

Abaclat and others v. Argentine Republic
ICSID Case No. ARB/07/5

RESPONDENT’S DOCUMENT REQUESTS FOR PHASE 2

No.	Requesting Party	Documents/Category of Documents Requested	Relevance and Materiality		Claimants’ Responses/Objections	Reply to Objections	Answer to Reply	Tribunal’s Decisions
			Citations	Comments				
1.	Respondent	Any and all claims and any other submissions filed by Claimants, either collectively or individually, with Italian courts or courts in any other jurisdiction against the banks from which Claimants acquired the security entitlements in Argentine bonds, in connection with such entitlements and/or against any other entity in connection with the purchase of said security entitlements. This request includes any claims filed by those Claimants that have withdrawn from this proceeding, whether before or after their withdrawal. Further, a request is also made for any and all judgments or court	Among others, Campiglia Declaration, 14 September 2012, ¶ 14; Santi Declaration, 10 September 2012, ¶ 17; Flagella Declaration, 18 September 2012, ¶ 7.	The existence of defects upon the acquisition of the security entitlements in the Argentine debt might have an impact on the analysis and assessment of the circumstances at the time of the acquisition of the alleged investment and its legality, on the finding of liability of the Argentine Republic and on a potential determination of damages.	1. Previously Requested. This request is repetitive of Respondent’s Request No. 13 in Phase 1, which was denied by the Tribunal for lack of relevance and because the documents requested are not in possession, custody or control of Claimants.	1. Previously Requested. The documents requested are particularly relevant in this phase, in which the Parties are supposed to have the opportunity to raise individual issues. Further, unlike the Request in Phase 1, ¹ the present request focuses on documents which are in possession, custody and/or control of Claimants rather than of TFA. The Tribunal must assess this request which is different from the one in Phase 1, and even if it were not, the relevance in this Phase 2 is different.	1. Previously Requested. This request should be rejected for the same reasons that the Tribunal denied the similar request in Phase 1 – <i>i.e.</i> , for lack of relevance/materiality and because the requested documents are not in Claimants’ possession, custody or control. The request does not focus on documents in Claimants’ possession because – as Claimants stated and Respondent simply ignores – we are unaware of any Claimants participating at ICSID that also are pursuing claims against banks. Indeed, Respondent has often focused on the fact that the TFA mandate documents preclude such simultaneous claims. ² Documents relating to claims against the banks would only be in the possession of the defendant banks themselves, or any plaintiffs who may have filed the claims and are not parties to this arbitration. The alleged relevance or materiality of	With regard to former Claimants: Rejected. With regard to current Claimants: Moot and the Arbitral Tribunal takes note Claimants’ statement that they “are unaware of any Claimants participating at ICSID that also are pursuing claims against

¹ “Complaints filed in any Italian court proceeding by any bank customer against any of TFA’s member banks regarding the sale of Argentine security entitlements, any decision or judgment by any Italian court in any such proceeding not published in Italian legal journals, all settlements between TFA member banks and their customers in connection with any such proceeding or dispute, and summaries and overviews of pending and closed cases prepared by TFA, its member banks, or its Control Persons.”

² *See, e.g.*, Decision on Jurisdiction ¶¶ 454-55.

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		<p>decisions, whether provisional, interlocutory, or final, issued by an Italian court in any of such proceedings which has not been published in an Italian legal gazette, and any and all agreements entered into between the banks and Claimants in connection with such proceedings or disputes.</p> <p>This request excludes such documents as have already been introduced into the record of this proceeding.</p>			<p>2. Possession – Third Parties. Not in the possession, custody or control of Claimants because the request seeks documents held by Italian banks or former Claimants who have withdrawn from the arbitration.</p>	<p>2. Possession – Third Parties. Claimants confuse this request with the one made in Phase 1. It is inadmissible that those Claimants that filed lawsuits now argue that they do not have possession of, or access to, the documents requested, since such documents have been filed or issued in actions to which such Claimants are parties. In particular, with respect to</p>	<p>such court proceedings is no “different” in Phase 2. In fact, they remain entirely irrelevant and immateriality, as the Tribunal recently reaffirmed. Procedural Order No. 17 states that the “specific circumstances surrounding individual purchases by Claimants of security entitlements are irrelevant,” and that “if Italian or other banks have breached any obligations they had towards Claimants or Argentina, such a breach is to be addressed in a recourse action against the relevant banks and is foreign and external to the present arbitration which concerns solely Argentina’s behavior with regard to Claimants’ investment.”³ Even if Claimants had filed claims against the banks – and there is no indication that they have – these claims would not be relevant to resolution of their claims against Argentina.</p> <p>The request remains repetitive of Respondent’s request in Phase 1 and should be rejected on the same grounds.</p> <p>2. Possession – Third Parties. Respondent repeatedly chooses to ignore that Claimants participating at ICSID are not also pursuing claims against the banks in Italy. In fact, each Claimant undertook in the TFA mandate documents that it would not pursue litigation against the banks so long as it is participating in the arbitration. Respondent has not identified any evidence, and we are unaware of any,</p>	<p>banks”.</p>

³ Procedural Order No. 17 dated 8 Feb. 2013, ¶ 19 (citing Decision on Jurisdiction and Admissibility ¶¶ 327-30; 542).

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						those individuals or entities which Claimants themselves allege continue to participate in this arbitration, there is no reason to argue that the documents are in the possession of third parties. Further, a party who files a lawsuit cannot allege that it has no access to the documents of such proceeding.	that Claimants currently in the arbitration also are pursuing claims in Italian court against banks. Thus, the requested documents from proceedings against the banks are not in the possession, custody or control of Claimants.	
					3. Privileged. Seeks documents that are protected by the attorney-client privilege and/or work product doctrine as between the banks and their counsel and former Claimants and their counsel. Seeks documents that are protected from disclosure by Italian law, which provides that party submissions may not be disclosed to third parties.	3. Privileged. Claimants distort the Argentine Republic's request. The Argentine Republic's request does not include documents protected by the attorney-client privilege. The documents requested refer to court submissions and decisions, filed and issued in lawsuits brought by Claimants in connection with the security entitlements that are the subject of this arbitration. Such submissions and decisions are, at least, known by the other party to the respective lawsuits, and thus these documents are not protected by the attorney-client privilege.	3. Privileged. Respondent ignores the breadth of its own request, which includes "[a]ny and all claims and any other submissions" and "all agreements" (presumably settlement agreements) between the parties to the litigation. To the extent that the request includes privileged documents, Claimants maintain their objection. Claimants also maintain their objection regarding Italian law non-disclosure requirements. ⁴ Respondent does not rebut, and effectively concedes, this requirement under Italian law.	
					4. Not Relevant/Material. Not relevant or material to Respondent's breaches of its Treaty and bond obligations, or the resolution of Claimants' claims. We are unaware of any evidence that any Claimants have sued their banks. Lawsuits filed against Italian banks by other	4. Not Relevant/Material. Relevant insofar as these documents might prove the lack of grounds for Claimants' alleged legitimate expectations, contradictions between Claimants' allegations in this arbitration and in other forums, and risks of double recovery. The relevance of these	4. Not Relevant/Material. As noted, the Tribunal has ruled that the "specific circumstances surrounding individual purchases by Claimants of security entitlements are irrelevant," and any litigation against Italian banks "is foreign and external to the present arbitration which concerns solely Argentina's	

⁴ Claimants' Letter to Respondent dated 14 Feb. 2013; Provisions Implementing the Italian Code of Civil Procedure, Art. 76 (providing that submissions of the parties may be made available only to the parties to the proceeding and their legal counsel, not to third parties; according to leading scholars and the majority of case law, this rule aims at preserving both the confidentiality of the information and the integrity of the file of the proceedings.

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					bondholders, including withdrawn Claimants, are not relevant or material to the resolution of the claims of participating Claimants.	documents in Phase 2 is further confirmed by the Letter sent by TFA to Claimants containing the instructions to commence arbitration, which expressly stated that: "a final judgment issued by an Italian court declaring null and void or voiding the agreement for the purchase of the security would cause your status as an investor to cease to exist, whereas such status is indispensable to bring an ICSID arbitration." ⁵ It cannot be argued that Claimants do not know whether they filed lawsuits against their banks to the extent that Claimants would be parties to such proceedings.	behavior with regard to Claimants' investment." ⁶ Claims against the banks are not relevant or material – even if they were being pursued by current Claimants, which they are not. Indeed, the TFA letter instructions noted by Respondent simply underscore that Claimants have undertaken not to pursue claims against the banks while they pursue claims against Argentina at ICSID. There is no risk via such litigation of double recovery or voiding of Claimants' investments in Argentina.	
					5. Burdensome. Unduly burdensome, if not impossible, for Claimants to produce. Would require Claimants to identify, and procure all documents from, court proceedings anywhere in Italy commenced by non-parties to this arbitration.	5. Burdensome. It is less burdensome for Claimants than for the Argentine Republic at least to identify which Claimants filed lawsuits against the banks in connection with the security entitlements at stake in this arbitration and provide the documents requested.	5. Burdensome. Claimants are not pursuing claims against the banks. It remains unduly burdensome, if not impossible, for Claimants to produce documents in the possession, custody or control of non-parties to this arbitration.	
					6. Available to Respondent. Under Italian law, final decisions of judicial proceedings are public and accessible to third parties.	6. Available to Respondent. The Argentine Republic's Request includes not only court decisions but also submissions filed by Claimants. Even if it were accepted that the decisions are public and accessible to Argentina, it is indispensable that Claimants identify the lawsuits they filed for the Argentine Republic to be able to procure the	6. Available to Respondent. Claimants are not pursuing claims against the banks. Publicly-available final decisions of Italian judicial proceedings are equally available to Respondent. No other documents are uniquely available to Claimants because they are not party to the Italian proceedings.	

⁵ Exhibit RA-1, para 8.

⁶ Procedural Order No. 17 dated 8 Feb. 2013, ¶ 19 (citing Decision on Jurisdiction and Admissibility ¶¶ 327-30; 542).

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						allegedly public documents.		
						<p>7. Preclusion. Party Equality. Finally, in an analogous situation connected with the submission of documents related to the criminal proceedings, Claimants requested that the Tribunal issue an order whereby “Respondent is ordered to immediately produce to Claimants all documents from any such proceeding.”⁷ In fact, the Tribunal responded to such request by instructing that “Respondent shall (...) provide Claimants with a copy of all documents provided to the relevant authorities as well as a copy of all documents received in connection with these proceedings, either from the relevant authorities directly or from other bodies or parties involved therein.”⁸ The Argentine Republic submitted all the documents in its possession.</p> <p>Thus, Claimants cannot now object to the production of a type of documents Claimants themselves requested and the Tribunal cannot but decide in the same manner as it did with respect to Claimants’ request. To rule otherwise would imply a violation of party equality in this proceeding.</p>	<p>7. Party Equality is Not Implicated By Respondent’s Abusive Pursuit of Criminal Actions. As established in Procedural Order No. 13, Claimants previously requested documents relating to Italian criminal proceedings which Respondent had filed against individual Claimants. Respondent’s abusive filing of such proceedings against Claimants has absolutely no bearing on Respondent’s request for documents from proceedings involving non-parties to the arbitration. The two types of proceedings are not in any way similar and do not implicate any preclusion or party equality principles. Moreover, Respondent’s claim that it “submitted all the documents in its possession” regarding the Italian proceedings it instigated is demonstrably false. Rather, Respondent expressly refused to comply with the Tribunal’s production order in Procedural Order No. 13. Respondent’s invocation of its own non-compliance with the Tribunal’s production order is ironic, and certainly does not warrant the granting of its request here.</p>	

⁷ Claimants’ letter to the Tribunal, 5 September 2012.

⁸ Procedural Order No. 13, para 43.

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2.	Respondent	Any and all documents missing from the online database pertaining to Elvira Albanese, Alessandra Michelangeli, Stefano Polloni, and Carime Romanelli.	Claimants' Memorial on Phase 2, § III.A.c	These documents are purportedly, pursuant to Claimants' position which is not shared by the Argentine Republic, <i>prima facie</i> evidence of nationality and residence.	Claimants will provide responsive documents as to Claimants Alessandra Michelangeli, Stefano Polloni, and Carime Romanelli. These documents also are available in the Claimant Database. Claimant Elvira Albanese is to be withdrawn from the proceeding.	The Argentine Republic reserves the right to submit in due course its observations and objections to the documents provided, their introduction into the record and Claimants' submission respecting Elvira Albanese.	Claimants reserve the right to respond to any observations or objections raised by Respondent.	Provisionally Moot. If not produced, Respondent may file a new application for production.
3.	Respondent	Any and all documents pertaining to any transaction made by Claimants or on Claimants' behalf involving security entitlements in Argentine sovereign bonds, from 1 November 2001 to date, including, but not limited to, bank certifications, purchase agreements, agreements or receipts. This request includes, but is not limited to, such documents as may be related to the acceptance of the 2005 and 2010 Exchange Offers.	For instance, Claimants' Memorial on Phase 2, § III.G	These documents might have an impact on the analysis of Claimants' characterization of the measures at issue in this arbitration.	1. Possession – Third Parties. Not in the possession, custody or control of Claimants to the extent that the request seeks documents held by TFA and documents related to participation by former Claimants in the Exchange Offers.	1. Possession – Third Parties and 2. Available to Respondent. Claimants do not deny that the security entitlements at stake in this arbitration have been subject to transactions from 1 November 2001 to date. Claimants only allege that Claimants do not have possession of documents that are in control or possession of TFA. It should be noted that the Argentine Republic did not request documents in the possession of TFA but rather in the possession of Claimants. It is not possible for Claimants not to be in possession of, or to have access to, the documents requested, to the extent that such documentation is related to transactions purportedly made by Claimants themselves.	1. Possession – Third Parties. Claimants maintain their objection to the extent that the requested documents are in the possession of TFA and/or TFA member banks, which are not party to this arbitration. The Tribunal ruled in Procedural Order No. 1 that "TFA is a third party to this arbitration and not a claimant; therefore, the Claimants may not be ordered to produced documents which might be in TFA's possession, custody or control." ⁹ The Tribunal later reaffirmed in its Decision on Jurisdiction that TFA is not a party, repeatedly referring to TFA as a "third party" ¹⁰ and ruling that, "[i]n the proceedings, TFA is to be seen as Claimants' agent." ¹¹ By extension, the TFA member banks – who play no role whatsoever in this proceeding or in the coordination of Claimants' claims – also are not parties to this arbitration. Further to these prior Tribunal rulings, Claimants	Granted, with the exception of documents related to the acceptance of the 2005 and 2010 Exchange Offers by former Claimants.

⁹ Claimants' Letter to Respondent dated 14 Feb. 2013; Procedural Order No. 1, at 2, § D.

¹⁰ See, e.g., Decision on Jurisdiction ¶¶ 443, 444, 457, 487, 657, 658.

¹¹ *Id.* ¶ 713.

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					<p>2. Available to Respondent. Claimants have already produced evidence of bond ownership, including bank certification letters and certification, in Attestation Form 3.3, that each Claimant continuously held the bond(s) since the date of purchase, had no intent of transferring the bond(s), and would inform TFA if they did transfer the bond(s). Respondent has not provided any rebuttal evidence as to any Claimant. Documents related to acceptance of the Exchange Offers by other bondholders are in the possession, custody, and control of Argentina.</p>		<p>cannot be ordered to produce documents from TFA and/or the TFA member banks.</p> <p>With respect to former Claimants, the Tribunal also has expressly ruled that "Claimants who are withdrawing will stop being parties to the present proceedings."¹² Accordingly, Claimants cannot be ordered to produce the documents of withdrawn Claimants, as with other non-parties.</p>	<p>2. Available to Respondent. Claimants have already produced voluminous responsive documents as to each Claimant regarding their acquisition of Argentine bond(s), and continuous and ongoing holding of the bond(s). Respondent has offered no rebuttal evidence as to any Claimant, nor any reason to contest the evidence Claimants have already submitted.</p> <p>With respect to documents relating to acceptance of the 2005 and 2010 Exchange Offers, Respondent does not refute, and effectively concedes, that such documents are in its possession, custody or control. In fact, no current Claimant can have tendered into either of the Exchange Offers because Respondent mandated as a condition of participating in its Exchange Offers that bondholders withdraw any pending claims against Argentina and/or waive the right to pursue future claims.</p>

¹² Decision on Jurisdiction ¶ 637.

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					<p>3. Not Relevant/Material. Not relevant or material to Respondent's breaches of its Treaty and bond obligations, or the resolution of Claimants' claims. Documents relating to acceptance of the Exchange Offers by other bondholders are not relevant or material to the resolution of the claims of Claimants who did not accept the Exchange Offers and continue to participate in this arbitration.</p>	<p>3. Not Relevant/Material. Such documents might have an impact on the analysis of Claimants' characterization of the measures at issue in this arbitration, as well as on a potential assessment of the alleged damages. It is evident that if Claimants carried out Argentine security entitlement transactions after Argentina's default and/or tendered into either of the Exchanges, this might cast doubt on Claimants' arguments regarding such measures.</p>	<p>3. Not Relevant/Material. The requested documents relating to Claimants' investments in Argentina, including their acquisition and continued holding of Argentine bond(s), has no bearing on Respondent's measures at issue constituting breaches of its obligations <i>vis-à-vis</i> those investments. Claimants have produced voluminous evidence of their bondholdings, including for purposes of calculating damages; no further production is warranted. As noted, bondholders tendering into the Exchange Offers waived any pending or future claims against Argentina. Documents relating to acceptance of the Exchange Offers by non-parties are not in Claimants' possession and not relevant to resolution of their claims. More fundamentally, Respondent is paying those bondholders that tendered, and is well-aware of which former Claimants accepted its Exchange Offers.</p>	
					<p>4. Burdensome. Unduly burdensome for Claimants to produce. Fails to identify a narrow and specific category of documents. Seeks documents from non-party sources.</p>	<p>4. Burdensome. It is less burdensome for Claimants than for the Argentine Republic to submit the documents requested.</p>	<p>4. Burdensome. Respondent's open-ended request for "[a]ny and all documents pertaining to any transaction made by Claimants" with respect to their bondholdings in the last 12 years – with no showing of relevance to the resolution of Claimants' claims – plainly fails to identify a narrow or specific category of documents, and imposes an unreasonable burden. <i>See</i> IBA Rules, Arts. 3(3), 9(2). Rejection of the request is warranted on that basis, regardless of the purported comparative burden as between Respondent and Claimants.</p>	

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4.	Respondent	Any and all documents pertaining to Claimants' acceptance of the 2005 and 2010 Exchange Offers, whether connected with the security entitlements included in this proceeding or any other security entitlements in Argentine bonds.	For instance, Claimants' Memorial on Phase 2, § III.G.3-7.	The relevance of these documents might have an impact on Claimants' characterization of the measures at issue.	<p>1. Possession – Third Parties. Not in the possession, custody or control of Claimants because bondholders who tendered into the Exchange Offers are not parties to this proceeding.</p> <p>2. Available to Respondent. Documents showing acceptance of the Exchange Offers are in Argentina's possession, custody or control.</p>	<p>1. Possession – Third Parties and 2. Available to Respondent. These documents should be in the possession of Claimants and/or TFA insofar as the documents relate to Claimants that commenced this arbitration and that purportedly tendered into the Exchange Offer, and therefore, revoked their consent. The Argentine Republic does not have such documents for the 2005 Exchange Offer, and with respect to the 2010 Exchange Offer, procuring such documents is much more burdensome than for Claimants, since the number of bondholders who tendered into the Exchange is larger than the number of Claimants involved in this proceeding. Further, the Request comprises documents concerning security entitlements owned by Claimants which are not necessarily the subject of this arbitration, as it is possible for a Claimant to have opted to file proceedings on account of certain security entitlements and simultaneously tender into the Exchange Offer with respect to others.</p>	<p>1. Possession – Third Parties. No current Claimant can have tendered into either of the Exchange Offers because Respondent mandated as a condition of participating in its Exchange Offers that bondholders withdraw any pending claims against Argentina and/or waive the right to pursue future claims. Accordingly, documents relating to the participation by former Claimants or other non-parties are not in Claimants' possession, custody or control. Documents relating to participation in the Exchange Offers by former Claimants and purportedly held by non-party TFA are not in Claimants' possession, custody or control because the Tribunal has ruled that "TFA is a third party to this arbitration and not a claimant; therefore, the Claimants may not be ordered to produced documents which might be in TFA's possession, custody or control."¹³</p> <p>2. Available to Respondent. Respondent does not refute, and effectively concedes, that documents relating to the 2010 Exchange Offer are in its possession, custody or control. Respondent's claim that it "does not have such documents for the 2005 Exchange Offer" is not credible and plainly refuted by the record. As just one example, it was discussed at length at the May 2012 procedural hearing that Respondent collected and organized information on all bondholders who tendered into both the 2005 and 2010</p>	Rejected (in custody of Respondent).

¹³ Claimants' Letter to Respondent dated 14 Feb. 2013; Procedural Order No. 1, at 2, § D.

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							Exchange Offers – including as reflected in the prospectus documents. <i>See, e.g.</i> , Exhs. C-999A, 999B, RF-26; <i>see also</i> Transcript of Procedural Hearing, 9 May 2012, at 108:11-110:14. Indeed, because Claimants now participating at ICSID did not tender into the Exchange Offers – or otherwise would be required to waive their claims against Argentina – the requested documents are available only to Respondent and not Claimants.	
					<p>3. Not Relevant/Material. Not relevant or material to Respondent's breaches of its Treaty and bond obligations, or the resolution of Claimants' claims. Documents relating to acceptance of the Exchange Offers by other bondholders, or with respect to bonds not at issue in the arbitration, are not relevant or material to the resolution of the claims of Claimants who did not accept the Exchange Offers and continue to participate in this arbitration.</p>	<p>3. Not Relevant/Material. The relevance of these documents has a direct impact on Claimants' claim, insofar as Claimants allege that their purported investment consists of their security entitlements in Argentine bonds. These documents might have an impact on the analysis of Claimants' characterization of the measures at issue in this arbitration as well as on a potential assessment of the alleged damages.</p>	<p>3. Not Relevant/Material. Respondent's conclusory statements do not refute, or even address, the fundamental fact that the participation of non-parties in the Exchange Offers is irrelevant and immaterial to the claims of Claimants – who did not participate in the Offers. Likewise, documents relating to bonds that are not at issue in this arbitration, whether or not those bonds purportedly were tendered into the Exchange Offers, are irrelevant to Claimants' claims relating to bonds that are at issue here. Respondent is paying those bondholders that tendered, and is well-aware of which former Claimants accepted its Exchange Offers.</p>	
					<p>4. Burdensome. Unduly burdensome for Claimants to produce. Fails to identify a narrow and specific category of documents. Seeks documents from non-party sources.</p>	<p>4. Burdensome. It is less burdensome for Claimants than for the Argentine Republic to produce the documents requested.</p>	<p>4. Burdensome. Respondent's open-ended request for "[a]ny and all documents pertaining to Claimants' acceptance of the 2005 and 2010 Exchange Offers" fails to identify a narrow or specific category of documents. <i>See</i> IBA Rules, Arts. 3(3), 9(2). In any event, as established, the requested documents are exclusively in the possession of Respondent or non-parties, and thus overly burdensome – if not</p>	

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							impossible – for Claimants to produce. It is not less burdensome for Claimants to produce documents which they do not have but which Respondent does.	
5.	Respondent	Documentation provided by TFA to Claimants in connection with the 2005 and 2010 Exchange Offers.	For instance, Claimants' Memorial on Phase 2, § III.G.3-7.	These documents are relevant to provide evidence of TFA's intent to continue with this arbitration proceeding and to exert influence on Claimants not to participate in the exchange offers.	<p>1. Previously Requested. This request is repetitive of Respondent's Request No. 4 in Phase 1, which was granted only to the extent as offered by Claimants.</p> <p>2. Possession – Third Parties. Not in the possession, custody or control of Claimants, to the extent request seeks documents held by TFA and withdrawn Claimants.</p> <p>2. Available to Respondent. Documents provided by TFA to Claimants regarding the 2005 Exchange Offer were already produced in response to Respondent's nearly identical Request No. 4 in Phase 1. Documents from TFA to Claimants relating to the 2010 Exchange Offer is publicly available on TFA's website.</p> <p>3. Not Relevant/Material. Not relevant or material to Respondent's breaches of its Treaty and bond obligations, or the resolution of Claimants' claims. The role of TFA as Claimants' agent was thoroughly examined and adjudicated in the</p>	The Argentine Republic reserves the right to submit in due course its observations and objections to the documents produced. Without prejudice to the foregoing, the Argentine Republic requests that the hard copies that Claimants have produced in response to this Request be provided in an electronic format.	<p>Claimants expressly preserve, and do not waive, all of the objections raised – which Respondent has not even attempted to rebut.</p> <p>As noted in Claimants' 14 February 2013 letter to Respondent, which accompanied and should be read together with Claimants' Redfern Schedule, Claimants further observe that Respondent's stated rationale for the request – that documents relate to TFA "exerting influence not to participate in the exchange offers" – is contradicted by Respondent's own witness, Paulo Enrico Farina, who confirms that "TFA refrained from issuing a recommendation [regarding the 2010 Exchange Offer] and it stated that the opinions expressed within its analysis could not be interpreted as representations aimed at influencing the free will of the holders."¹⁴ Claimants reiterate that testimony here for the Tribunal's ease of reference.</p> <p>Claimants produced responsive documents on the 14 February deadline via direct international delivery to Respondent. Respondent can readily scan and convert these documents into electronic format.</p>	<p>Provisionally Moot.</p> <p>If not produced, Respondent may file a new application for production.</p>

¹⁴ Witness Statement of Paulo Enrico Farina ¶ 56.

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					<p>jurisdictional phase. TFA communications to Claimants have no relevance or materiality to the outcome of the case on the merits.</p> <p>4. Burdensome. Unduly burdensome for Claimants to produce. Fails to identify a narrow and specific category of documents. Seeks documents from non-party sources.</p> <p>Without waiving Claimants' objections, Claimants have produced or will produce responsive documents.</p>		Respondent's demand for production in a different format is particularly unwarranted given Respondent's ongoing failure to produce responsive documents to Claimants, in violation of the Tribunal's orders and the 14 February deadline.	
6.	Respondent	The power of attorney revocations by which the agent learnt that certain Claimants wished to withdraw from the arbitration.	Serrani Declaration, 28 September 2012.	These revocations provide essential information as to the reasons and terms under which certain Claimants withdrew from this proceeding. Witness Serrani refers to the revocation instruments that TFA may have received in those cases in which there were changes as to Claimants' nationality. The same type of documents, albeit related to other grounds for revocation of the TFA Mandate, should be in his	<p>1. Previously Requested. This request is repetitive of Respondent's Request No. 1 in Phase 1, which was granted only to the extent as offered by Claimants.</p> <p>2. Possession – Third Parties. Not in the possession, custody or control of Claimants because the request seeks documents held exclusively by TFA and withdrawn Claimants, both of which the Tribunal has ruled are not parties to the proceeding.</p>	<p>1. Previously Requested. This request was not part of Request No. 1 in Phase 1. Indeed, the Argentine Republic's Request was made on 17 November 2008 and the vast majority of the revocations were submitted as a consequence of the acceptance of the 2010 Exchange Offer by approximately 120,000 Claimants. Accordingly, it is impossible for Request No. 1 in Phase 1 to have included this request.</p> <p>2. Possession – Third Parties. It is hard to understand why Claimants' counsel still refuse to produce the revocation documents whereby Claimants purportedly withdrew from this arbitration on an individual basis. Together with Claimants' Memorial on Phase 2, Claimants submitted the Declaration of Serrani, who referred to</p>	<p>1. Previously Requested. Respondent's request for power of attorney revocations is plainly included in its Request No. 1 in Phase 1 for "[c]ommunications ... between TFA and any Claimant ... including regarding withdrawal from this arbitration and/or revocation of any mandate." To the extent that Respondent reiterates its earlier request, Claimants maintain their objection.</p> <p>2. Possession – Third Parties. The requested revocation forms are documents communicated between TFA and former Claimants who have since withdrawn from the arbitration. As noted above, the Tribunal has specifically ruled that "TFA is a third party to this arbitration and not a claimant; therefore, the Claimants may not be ordered to produce documents which</p>	Granted.

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				possession.		the documents in his custody. Thus, the very evidence submitted by Claimants shows that these documents continue to be in Claimants' custody and control.	might be in TFA's possession, custody or control." ¹⁵ Likewise, with respect to Claimants who revoked the power of attorney, "Claimants who are withdrawing will stop being parties to the present proceedings." ¹⁶ Further to these prior Tribunal rulings, Claimants cannot be ordered to produce documents from TFA and/or former Claimants. These considerations as to non-parties are all the more applicable here because the request seeks revocation documents submitted by non-party former Claimants, and not any documents from participating Claimants.	

¹⁵ Claimants' Letter to Respondent dated 14 Feb. 2013; Procedural Order No. 1, at 2, § D; *see also* Decision on Jurisdiction ¶¶ 443, 444, 457, 487, 657, 658.

¹⁶ Decision on Jurisdiction ¶ 637.

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					<p>3. Privileged. Seeks documents that are protected by the attorney-client privilege and/or work product doctrine.</p>	<p>3. Privileged. The request refers to the revocation documents by which Claimants purportedly manifested their decision to withdraw from this arbitration. Such documents cannot be privileged in the framework of this arbitration.</p>	<p>3. Privileged. Under the IBA Rules, an arbitral tribunal shall “exclude from evidence or production any document” by reason of “legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable.”¹⁷ Communications between Claimants and their legal counsel are privileged. Communications between Claimants, Claimants’ counsel and/or TFA, acting in its capacity as Claimants’ authorized agent,¹⁸ are also privileged. By definition, privileged documents should not be produced even if they fall within “the framework of this arbitration” – a concept, in any event, that Respondent states in conclusory fashion and fails to elaborate.</p>	
					<p>4. Not Relevant/Material. Not relevant or material to Respondent’s breaches of its Treaty and bond obligations, or the resolution of Claimants’ claims. The circumstances of withdrawal of former Claimants are not relevant or material to the outcome of the case.</p>	<p>4. Not Relevant/Material. The grounds for, and the terms under which over 60% of Claimants withdrew from this arbitration are directly relevant to the discussion of the measures by which less than 40% of Claimants continue to pursue this proceeding.</p>	<p>4. Not Relevant/Material. The purported “measures” by which current Claimants continue to pursue their claims are not relevant to Respondent’s breaches of its obligations or the resolution of those claims. The withdrawal of certain Claimants from the proceeding has no relevance or materiality to the resolution of claims by Claimants who continue to participate.</p>	
					<p>5. Burdensome. Unduly burdensome. Seeks documents as to revocation of over 100,000 former Claimants from non-party sources.</p>	<p>5. Burdensome. Only Claimants have access to these documents. According to witness Serrani’s statements, such documents are purportedly stored in a</p>	<p>5. Burdensome. Only TFA has access to these documents, which relate to over 100,000 individuals who are no longer parties to this proceeding. There is no</p>	

¹⁷ IBA Rules, Art. 9(2)(b).

¹⁸ See, e.g., Decision on Jurisdiction ¶ 713.

No.	Requesting Party	Documents/Category of Documents Requested	Relevance and Materiality		Claimants' Responses/Objections	Reply to Objections	Answer to Reply	Tribunal's Decisions
						single physical location.	corresponding relevance/materiality or other consideration warranting the exceedingly burdensome measures that production would require – even if these documents were in the possession, custody or control of Claimants, which they are not.	
7.	Respondent	Legal and financial TFA's working documents pertaining to the 2005 and 2010 Exchange Offers and on which basis TFA made recommendations to Claimants and other bondholders.	For instance, Claimants' Memorial on Phase 2, § III.G.3-7.	These documents are relevant given that they constitute the basis for the recommendations made by TFA and show whether a serious and integrated analysis was made of the exchange offers and the future growth of Argentina.	<p>1. Previously Requested. This request is repetitive of Respondent's Request No. 4 in Phase 1, which was granted only to the extent as offered by Claimants.</p> <p>2. Possession – Third Parties. Not in the possession, custody or control of Claimants because the request seeks documents held by TFA.</p> <p>3. Privileged. Seeks documents that are protected by the attorney-client privilege and/or work product doctrine.</p> <p>4. Available to Respondent. TFA documents regarding the 2005 Exchange Offer were already produced in response to</p>	<p>1. Previously Requested. The Request in Phase 1 was, in any case, limited to those documents related to the 2005 Exchange Offer. On this occasion the Argentine Republic extends the request to the 2010 Exchange Offer.</p> <p>2. Possession – Third Parties. This objection must be rejected insofar as Claimants have submitted in this proceeding some documents of the type herein requested.</p> <p>3. Privileged. The Argentine Republic does not request the production of documents protected by the attorney-client privilege.</p> <p>4. Available to Respondent. The Argentine Republic does not request the production of documents which are publicly available or already produced</p>	<p>1. Previously Requested. Respondent does not refute, and effectively concedes, Claimants' objection with respect to documents relating to the 2005 Exchange offer. Claimants maintain their objection as to those documents.</p> <p>2. Possession – Third Parties. Documents that have already been submitted in this arbitration are available to Respondent and need not be produced. The prior production of documents relating to the Exchange Offers, including those publicly available on the TFA website, does not mean that Claimants have possession, custody or control of TFA "working documents."</p> <p>3. Privileged. By definition, the "legal . . . working documents" requested by Respondent appear to fall within the attorney-client and/or attorney work product privileges. <i>See</i> IBA Rules, Art. 9(2)(b). Claimants maintain their objection to the extent that Respondent's request as formulated seeks the production of privileged documents.</p> <p>4. Available to Respondent. Claimants maintain their objection to the extent that Respondent's request as formulated seeks documents that are publicly available or</p>	Rejected (already produced and/or too broad and burdensome).

No.	Requesting Party	Documents/Category of Documents Requested	Relevance and Materiality		Claimants' Responses/Objections	Reply to Objections	Answer to Reply	Tribunal's Decisions
					Respondent's nearly identical Request No. 4 in Phase 1. TFA documents relating to the 2010 Exchange offer are publicly available on the TFA website.	in this arbitration.	otherwise available to Respondent.	
					5. Not Relevant/Material. Not relevant or material to Respondent's breaches of its Treaty and bond obligations, including Respondent's actions in 2005 and 2010, or the resolution of Claimants' claims. The role of TFA as Claimants' agent was thoroughly examined and adjudicated in the jurisdictional phase. The internal working documents of this non-party are not relevant or material to the outcome of the case on the merits.		5. Not Relevant/Material. Respondent does not dispute, and effectively concedes, that the requested documents are not relevant or material to the resolution of Claimants' claims. No further considerations need to be weighed; the request should be rejected.	
					6. Burdensome. Unduly burdensome. Fails to identify a narrow and specific category of documents. Seeks documents from nonparty sources.	6. Burdensome. This request is not overly broad; it is limited to the documents pertaining to the 2005 and 2010 Exchange Offer.	6. Burdensome. Respondent's request for working documents relating to both the 2005 and 2010 Exchange Offers fails to identify a narrow or specific category of documents, and seeks documents exclusively in the possession of a non-party. The burdens, if not impossibility, of production should not be imposed on Claimants, including in particular because Respondent does not refute that the documents are irrelevant and immaterial to the resolution of the claims.	
8.	Respondent	Documentation evidencing each Claimant's current ownership in the security entitlements upon which the claim is based. In the case of bank certificates,	For instance, Claimants' Memorial on Phase 2, § III.G	Claimants must prove, at this merits stage and after the 2010 Exchange Offer, that they are still in possession of the	1. Available to Respondent. Claimants have already produced evidence of bond ownership, including bank certification letters and certification, in Attestation Form 3.3, that each Claimant	1. Available to Respondent. The documentation produced at the commencement of this arbitration does not guarantee that Claimants still own the security entitlements on account of which Claimants bring their claim. In	1. Available to Respondent. Claimants have produced voluminous evidence of each Claimant's bond acquisition and continuous and ongoing ownership. Respondent ignores and fails to provide any rebuttal evidence for, <i>inter alia</i> , the	Granted to the extent not already produced.

No.	Requesting Party	Documents/Category of Documents Requested	Relevance and Materiality		Claimants' Responses/Objections	Reply to Objections	Answer to Reply	Tribunal's Decisions
		they are not to exceed one year.		security entitlements upon which their claim is based.	continuously held the bond(s) since the date of purchase, had no intent of transferring the bond(s), and would inform TFA if they did transfer the bond(s). Respondent has not provided any rebuttal evidence as to any Claimant. Argentina also possesses documents demonstrating which bonds were tendered into the 2010 Exchange Offer.	fact, the reiterated and periodic submissions through Annexes K and L prove the changes this proceeding has undergone in connection with the ownership of the alleged investment claimed in this arbitration. Thus, it is plain that the commitment that the security entitlements would be held "frozen" in the bank account has been broken by Claimants.	certification that each Claimant provided in Attestation Form 3.3 that they would continue to hold their bond investments unless they indicated otherwise. Annex K identifies those Claimants that were added to the arbitration prior to the registration of the Request for Arbitration, and has no bearing on the bondholdings of those Claimants. Annex L identifies those former Claimants that have withdrawn from the arbitration, and thus whose bondholdings are no longer at issue in this proceeding. Accordingly, neither Annex has any bearing on the evidence of current bond ownership that each participating Claimant has provided – and certainly does not in any way suggest that Claimants have broken any purported commitment with respect to the status of their bondholdings.	
					2. Not Relevant/Material. Not relevant or material to Respondent's breaches of its Treaty and bond obligations, or the resolution of Claimants' claims. Evidence of each Claimant's bond ownership is already in the record, and Respondent has not offered any basis on which to challenge that evidence as to any particular Claimant. More recent bank letters will not affect the outcome of the case.	2. Not Relevant/Material. Claimants must prove in this Phase 2 that Claimants still own the security entitlements on the basis of which they bring their claim.	2. Not Relevant/Material. Respondent ignores the fact that it has not offered any rebuttal evidence (or other basis) on which to challenge the voluminous bondholding evidence already in the record as to each Claimant. Claimants have established their holdings of Argentine bonds for purposes of jurisdiction, damages, and other applicable purposes. No further documents are relevant or material to the resolution of their claims, which in any event turn on Respondent's breaches of its Treaty and bond obligations.	
					3. Burdensome. Unduly burdensome for Claimants to produce bank certification letters for each of over 50,000 Claimants when	3. Burdensome. It is less burdensome for Claimants than for the Argentine Republic to produce the documents requested.	3. Burdensome. Claimants have already produced voluminous evidence of bond ownership – none of which has been rebutted (or even challenged) by	

No.	Requesting Party	Documents/Category of Documents Requested	Relevance and Materiality		Claimants' Responses/Objections	Reply to Objections	Answer to Reply	Tribunal's Decisions
					such letters, along with other evidence of bond ownership, have already been produced.		Respondent, through rebuttal evidence or otherwise. There is thus no relevance/materiality or other consideration warranting the exceedingly burdensome measures that production would require. Rejection of the request is warranted, regardless of the purported comparative burden as between Respondent and Claimants.	
					Without waiving Claimants' objections, Claimants have produced or will produce documents that they have determined are necessary and responsive, which they will produce as they become available.			
9.	Respondent	Documentation referring to any communication between a Claimant individually or several Claimants collectively, and TFA and/or any of its members, from the date of commencement of this arbitration to date.	For instance, Claimants' Memorial on Phase 2, § III.G y J	These documents are relevant to establish whether there are any more Claimants which have manifested their intent to withdraw from the arbitration, and the knowledge that each Claimant may have of the continuation of this arbitration.	<p>1. Previously Requested. This request is repetitive of Respondent's Request Nos. 1, 4, and 15 in Phase 1, which were granted only to the extent as offered by Claimants.</p> <p>2. Possession – Third Parties. Not in the possession, custody or control of Claimants, to the extent request seeks documents held by TFA.</p> <p>3. Privileged. Seeks documents that are protected by the attorney-client privilege and/or work product doctrine.</p> <p>4. Available to Respondent. Communications between TFA and Claimants were already produced in response to Respondent's related Request Nos. 1, 4 and 15 in Phase 1. Communications from TFA to</p>	<p>The Argentine Republic reserves the right to submit in due course its observations and objections to the documents produced.</p> <p>Without prejudice to the foregoing, the Argentine Republic requests that the hard copies that Claimants have produced in response to this Request be provided in an electronic format.</p>	<p>Claimants expressly preserve, and do not waive, all of the objections raised – which Respondent has not even attempted to rebut.</p> <p>Claimants produced responsive documents on the 14 February deadline via direct international delivery to Respondent. Respondent can readily scan and convert these documents into electronic format. Respondent's demand for production in a different format is particularly unwarranted given Respondent's ongoing failure to produce responsive documents to Claimants, in violation of the Tribunal's orders and the 14 February deadline.</p>	<p>Provisionally Moot.</p> <p>If not produced, Respondent may file a new application for production.</p>

No.	Requesting Party	Documents/Category of Documents Requested	Relevance and Materiality		Claimants' Responses/Objections	Reply to Objections	Answer to Reply	Tribunal's Decisions
					<p>Claimants since the date of prior production are publicly available on the TFA website.</p> <p>5. Not Relevant/Material. Not relevant or material to Respondent's breaches of its Treaty and bond obligations, or the resolution of Claimants' claims. The role of TFA as Claimants' agent was thoroughly examined and adjudicated in the jurisdictional phase. Communications between Claimants and their appointed agent TFA are not relevant or material to the outcome of the case on the merits.</p> <p>6. Burdensome. Unduly burdensome to produce. Fails to identify a narrow and specific category of documents, and seeks open-ended production of irrelevant communications between non-party TFA, its 400 non-party member banks, and over 50,000 individual Claimants.</p> <p>Without waiving Claimants' objections, Claimants have produced or will produce responsive documents.</p>			