijeratne is that upon the transfer of the shares to Montrose Singapore, Montrose Singapore held the shares in Montrose Sri Lanka on trust for Mr Eyre. ³⁸ However, no documents have been disclosed indicating any consent of	To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify</p>	No Decision Required

³⁸ Wijeratne, para 10; Eyre 1, para 21.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
	<p>Singapore on 31 March 2012, including but not limited to:</p> <p>(a) The Board Resolution and Minutes of Montrose Singapore recording and/or evidencing any agreement by Montrose Singapore, acting through its Directors, to hold the shares on trust for Mr Eyre and the terms of the alleged trust;</p> <p>(b) Any other documents evidencing the alleged intention on the part of Montrose Singapore to hold the Montrose Sri Lanka shares on beneficial trust for Mr Eyre and the terms of the alleged trust;</p> <p>(c) The manner in which the alleged trust in respect of the shares in Montrose Sri Lanka were treated in the accounts and/or management balance sheets for 2012 and 2013;</p> <p>(d) Mrs Eyre's agreement to forego her interest, as shareholder in Montrose Singapore, of her ordinary entitlements as shareholder with respect to the Montrose Sri Lanka shares.</p>	<p>Montrose Singapore, acting through its directors, to act as trustees, nor the scope of that consent. Equally no documents have been disclosed indicating any agreement on the part of Mrs Eyre consenting to an arrangement that impacted her ordinary entitlements as shareholder.</p> <p>The Respondent repeats the remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>	<p>Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>the scope of searches conducted and by whom.</p>	

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
17.	<p>The documents containing and/or evidencing the fact that the reason for the transfer of the shares to Montrose Singapore was concerns raised by financial institutions, with whom Mr Eyre had been corresponding, in respect of the fact that Mr Eyre had beneficial but not legal title to the Land.</p> <p>This Document Request includes but is not limited to documents in which Mr Eyre indicated to the financial institutions that he had a beneficial interest in the shares in Montrose Sri Lanka.</p>	<p>The Document Request records the case and evidence of Mr Eyre.³⁹ The documents are relevant and material to this contention and the contention that there was any split between legal and beneficial ownership and that Mr Eyre ever in fact intended to seek split legal and beneficial ownership of any alleged interest.</p> <p>Mr Eyre states in terms that there was written correspondence on this issue.</p> <p>The Respondent repeats the remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p> <p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	No Decision Required
18.	<p>Annexure 14 to the letter of 6 February 2015 (C-70) that was produced by the Claimants.</p>	<p>The letter is a letter from Mr Wethasinghe of Electro Holidays to the Prime Minister of Sri Lanka explaining the intended hotel development. On page 2 of the letter, last paragraph, he stated that Montrose Global LLC London, Tubal Group of South Yorkshire and Electro Holiday provided documents to show that the three sites in question were owned by the respective companies, in the form of Annexure 14.</p>	<p>To the extent that the requested documents exist, are not privileged, are within the Claimants' possession, custody or control and have not already been provided to the Respondent in the course of the arbitral proceedings, the Claimants have no objection to providing them.</p>	<p>Noted.</p> <p>The Respondent reserves all its rights if documents are not produced since documents must exist, including inter alia the right to require the Claimants to identify the scope of searches conducted and by whom.</p>	No Decision Required

³⁹ Claimants' Memorial (11 Aug 2017), para 52 and Eyre 1, para 21.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
		<p>The documents are therefore relevant and material to the question of Mr Eyre's alleged interest and the Respondent repeats the remainder of its justification in paragraph 1 because the same justification for relevance and materiality arises.</p>	<p>The Claimants' agreement to produce any documents is without prejudice to the Claimants' case, and is not an admission of any part of the Respondent's case or the purported justification for the request.</p>		
19.	<p>The documents containing and/or evidencing the contractual and/or other arrangement between Montrose Global LLC London, Tubal Group of South Yorkshire and Electro Holiday (and/or Mr Wethasinghe) referred to in the letter of 6 February 2015 (C-70) including but not limited to the terms of that contract and/or other arrangement.</p>	<p>The documents are relevant and material given that: (1) following the Deed of Transfer from Electro Holiday to Montrose Singapore, Electro Holiday and/or Mr Wethasinghe continued to have a business relationship with Mr Eyre with respect to the future development of the proposed hotel; (2) Mr Eyre relies upon (as set out earlier at Request 6) a payment made to Mr Wethasinghe two years after the Deed of Transfer to Montrose Sri Lanka as being part of the payment in respect of that Deed of Transfer.</p> <p>The nature of that continued relationship and any arrangements are therefore relevant and material for the reasons identified with respect to Request 1.</p>	<p>The Claimants object to this request.</p> <p>This request is a fishing expedition and the requested documents are not relevant or material to the disputed issues in the jurisdiction proceedings (see Article 9.2 (a) of the IBA Rules).</p> <p>The Respondent refers to a letter dated 6 February 2015 (C-70) which post-dates the transfer of the Montrose Land and the relevant payments made in respect of it by a number of years. The letter makes no reference to any formal contractual or other arrangement between the parties.</p> <p>The terms of any arrangement entered into between Montrose Global LLC London, the Tubal Group or Electro</p>	<p>The Respondent maintains this Request. It is for a narrow category of relevant and material documents.</p> <p>The Claimants want to rely upon a payment made by Montrose Aircraft Leasing to a company in which Mr Wethasinghe has an interest together with Mr Iqbal of the Tubal Group⁴⁰, 2 years after the acquisition of the Land.</p> <p>What is apparent from C-70 is that Mr Wethasinghe and Electro Holidays had an ongoing arrangement with Montrose Global LLC London in the respect of the proposed future hotel development.</p>	<p>Request Granted</p>

⁴⁰ Eyre 1, paras 32, 39.

No.	Respondent's Document Request	Respondent's Statement of Relevance and Materiality	Claimants' Objection (if any)	Respondent's Reply	Arbitral Tribunal's Decision
			<p>Holiday (to the extent that any such arrangements exist) are not relevant to any pleaded issue, or the Tribunal's jurisdiction in these proceedings.</p> <p>In addition, the Respondent's attempt to justify this request mischaracterises the Claimants' case. Mr. Eyre does not rely on the payment of \$400,055 as being part of the payment under the Deed of Transfer but instead states that it was a "contribution in respect of the Montrose Land" (see paragraph 19 of Mr Eyre's witness statement dated 25 April 2018).</p>	<p>The terms of that arrangement, to the extent that they concern the Land, are relevant and material to the question of whether or not Mr Eyre ever had an intention to create any form of beneficial interest in the Land and was capable of creating any such beneficial interest. No evidence of payment in respect of the Land has been produced. In those circumstances, Electro Holidays would be deemed to have retained beneficial interest in the Land, inconsistently with Mr Eyre's case. The document is thus relevant and material to the foundation of Mr Eyre's own case.</p>	

Dated 9 May 2018, Served by Clyde & Co, The St Botolph Building, 138 Houndsditch, London EC2A 7AR, UK, **on behalf of the Respondent**