

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Hela Schwarz GmbH

v.

People's Republic of China

(ICSID Case No. ARB/17/19)

PROCEDURAL ORDER NO. 5

**DECISION ON THE PARTIES' REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Members of the Tribunal

Sir Daniel Bethlehem QC, President of the Tribunal
Professor Campbell McLachlan QC, Arbitrator
Mr. Roland Ziadé, Arbitrator

Secretary of the Tribunal

Ms. Lindsay Gastrell

Assistant to the Tribunal

Mr. Paolo Busco

29 July 2019

CONTENTS

I. PROCEDURAL BACKGROUND.....	2
II. APPLICABLE STANDARDS	3
III. ORDER.....	4
ANNEX 1.....	6
ANNEX 2.....	40
ANNEX 3.....	82

I. PROCEDURAL BACKGROUND

1. On 9 March 2018, the Tribunal issued Procedural Order No. 1, addressing the procedure of this arbitration. Section 18 of Procedural Order No. 1 set forth instructions pertaining to the “Production of Documents”, and the Procedural Timetable contained in Annex A of Procedural Order No. 1 provided a schedule for the document production phase of the proceeding. In addition, Annex B of Procedural Order No. 1 contained the document production schedule that the Parties were to use for their document requests.
2. In accordance with Section 18.3 of Procedural Order No. 1 and the Procedural Timetable (Alternative Schedule 2), on 8 May 2019, each Party served on the other Party a schedule containing its requests for the production of documents. Subsequently, on 5 June 2019, each Party (a) set forth its objections to certain of the other Party’s requests for documents and (b) produced documents that were not subject to any objection.
3. On 26 June 2019, each Party replied to the other Party’s objections and submitted its document production schedule to the Tribunal. Together with its schedule, the Respondent submitted a letter in which it requested an additional document that had not been included in its schedule and had not been the subject of the prior exchanges between the Parties.
4. The Secretary of the Tribunal acknowledged receipt of the Parties’ completed document production schedules on behalf of the Tribunal. At the same time, the Parties were informed that the Tribunal expected to issue its decision on document production no later than 9 August 2019 (rather than by 24 July 2019, as anticipated in the Procedural Timetable). The Tribunal adjusted the subsequent dates on the Procedural Timetable accordingly and informed the Parties that the Tribunal would confirm the precise deadlines for each procedural step with its document production decision.
5. On 28 June 2019, the Secretary of the Tribunal wrote to the Parties on behalf of the President of the Tribunal concerning the Respondent’s additional document request. In accordance with Section 18.9 of Procedural Order No. 1, the Respondent was invited to address what exceptional circumstances, if any, warranted the Tribunal to permit this additional request. The Claimant was thereafter invited to respond to the Respondent’s application to submit an additional request.

6. On 3 July 2019, the Respondent wrote to the Tribunal setting out the exceptional circumstances that, in its submission, warranted the Tribunal to permit the Respondent's additional document production request. By email to the Tribunal Secretary dated 10 July 2019, the Claimant contested the relevance of the document that was the subject of the Respondent's additional document request but noted that, "in light of the fact that the Claimant is in possession of this letter [requested by the Respondent] and that its production does not impose any particular burden on the Claimant, it is produced as attachment to this email." The document in question was attached to the Claimant's email.

II. APPLICABLE STANDARDS

7. The Tribunal recalls, *inter alia*, paragraph 18.2 of Procedural Order No. 1, which provides that the Tribunal shall be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) (the "**IBA Rules**") in relation to document production in this case.
8. The Tribunal's decision on the Parties' respective disputed requests for the production of documents is set out in the Schedules appended to this Order as **Annex 1** (Claimant's Schedule) and **Annex 2** (Respondent's Schedule).
9. Pursuant to the procedural calendar, as amended, each Party is ordered to produce the documents indicated in Annex 1 and Annex 2 to the requesting Party by 6 September 2019.
10. The Tribunal notes that its decision on the Parties' document production requests does not imply a decision by the Tribunal on any issue in dispute between the Parties or prejudice any question of the relevance or weight of any argument, witness testimony or other evidence advanced by either Party.
11. Insofar as documents ordered to be produced are not produced or not fully produced as decided in this Order without an adequate explanation as provided under paragraph 12 below, the Tribunal will take this into account in its evaluation of the respective factual allegations and evidence and may draw adverse inferences against the Party refusing production.

12. With respect to the Tribunal's decision ordering the production of any document or documents, in the event that no document/s responsive to a particular request are found in the possession, custody or control of the requested Party, that Party shall provide to the requesting Party and to the Tribunal (a) a description of the searches that it has undertaken for the documents in question, (b) a statement averring that the document/s in question are not within the possession, custody or control of the said Party, and, as appropriate, (c) a full explanation addressing any circumstances in which the document/s in question, although once in the possession, custody or control of the requested Party, were subsequently lost or destroyed, including the date or likely date of the loss or destruction of the document/s.
13. In any case in which a Party asserts a claim of privilege in respect of any part of a document the production of which has been ordered, the entirety of the document in question must be produced within the deadline prescribed subject to redaction of that part of the document in respect of which privileged is asserted. Any claim of privilege shall be the subject of full explanation, accompanying the production of the document in question, addressing the circumstances giving rise to the assertion of privilege for each element redacted in sufficient detail to permit the requesting Party and the Tribunal to assess whether the claim of privilege is justified.
14. Reliance, whether direct or indirect, by a Party on a document or documents the disclosure of which was requested by the other Party (whether specifically or by reference to a defined class of documents) but resisted by the Party subsequently relying thereon, and not the subject of an order of production, will presumptively give rise to requirement for the Party relying on the document/s to produce the document/s or class of documents originally requested and a right of submission by the Party making the original document production request.

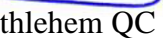
III. ORDER

15. The Tribunal holds as follows:

- a. The Tribunal decides on each contested document production request as stated in Row E of each request in **Annex 1** and **Annex 2**. These Annexes form an integral part of the present Order.
- b. In accordance with the Procedural Timetable (as revised), each Party shall produce all documents ordered to be produced by 26 August 2019 and, in so doing, shall comply with the additional instructions stated above in Section II of this Order.
- c. The documents produced shall not be communicated to the Tribunal at this stage and shall not be considered part of the record, unless and until one of the Parties submits them as exhibits to a submission.
- d. The revised Procedural Timetable is appended to this Order as **Annex 3**.

On behalf of the Tribunal,

[signed]


Sir Daniel Bethlehem QC
President of the Tribunal

Date: 29 July 2019

ANNEX 1

CLAIMANT’S REQUESTS FOR THE PRODUCTION OF DOCUMENTS

I. Documents relating to the development of JHSF’s former plot of land

Document Request No.	1
A. Documents or category of documents requested	<p>Documents containing clear information about a) the planned and/or actual development of JHSF’s plot of land following expropriation and b) the price paid by the new owner for the acquisition of the land-use right over JHSF’s former plot of land. In particular:</p> <ul style="list-style-type: none"> • Agreements or other arrangements between the authorities of Jinan and the developers of the Huashan Area Renovation Project (including, but not limited to, the Jinan Binhe New District Construction and Investment Group Co. Ltd., the “Zhonghai Group” (China State Construction Engrg. Corp.), and any affiliates of those companies, including the China Overseas Property Group Co., Ltd.) between 2013 and 2017; • Regulatory approvals issued by the authorities of Jinan to the developers of the Huashan Project in relation to the above between 2013 and 2017.
B. Relevance and materiality:	
Reference to submissions	Memorial on the Merits, paras. 54, 64, 67-69, 389-392, 411-420.
Comments	Documents with clearly identifiable information about the development of JHSF’s former land parcel and the price paid for the transfer thereof to the new developer are critical to the Claimant’s claims that it was not adequately compensated and that the expropriation did not primarily serve a public purpose. The Claimant has already established that the major part of the Huashan Project is dedicated to the development of infrastructure for commercial, financial and residential purposes. However, it does not have access to the documents pertaining to the legal and commercial arrangements between

	<p>the local government (or other public entities) and the developers of the Huashan Project. The requested documents are also believed to contain information about the prices paid by developers of the Huashan Project, information that is relevant to the Claimant’s claim that it was not offered adequate compensation.</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>China objects to this request on the grounds that: (i) with respect to sub-category (b), the requested documents do not exist; (ii) with respect to sub-category (a), the Claimant has not established that the requested documents are relevant and material to the outcome of the case; and (iii) with respect to sub-category (a), the request is unduly broad and vague.</p> <p><u>First</u>, with respect to category b) (namely, “<i>documents containing clear information about [...] the price paid by the new owner for the acquisition of the land-use right over JHSF’s plot of land</i>”), to the best of the Respondent’s knowledge, no such documents exist. The land-use right over JHSF’s plot of land has not given rise to any purchase and therefore, no price has been paid for it.</p> <p><u>Second</u>, with respect to category a) (namely, “<i>documents containing clear information about [...] the planned and/or actual development of JHSF’s plot of land following expropriation</i>”), the Claimant has failed to establish why the requested documents are relevant or material to the outcome of the case as required by Articles 3.3(b) and 9.2(a) of the IBA Rules. To the extent the Claimant contends that documents concerning the planned development of JHSF’s plot of land are relevant to assess the public purpose of the Huashan Project, this is obviously misconceived. JHSF’s plot of land covers a very small part of the Huashan Project, the public purpose of which must be assessed in consideration of the Project as a whole. Documents concerning specifically the planned development of JHSF’s plot of land are therefore irrelevant to that purpose. To the extent the Claimant contends that these documents are relevant to its claim that it was not offered adequate compensation, this is also misconceived. As the Respondent set out in its Counter-Memorial, under the applicable Chinese rules and regulations, the compensation to which expropriated parties are entitled depends on the value of the land use rights and buildings based on their <u>original use prior</u> to the announcement of the expropriation (<i>see</i> Counter-Memorial § 47). Subsequent developments on the plots of lands are entirely irrelevant. They</p>

	<p>cannot bear on whether JHSF’s compensation was adequate, i.e. the issue in dispute in this case.</p> <p><u>Third</u>, category a) is overly broad and undefined, referring among other things to documents relating to “<i>the planned and/or actual development</i>” of the land occupied by JHSF without specifying the authority in question or specific type of document requested. Such a blanket request (of unidentified relevance and materiality) fails to sufficiently define a narrow and specific category of documents as required by Article 3.3(a) of the IBA Rules.</p>
<p>D. Reply</p>	<p><u>Existence of the documents in sub-category (b):</u></p> <p>The requested documents must be deemed to exist in the circumstances of the case. The Claimant notes that this request is not to be read as only encompassing classical purchase agreements for the acquisition of land use rights, but any agreement that relates to the obtainment, by the developer, of the authorizations or entitlements to carry out its works on the land.</p> <p>As established in the Claimant’s Memorial, the Huashan project is developed by a company named “Jinan China Overseas Property Development Co. Ltd.”, a private for-profit concern in which several listed companies hold an equity interest (see Claimant’s Memorial on the Merits, para. 412; Exhibit C-0113). In this context, the Respondent’s assertion that no documents exist regarding the acquisition by the latter of rights pertaining to the use of the land in this area is not credible. The project developer must have obtained certain rights to carry out the works. This also applies to JHSF’s former plot of land. Hence, some agreements or arrangements, regarding the rights acquired by the developer and the price it paid for those rights, must have been concluded. Whether such agreements or arrangements apply to a larger area encompassing JHSF’s former premises or are specifically limited to JHSF’s former plot of land is immaterial for the purpose of this request. Given the undisputed fact that JHSF was expropriated and its premises demolished to enable the local authorities to proceed with their plans to develop the area encompassing JHSF’s premises, the Respondent would need a very well-reasoned explanation to justify the non-existence of the requested documents.</p> <p><u>Relevance and materiality of documents in sub-category (a):</u></p>

As explained in the Claimant’s comments section above, the requested documents are relevant and material to the outcome of the case. In particular, the documents are necessary to assess the legality of the expropriation in terms of its alleged public purpose and of the adequacy of the offered compensation.

First, with regard to public purpose, the Respondent’s objection is based on the incorrect assumption that it is sufficient to ascertain the overall purpose of the Huashan Project in order to determine whether the expropriation of the Claimant’s assets was for the public benefit. However, the relevant issue in this arbitration is much narrower than that, as it specifically concerns the expropriation of JHSF’s property rights – over a small fraction of the Huashan area – and whether this specific expropriation was for the public benefit. The future use of JHSF’s former plot of land is thus of central relevance to the Tribunal’s decision on the issue of public purpose. In any event, even if one was to consider that an assessment of the purpose of the Huashan Project as a whole was sufficient, information regarding the future use of individual land parcels, including JHSF’s former plot of land, would be relevant in this context.

Second, the requested documents are also relevant to assess whether the Claimant was adequately compensated, as they will contain information about the price paid by entities that now enjoy the right to use JHSF’s former plot of land. In this respect, it is the Claimant’s position that the price paid by the developer for the enjoyment of the relevant plot of land is highly relevant to the economic value of such land. The fact that, as the Respondent asserts, the documents would not be relevant to the calculation of compensation “*under the applicable Chinese rules and regulations*” is immaterial in the context of this arbitration. The Claimant bases its claims on principles of international law, including the principles of compensation set out under Article 4(2) of the Germany-China BIT.

Narrowness and clarity of the requested documents:

The request is sufficiently clear and narrow for the Respondent to identify and obtain the relevant documents.

The Claimant is not in a position to determine with precision the entities involved in the transactions regarding the development of JHSF’s former plot of land, be it on the side of the local authorities or on the side of the private entities developing the

	<p>Huashan area. The Respondent, on the other hand, does have access to relevant information in this regard and would be able to obtain the documents described in this request by consulting with the Jinan authorities.</p> <p>The reason for the phrase “<i>the planned and/or actual development</i>” is that the Claimant does not have information about the current status of the development. The request relates to the use of JHSF’s land after its eviction.</p>
E. Decision of the Tribunal	<p>The document production request is upheld as regards:</p> <p>(1) agreements or other arrangements between the authorities of Jinan and the developers of the Huashan Area Renovation Project between 2013 and 2017, and</p> <p>(2) regulatory approvals issued by the authorities of Jinan to the developers of the Huashan Project between 2013 and 2017</p> <p>in relation the planned and/or actual development of JHSF’s plot of land following expropriation and the price paid by the new owner for the acquisition of the land-use right over JHSF’s former plot of land.</p>

II. Documents relating to the calculation of compensation for the expropriation of JHSF and other entities in the Huashan Area

Document Request No.	2
A. Documents or category of documents requested	Document referred to in the Official Expropriation Decision as “Compensation Scheme for Expropriation of Houses in the Renovation Project of Huashan Area.”
B. Relevance and materiality:	
Reference to submissions	Official Expropriation Decision of 11 September 2014 (Exhibit C-0085).
Comments	This document is mentioned in the Official Expropriation Decision of 11 September 2014 (Exhibit C-0085) and appears to

	contain specific guidelines on the calculation of compensation of expropriations in the Huashan area. It is therefore relevant to the question whether adequate compensation was offered for the expropriation of JHSF.
C. Summary of objections by disputing Party to production of requested documents	The requested document is in the Claimant’s possession. China has already exhibited it in this arbitration as Exhibit R-0012 (i.e. the Compensation Plan for Building Expropriation in the Huashan Area Renovation Project).
D. Reply	The Claimant takes due note that the requested document appears to be the same as the document already exhibited by the Respondent as Exhibit R-0012 .
E. Decision of the Tribunal	Having regard to the Respondent’s observations and the Claimant’s reply, this request does not require decision by the Tribunal.

Document Request No.	3
A. Documents or category of documents requested	Minutes/transcripts or any other records of the public hearing of 25 July 2014 referred to in the Respondent’s Counter-Memorial on the Merits.
B. Relevance and materiality:	
Reference to submissions	Counter-Memorial on the Merits, para. 68.
Comments	The meeting followed the issuance of the Compensation Plan by the Jinan Municipality. The Respondent asserts that the meeting was attended by a representative of JHSF but has not specified the purpose and subject thereof.
C. Summary of objections by disputing Party to production of	China objects to this request on the grounds that: (i) the Claimant has not established that the requested documents are relevant and material to the outcome of the case; and (ii) the requested information is already in the possession, custody or control of the Claimant.

<p>requested documents</p>	<p><u>First</u>, the Claimant has not established that the requested documents are relevant and material to the outcome of the case as required by Articles 3.3(b) and 9.2(a) of the IBA Rules. The sign-in sheet for the public hearing of 25 July 2014 submitted by China as Exhibit R-0040 proves that Mr Wang Yunlin attended that meeting on behalf of JHSF. The Claimant is therefore fully aware of the “<i>purpose and subject</i>” of the meeting. In addition, the requested documentation is neither needed as an element of the Claimant’s case, nor does it relate to any claim being advanced in this arbitration.</p> <p><u>Second</u>, given the above, the requested information is already in the possession, custody or control of Hela Schwarz. The Claimant’s request is therefore not in accordance with Article 3.3(c) of the IBA Rules.</p>
<p>D. Reply</p>	<p>The Claimant hereby confirms that the requested document is not in its possession, custody or control.</p> <p>While the Claimant concedes that this document may or may not contain information relevant to the outcome of the case, it appears counter-intuitive that the Respondent should resist the production of a document containing additional information regarding an event that was introduced to the relevant facts of the case by the Respondent itself.</p> <p>Such resistance is all the less understandable in the context of a request concerning one clearly defined document, the production of which would not impose any particular burden on the Respondent.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld, noting that the fact of the public hearing was relied upon by the Respondent as part of its case.</p>

Document Request No.	4
A. Documents or category of documents requested	Any public comments collected in relation to the Compensation Plan for the Huashan Project (as referenced in Exhibit R-0068, p. 7-8) between June and December 2014.
B. Relevance and materiality:	
Reference to submissions	Exhibit C-0068, p. 7-8.
Comments	The Respondent asserts that the Huashan Project and its compensation scheme complied with all criteria established by Chinese law. Giving due regard to the possible concerns of the wider public and its involvement in the process is an essential element in this context, which is why such public comments must be disclosed.
C. Summary of objections by disputing Party to production of requested documents	<p>China objects to this request on the grounds that: (i) the requested documents are not relevant and material to the outcome of the dispute; (ii) the request is overly broad; and (iii) it is unduly burdensome.</p> <p><u>First</u>, the Claimant has failed to establish that the requested documents are relevant to the case and material to its outcome as required by Articles 3.3(b) and 9.2(a) of the IBA Rules. Any subjective views or preferences of individual members of the public do not determine the lawfulness of government measures. Legality is to be assessed objectively according to the applicable Chinese or international law. The requested documentation could therefore not be relevant to the Tribunal’s determinations in the present arbitration.</p> <p><u>Second</u>, the Claimant’s request is unreasonably broad, asking for “[a]ny public comments” relating to compensation in the Huashan Project without even delimiting the recipient. Tens of thousands of entities and individuals were involved in the Huashan Project. The request does not properly define a narrow and specific category of documents as required by Article 3.3(a) of the IBA Rules. Due to this breadth, information that is entirely peripheral to any side’s claims in this arbitration would be captured. Plainly, the Claimant is asking for every single</p>

	<p>public comment in the hope of finding something of interest to Hela Schwarz, which is the archetype of a fishing expedition unwarranted in international arbitration.</p> <p><u>Third</u>, in light of its excessive scope, responding to the Claimant’s open-ended request would be unreasonably burdensome and disproportionate. This is another ground for rejection, pursuant to Article 9.2(c) of the IBA Rules.</p>
<p>D. Reply</p>	<p><u>Relevance of the requested documents:</u></p> <p>The documents are relevant to the outcome of the dispute in terms of the requirement that the expropriation be for the public benefit. The documents are likely to demonstrate that the Respondent faced serious resistance from the local population and businesses against the implementation of the Huashan Project. While the Claimant acknowledges that the Huashan Project may, to some extent, serve a public purpose, the main motivation behind the project was the realisation of profits. The comments and resistance of those affected by the Huashan Project will thus strengthen the Claimant’s claim that the project’s main objective was not to serve public purposes and that the project was not as welcome by the local population as the Respondent would have the Tribunal believe.</p> <p>In the context of the Respondent’s assertion that the Huashan Project would be nothing but a philanthropic enterprise, the reaction of the affected parties would provide the missing information to complete the picture.</p> <p><u>Alleged lack of specificity of the request:</u></p> <p>The category of requested documents is defined in a clear and specific manner. The Respondent cannot oppose production by simply relying on the unsubstantiated assertion that the defined category would <i>probably</i> encompass a too large number of documents. The Respondent has failed to provide any indication of the number of public comments submitted in relation to the Huashan Project. The Respondent should therefore be ordered to enquire whether such public comments have been submitted and, if this is the case, whether the number of relevant documents is such that they can be produced.</p> <p><u>Alleged excessive burden:</u></p>

	As noted above, the requested documents are clearly defined in the Claimant’s request. In addition, it must be assumed that the local authorities would collect and file such public comments in an organized manner. The documents should therefore be easily accessible.
E. Decision of the Tribunal	The request is denied on grounds of materiality, proportionality and burden.

Document Request No.	5
A. Documents or category of documents requested	Record of the voting process of February 2014 for the appointment of Shandong Zhong’an as appraisal company for the Huashan Area, as referred to in the Respondent’s Counter-Memorial on the Merits.
B. Relevance and materiality:	
Reference to submissions	Counter-Memorial on the Merits, paras. 9, 98, 215.
Comments	This request is relevant to the Respondent’s assertion that the appraisal company was freely chosen by the entities affected by the expropriation.
C. Summary of objections by disputing Party to production of requested documents	<p><u>First</u>, China has already submitted into the record the notarised certificate confirming the process for selecting the expropriation valuation companies and the voting results (Exhibit R-0037).</p> <p><u>Second</u>, through this request the Claimant seeks additional support for China’s case, rather than its own. This is not the proper purpose of a request for production of documents. In particular, the Claimant has never alleged (in its Memorial or in its request for production of documents) that the appraisal company had not been freely chosen.</p> <p>Nonetheless, China agrees to produce a number of additional documents recording the voting process of February 2014.</p>
D. Reply	For the avoidance of doubt, the Claimant disputes that the appraisal company was freely chosen by all affected parties. This issue is relevant in relation to its claim that the

	<p>expropriation process was not conducted in accordance with due process.</p> <p>The Claimant further notes that the documents provided by the Respondent fail to mention one crucial information regarding the voting process, namely the names of participants.</p>
E. Decision of the Tribunal	The Tribunal notes that the Respondent has agreed to produce further documents recording the voting process of February 2014. The Tribunal recalls paragraph 14 of Procedural Order No. 5 above. No further decision is required from the Tribunal at this point.

Document Request No.	6
A. Documents or category of documents requested	Decision of the Huashan Area Development & Construction Leading Group regarding the applicable compensation method, and any documents in the run-up to that decision.
B. Relevance and materiality:	
Reference to submissions	Memorial on the Merits, paras. 99, 285; Counter-Memorial on the Merits, para. 74; Exhibit C-0073.
Comments	The decision is alleged to have set a unified method of calculation for the compensation of all expropriated parties within the area of the Huashan Project. The Respondent relies on this unified method to argue that a calculation of compensation for the expropriation of JHSF on the basis of the “proceeds sharing” method was not possible.
C. Summary of objections by disputing Party to production of requested documents	<p>China objects to this request on the grounds that: (i) the Claimant has not established that the requested documents are relevant and material; (ii) the request is impermissibly broad; and (iii) the request is unduly burdensome.</p> <p><u>First</u>, Hela Schwarz has not established that the documents requested are relevant to this case and material to its outcome as required by Articles 3.3(b) and 9.2(a) of the IBA Rules. Contrary to the Claimant’s statement above, the Respondent has <u>not</u> argued that the application of the proceeds sharing method</p>

	<p>was impossible as a result of a so-called “<i>decision of the Huashan Area Development & Construction Leading Group</i>”. The Respondent has argued that the proceeds sharing method was denied to JHSF as a result of Article 12 of Rules 249, which provides notably that the application of that method is at the sole discretion of the repurchase entity (<i>see Counter-Memorial § 52</i>). Since the Respondent’s case in that respect is not based on the decisions of the Leading Group, the Claimant’s statement on the alleged relevance of that document are misconceived, and the request should thus be rejected.</p> <p><u>Second</u>, the Claimant’s request for “<i>any documents in the run-up to that decision</i>” is impermissibly broad and vague, referring to unspecified documents over an uncertain period of time without identifying the origin, recipient, nature or subject of the supposed documents. This amounts to a fishing expedition in contravention of Article 3.3(a) of the IBA Rules.</p> <p><u>Third</u>, because the request does not even try to circumscribe a narrow and specific category of documents, responding to it would be disproportionate and unreasonably burdensome. Production is therefore also not appropriate pursuant to Article 9.2(c) of the IBA Rules.</p>
<p>D. Reply</p>	<p><u>Relevance of the requested documents:</u></p> <p>The requested document is of central relevance to the Claimant’s case. The question of whether the Respondent has correctly applied its local regulations – namely Orders No. 249 and 161 – is one of the key issues in the Claimant’s due process claim.</p> <p>As set out in the Claimant’s Memorial, the Claimant’s attempts to negotiate the compensation amount under local regulations, specifically under Orders No. 249/161, were blocked and undermined by the Chinese authorities, in particular by the Transaction Center, on the ground that the “Leading Group” had already decided to apply a unified compensation method to all expropriated parties in the area of the Huashan Project (see Exhibit C-0073, p. 2). It would, in particular, be highly relevant to know on what basis the “Leading Group” decided to exclude altogether any compensation based on the “proceeds sharing” method for the entirety of the Huashan area, in spite of the fact that the possibility to apply this method was expressly foreseen in recent local regulations. It goes without saying that such unilateral decision of a particular body, taken in the dark, to</p>

	<p>suspend or refuse, outrightly, the application of a valid and applicable legal norm in relation to a foreign investor does not conform to principles of due process. Therefore, the documents requested are relevant and material for this case.</p> <p>Additionally, the matter gives rise to the question whether the Leading Group was the competent authority to determine the compensation method. According to the Respondent (Respondent’s Counter-Memorial on the Merits, para. 52), only the relevant repurchase entity (i.e. in this case the transaction centre) would be competent to decide whether the proceeds sharing was applicable.</p> <p><u>Narrowness of the request and alleged excessive burden:</u></p> <p>The request primarily relates to one document, namely the Decision of the Huashan Area Development & Construction Leading Group regarding the compensation method applicable to the area of the Huashan Project. The reason for including “<i>documents in the run-up to that decision</i>” is that, should the decision itself not contain the reasons for the decision, it would be relevant to obtain the preparatory documents (such as the records of meetings of the Leading Group) recording the discussions and reasons that led to the decision.</p> <p>Although the date of the decision is unknown, the request can reasonably be limited to the period between 26 September 2013 (the date of the expropriation notice) and 2 July 2014 (when the representatives of the Claimant were informed about the decision of the “Leading Group”).</p> <p>In light of the narrow and specific nature of the request, it would not impose an unduly heavy burden on the Respondent to order the production of the requested documents.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld in respect of the decision of the Huashan Area Development & Construction Leading Group regarding the applicable compensation method and any associated document containing the reasons for that decision, between 26 September 2013 and 2 July 2014.</p>

Document Request No.	7
A. Documents or category of documents requested	Any repurchase agreements concluded with expropriated parties in Jinan on the basis of the “proceeds sharing” method described in Order No. 161 between 2013 and 2018.
B. Relevance and materiality:	
Reference to submissions	Counter-Memorial on the Merits, paras. 67, 76-77, 158; Exhibit C-0075, para. 5 (last 3 sentences).
Comments	The Respondent maintains that “ <i>the proceeds sharing method could not be applied to the repurchase of JHSF’s land use right</i> ”, but has refrained to provide any real explanation for this alleged impossibility, except that “ <i>it would be unfair and discriminatory to apply the proceeds sharing method only to the few entities</i> ”. The evidentiary record (Exhibit C-0075) contains indications that, contrary to the Respondent’s assertions, repurchase agreements have been concluded with expropriated parties on the basis of Order No. 161. The production of such documents would serve to ascertain how requests for repurchase similar to that of JHSF have been treated.
C. Summary of objections by disputing Party to production of requested documents	<p>China objects to this request on the grounds that: (i) the requested documents are irrelevant and immaterial to the resolution of this dispute; (ii) the request is unreasonably broad; and (iii) it is excessively burdensome.</p> <p><u>First</u>, through this request the Claimant seeks additional support for China’s case, rather than its own. Whether China was justified in denying the application of the proceeds sharing method to JHSF is for the Tribunal to decide, on the basis of the applicable Chinese laws and regulations, but requesting China to provide further documents to support its case is not the proper purpose of a request for production of documents.</p> <p><u>Second</u>, to the extent the documents requested concern land use related to the Huashan Project, these documents do not exist. The Claimant bases its request on Exhibit C-0075, suggesting that this email shows that “<i>repurchase agreements have been concluded with expropriated parties</i>”. However, that internal email from Mr Scheil to Mr Naujoks (copying Mrs Schwarz)</p>

	<p>does not indicate that any repurchase agreements were concluded in the Huashan Project area. To the contrary, Exhibit C-0075 records that “<i>the authorities must respect the principle of equal treatment</i>” and that the “<i>situation [of applying the proceeds sharing method] should not be the case here</i>”. For the avoidance of doubt, the Respondent confirms that no repurchase agreement was concluded on the basis of the “proceeds sharing” method with expropriated parties in the context of the Huashan Project area.</p> <p><u>Third</u>, to the extent the documents requested concern land use rights unrelated to the Huashan Project, the Claimant has failed to demonstrate how the requested documents are relevant and material to the outcome of this case as required by Articles 3.3(b) and 9.2(a) of the IBA Rules.</p> <p><u>Fourth</u>, to the extent the Claimant’s request concerns land use rights unrelated to the Huashan Project, this request is unjustifiably broad, wholly unspecific and would capture agreements concluded with unrelated parties in different factual situations that have nothing to do with the Huashan Project, and could contain privileged, confidential or sensitive information. Notably, the Claimant requests all agreements concluded on the basis of the proceeds sharing method by all transaction centers in Jinan, when the negotiations in relation to a potential repurchase agreement with JHSF concerned the Tianqiao Center only, and all agreements concluded between 2013 and 2018, when the negotiations with JHSF were conducted between June and August 2014 only. Such wide-ranging common law style discovery is inappropriate in international arbitration and should be denied pursuant to Article 3.3(a) of the IBA Rules. Moreover, in light of its breadth and speculative nature, it would be unreasonably onerous for China to search for and produce all documents relating to any such unconnected repurchase agreements supposedly concluded throughout Jinan over the course of several years. This is an additional ground for rejection under Article 9.2(c) of the IBA Rules.</p>
<p>D. Reply</p>	<p><u>Relevance of the requested documents for the Claimant’s case:</u></p> <p>If produced, the requested documents would likely demonstrate that, contrary to the Respondent’s assertion, there was scope for the application of Order No. 161 in circumstances similar to those of the present case. For the avoidance of doubt, it is the Claimant’s case that the Respondent breached its own law by</p>

failing to conduct good faith negotiations under Rule 161 (Claimant’s Memorial on the Merits, paras. 282 ff.). In particular, those documents would likely disprove the Respondent’s assertion that “[t]he proceeds sharing method is typically only adopted in projects where the totality or majority of the land on which the expropriated parties are located will be resold for operational use after the expropriation.” (Respondent’s Counter-Memorial on the Merits, para. 76).

Evidently, documents that have the potential to demonstrate that the Respondent’s defences are meritless are relevant to the Claimant’s case.

Scope of the request, alleged lack of narrowness and alleged excessive burden:

As indicated above, the Claimant’s request is not limited to documents related to the Huashan Project, but to all expropriations in the city of Jinan that have led to repurchase agreements under Order No. 161 between 2013 and 2018.

This is a highly specific request and the Respondent cannot object to it by simply relying on an abstract guess that this category could possibly encompass too many documents. The Respondent has failed to substantiate its objection by, for example, providing an indication as to the number of documents that would likely fall within this category. Its reference to the fact that the request would cover “*all agreements concluded on the basis of the proceeds sharing method by all transaction centers in Jinan*” without an indication of the number of transaction centers that exist within the city of Jinan is equally unconvincing. In those circumstances, there are no grounds to believe that it would be unduly burdensome to ask the transaction centres of Jinan to check whether any such agreements have been concluded.

As regards the timespan of relevant documents, it may be limited by the Tribunal as it considers adequate. Nevertheless, the Claimant notes that a) there is no indication that a large number of those agreements were concluded in the relevant timespan (again, it is not sufficient for the Respondent to justify its objection by solely pointing to an allegedly unreasonable onus without giving any further substantiation); and b) Order No. 161 entered into force on 1 August 2013 and remained in force for five years (see **Exhibit C-0077**), thereby automatically limiting

	the timespan of relevant documents to the period 1 August 2013 to 1 August 2018.
E. Decision of the Tribunal	Having regard to paragraphs 67, 76-77 and 158 of the Counter-Memorial, this request is upheld.

III. Documents relating to JHSF’s efforts to negotiate the compensation amount and its application for a land repurchase procedure

Document Request No.	8
A. Documents or category of documents requested	<p>Correspondence between the Jinan Government and other public entities exchanged from February to December 2014 in relation to JHSF’s efforts to negotiate the compensation amount.</p> <p>Such entities include – but are not necessarily limited to – the following: Jinan Land Reserve Tianqiao Centre (also known as the “Transaction Centre”); Licheng District Housing Urban and Rural Construction Committee; Licheng District Land Resource Bureau; Land Repurchase Department; Licheng District Building Expropriation Service Centre; Jinan Association of Enterprises with Foreign Investment; CECC.</p> <p>Persons possibly involved in such correspondence include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • <u>Representatives of the Shandong Province</u>: Mr. Xia Geng (Vice Governor of Shandong Province); Mr. Yan Zhaowan (Deputy Director General of Department of Foreign Trade and Economic cooperation of Shandong Province); Ms. Cong Xiao (Foreign Affairs Office of Shandong Province); Ms. Yu Qi (Deputy Chief of Division of International Cooperation Affairs of Shandong Province); • <u>Representatives of the Jinan Government and other Jinan authorities</u>: Mr. Li Guoxiang (Deputy Chief of Licheng District Government); Mr. Wen Wei (Licheng District Urban and Rural Construction Committee); Mr. Li Guji (Licheng District Urban and Rural Construction Committee); Mr. Zhao Xuebin (Deputy Chief of Land Resource Bureau); Mr. Wang (Land Resource Bureau); Mr. Ge Qingming (Head of Land Repurchase Department); Mr. Zhang (Co-head of Land Repurchase

	<p>Department);</p> <ul style="list-style-type: none"> • <u>Representatives of the Binhe Group and/or of the Transaction Center</u>: Ms. Huang Bei (Vice General Manager and Executive Director of Binhe Group) (also representative of Transaction Center); Mr. Shi Xiangzhong (General Manager of Binhe Group and legal representative of the Transaction Center); Gao Bing (Vice General Manager of Binhe Group).
<p>B. Relevance and materiality:</p> <p>Reference to submissions</p> <p>Comments</p>	<p>Memorial on the Merits, paras. 83-113, 277-288.</p> <p>This request relates to the Claimant’s assertion that its request for a repurchase procedure, although formally accepted, was not treated in accordance with applicable regulations and that no genuine negotiations ever took place in that respect. The requested documents will assist the Tribunal’s investigation of the way in which JHSF’s efforts to negotiate the compensation amount and its request for a repurchase procedure were treated by the Jinan authorities.</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>China objects to this request on the grounds that: (i) the Claimant has failed to demonstrate that the requested documents are relevant and material; (ii) the request is impermissibly wide-ranging and vague; and (iii) it is excessively burdensome.</p> <p><u>First</u>, the Claimant has failed to demonstrate that the documents sought are relevant to the case and material to its outcome, as they must be under Articles 3.3(b) and 9.2(a) of the IBA Rules. Whatever internal correspondence may or may not have been exchanged by authorities is neither relevant nor material to the question whether the Claimant was “<i>treated in accordance with applicable regulations</i>”. Whether or not the proceeds sharing method could be applied as a matter of Chinese law is a legal issue to be determined on a basis of an analysis of Chinese laws and regulations. It does not depend on internal bureaucratic communications. The record is clear as to the preconditions for applying such proceeds sharing (<i>see</i> Article 12 of the Measures of Jinan City for the Acquisition and Storage of State-owned Land, Jinan Government Order No. 249, 20 July 2013, Exhibit R-0008; Counter-Memorial, §§ 52, 74, 76-78), and the internal</p>

	<p>correspondence exchanged between local authorities is both irrelevant and immaterial to that issue.</p> <p><u>Second</u>, the requested documents are also not needed for any determination whether “<i>genuine negotiations ever took place</i>”. Numerous documents on the record already allow for a confident determination in that respect (<i>see</i>, for example, Exhibit C-0069, Exhibit C-0058, Exhibit C-0071, Exhibit C-0072, Exhibit C-0073, Exhibit C-0060, Exhibit C-0068, Exhibit C-0067, Exhibit C-0079, Exhibit C-0080). Whether these documents establish that genuine negotiations took place (which they do), and whether such negotiations have a bearing on China’s international obligations under the BIT is for the Tribunal to assess, but requesting China to provide further documents to support its own case is not the proper purpose of a request for production of documents. Hela Schwarz’s so-called attempt to “<i>assist the Tribunal’s investigation</i>” is a prime example of the kind of baseless, non-specific search for material that the IBA Rules are designed to prevent.</p> <p><u>Third</u>, contrary to Article 3.3(a) of the IBA Rules, the Claimant’s request is excessively broad and unduly vague, seeking (inconsequential) documents from hundreds of “<i>possibly involved</i>” officials at dozens of authorities, but without specifying the origin, author, recipient or time of creation of the requested documents and without clearly delimiting the contents of the correspondence, which could also contain privileged, confidential or sensitive information. Moreover, in light of its breadth and speculative nature, it would be unreasonably onerous for China to search for and produce all documents relating to any such officials and authorities. This is an additional ground for rejection under Article 9.2(c) of the IBA Rules.</p>
<p>D. Reply</p>	<p><u>Relevance of the requested documents:</u></p> <p>While the Claimant admits that this request is potentially broad in scope, its relevance cannot be denied.</p> <p>Far from being a purely legal question (whether Order 161 could be applied in this case), the question is whether, after the Claimant’s request to initiate a land repurchase procedure was formally accepted, the competent authorities dealt with the request in good faith. Indeed, it is the Claimant’s case that the request to negotiate was only formally accepted and was not</p>

followed by genuine negotiations. In this regard, relevant internal correspondence would show how the competent authorities in fact handled the request, and whether it was taken seriously or not.

Narrowness of the request and alleged burden:

The broad nature of this request is largely due to the fact that, throughout the process, and as a result of the Jinan authorities' own conduct, the Claimant was never able to clearly identify the persons or entities in charge of conducting negotiations under Order No. 249. It is for this reason that a list of involved persons and entities was included in the request.

The scope of the request may be narrowed down as the Tribunal considers appropriate. For example, the request could be limited to correspondence between the following individuals:

- Mr. Li Guoxiang (Deputy Chief of Licheng District Government);
- Ms. Huang Bei (Vice General Manager and Executive Director of Binhe Group and representative of Transaction Center);
- Mr. Shi Xiangzhong (General Manager of Binhe Group and legal representative of the Transaction Center);
- Mr. Wen Wei (Licheng District Urban and Rural Construction Committee);
- Mr. Wang (Land Resource Bureau);
- Mr. Zhao Xuebin (Deputy Chief of Land Resource Bureau); Mr. Wang (Land Resource Bureau);
- Mr. Zhang (Co-head of Land Repurchase Department);
- Ms. Cong Xiao (Foreign Affairs Office of Shandong Province).

As far as temporal limitations are concerned, the Claimant expressly limited its request to correspondence between February and December 2014.

The request is also limited in terms of subject-matter to correspondence "*in relation to JHSF's efforts to negotiate the compensation amount*", allowing the Respondent to perform electronic searches by using keywords such as "Hela Schwarz", "Hela-Schwarz", "Jinan Hela Schwarz Food", "JHSF" etc or any corresponding keywords in Chinese characters.

<p>E. Decision of the Tribunal</p>	<p>The request is upheld in respect of correspondence between any of the following individuals in the period February to December 2014 in relation to JHSF’s efforts to negotiate the compensation amount:</p> <ul style="list-style-type: none">• Mr. Li Guoxiang (Deputy Chief of Licheng District Government);• Ms. Huang Bei (Vice General Manager and Executive Director of Binhe Group and representative of Transaction Center);• Mr. Shi Xiangzhong (General Manager of Binhe Group and legal representative of the Transaction Center);• Mr. Wen Wei (Licheng District Urban and Rural Construction Committee);• Mr. Wang (Land Resource Bureau);• Mr. Zhao Xuebin (Deputy Chief of Land Resource Bureau); Mr. Wang (Land Resource Bureau);• Mr. Zhang (Co-head of Land Repurchase Department);• Ms. Cong Xiao (Foreign Affairs Office of Shandong Province).
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Document Request No.	9
A. Documents or category of documents requested	<p>Minutes/transcripts or any other records of meetings held from February to December 2014 by the entities identified above in Request No. 8 relating to JHSF’s efforts to negotiate the compensation amount, from February to December 2014.</p> <p>If such meetings were also attended by representatives of JHSF, this request extends to those meetings of which the Claimant has already produced its own minutes or records in this arbitration, and includes, at least, the following meetings:</p> <ul style="list-style-type: none"> • Meeting of 24 February 2014 between Mr. Scharping and representatives of the CECC (see Exhibit C-0054); • Meeting of 9 June 2014 between Mr. Scharping and representatives of the Jinan government (see Exhibit C-0058); • Several meetings of 2 July 2014 between representatives of JHSF and multiple public bodies (see Exhibits C-0071, C-0072 and C-0073); • Meeting of 18 July 2014 between representatives of JHSF and multiple public bodies (see Exhibit C-0063); • Meeting of 22 July 2014 between representatives of JHSF (lawyer of SNB), Mr. Zhao (Land Resource Bureau) and others (see Exhibit C-0078); • Meeting of 25 July 2014 between Mr. Li Guoxiang, Ms. Huang Bei and other representatives of the local authorities (see Counter-Memorial on the merits, para. 81); • Meetings of 27 and 28 July 2014 between representatives of JHSF and representatives of the Land Resource Bureau, Licheng District and the Binhe Group (see Exhibit C-0080).
B. Relevance and materiality:	

<p>Reference to submissions</p>	<p>Memorial on the Merits, paras. 83-113, 277-288; Counter-Memorial on the Merits, para. 81; Exhibits C-0054, C-0058, C-0063, C-0071, C-0072, C-0073, C-0078, C-0080.</p>
<p>Comments</p>	<p><i>See above, Request No. 8</i></p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>China objects to this request on the grounds set out above in respect of the Claimant’s request no. 8, <i>mutatis mutandis</i>.</p> <p>Furthermore, requesting records of meetings in which the Claimant’s representatives themselves participated is not in accordance with Article 3.3(c) and 9.2(c) of the IBA Rules. Those can be presumed to be in the Claimant’s possession, custody and control, and it would be unfairly onerous to nevertheless require the Respondent to produce the documents when the Claimant was present.</p>
<p>D. Reply</p>	<p>The Claimant refers to its reply with respect to request no. 8, <i>mutatis mutandis</i>.</p> <p>The Claimant confirms that the requested records of meetings prepared by the respective entities are not in the Claimant’s possession. Moreover, the purpose of the request is not to inform the Claimant or the Tribunal about the subject-matter of such meetings, but about how the relevant authorities kept track of such meetings, including any conclusions they may have drawn from the discussions.</p> <p>The Tribunal may, if it considers appropriate, limit its order to the documents relating to the meetings expressly listed above.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld as regards records of the following meetings addressing JHSF’s efforts to negotiate the compensation amount:</p> <ul style="list-style-type: none"> • meeting of 24 February 2014 between Mr. Scharping and representatives of the CECC; • meeting of 9 June 2014 between Mr. Scharping and representatives of the Jinan government; • meetings of 2 July 2014 between representatives of

	<p>JHSF and multiple public bodies;</p> <ul style="list-style-type: none"> • meeting of 18 July 2014 between representatives of JHSF and multiple public bodies; • meeting of 22 July 2014 between representatives of JHSF (lawyer of SNB), Mr. Zhao (Land Resource Bureau) and others; • meeting of 25 July 2014 between Mr. Li Guoxiang, Ms. Huang Bei and other representatives of the local authorities; • meetings of 27 and 28 July 2014 between representatives of JHSF and representatives of the Land Resource Bureau, Licheng District and the Binhe Group.
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Document Request No.	10
A. Documents or category of documents requested	<p>Any internal reports or memoranda of entities identified above in Request No. 8 dated from February to December 2014 and relating to JHSF’s efforts to negotiate the compensation amount and its application for a land repurchase procedure, including, but not limited to:</p> <ul style="list-style-type: none"> • A report by Ms. Yu Qi (Deputy Chief of Division of International Cooperation Affairs of Department of Commerce of Shandong Province) regarding the meeting of 18 July 2014 (mentioned on the last page of Exhibit C-0063) and any replies thereto; • A report by Mr. Zhao to the “Leading Group” (mentioned at p. 2 of Exhibit C-0073: <i>“According to Mrs. Huang the Licheng Land District Bureau (Mr. Zhao) only has to report to higher level government bodies (“Leading Group”) if a contract cannot be reached.”</i>) and any replies thereto; • A report by Ms. Huang to her superiors and to Mr. Zhao (mentioned at p. 3 of Exhibit C-0073: <i>“Mrs. Huang ... agreed to mediate in this case by reporting to her</i>

	<p><i>superiors as well as coordinating with Mr. Zhao.”) and any replies thereto;</i></p> <ul style="list-style-type: none"> • A report by Mr. Li to the Jinan Government (mentioned in Exhibit C-0078: “<i>Mr Li said the district could not decide on compensation based on “Proceeds Sharing”. What Mr Li could do was report the case to the city government. This report should have been finalized yesterday.”) and any replies thereto.</i>
<p>B. Relevance and materiality:</p> <p>Reference to submissions</p> <p>Comments</p>	<p>Memorial on the Merits, paras. 83-113, 277-288; Exhibit C-0063; Exhibit C-0073; Exhibit C-0078.</p> <p><i>See above, Request No. 8</i></p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>China objects to this request on the grounds set out above in respect of the Claimant’s request no. 8, <i>mutatis mutandis</i>.</p>
<p>D. Reply</p>	<p>The Claimant refers to its reply with respect to request no. 8, <i>mutatis mutandis</i>.</p> <p>The request may be limited to the four reports explicitly identified above if the Tribunal considers appropriate.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld in respect of the following documents:</p> <ul style="list-style-type: none"> • report by Ms. Yu Qi (Deputy Chief of Division of International Cooperation Affairs of Department of Commerce of Shandong Province) regarding the meeting of 18 July 2014 (mentioned on the last page of Exhibit C-0063) and any replies thereto; • report by Mr. Zhao to the “Leading Group” (mentioned at p. 2 of Exhibit C-0073) and any replies thereto; • report by Ms. Huang to her superiors and to Mr.

	<p>Zhao (mentioned at p. 3 of Exhibit C-0073) and any replies thereto;</p> <ul style="list-style-type: none"> • report by Mr. Li to the Jinan Government (mentioned in Exhibit C-0078) and any replies thereto.
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IV. Documents relating to judicial proceedings

Document Request No.	11
A. Documents or category of documents requested	Administrative Ruling of the Shandong Higher People’s Court ((2015) Lu Xing Zhong Zi No. 444), i.e. the decision of second instance in the proceedings brought by other expropriated parties in the Huashan area to challenge the Official Expropriation Decision.
B. Relevance and materiality:	
Reference to submissions	Counter-Memorial on the Merits, para. 114.
Comments	<p>The Respondent argues that the local courts were justified in rejecting JHSF’s claim since the legality of the Expropriation Decision of 11 September 2014 had already been ruled upon by the Jinan Intermediate People’s Court in a previous case. In this context, the Respondent produced the decision of first instance in that previous case, i.e. the Decision of the Jinan Intermediate People’s Court of 30 April 2015 in case (2015) Ji Xing Chu Zi No. 72 (Exhibit R-0068). However, the Respondent refrained from producing the appeal decision rendered in that same case by the court of second instance upon the applicants’ appeal (Shandong Higher People’s Court).</p> <p>In its Memorial, the Claimant insisted on the fact that the proceeding initiated by Ms. Kang Xiaomei and others did not lead to a final decision on the merits of the case. According to the Jinan Intermediate People’s Court, the object of the decision rendered by the Shandong Higher People’s Court was to acknowledge the withdrawal of their complaint following an agreement reached with the Jinan Government on the compensation amount (see Exhibit C-0005).</p>

<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>Hela Schwarz’s request contravenes Article 3.3(c) of the IBA Rules because the requested document was made available as evidence in the administrative lawsuit brought by JHSF (<i>see Exhibit R-0046</i>, List of Exhibits Filed by the Jinan Government in the Case Initiated by JHSF, 20 May 2016, No. 15).</p> <p>Nonetheless, China agrees to produce Administrative Ruling of the Shandong Higher People’s Court ((2015) Lu Xing Zhong Zi No. 444).</p>
<p>D. Reply</p>	<p>The Claimant thanks the Respondent for providing the requested document.</p>
<p>E. Decision of the Tribunal</p>	<p>The Tribunal notes that no further action is required of the Tribunal on this request.</p>

<p>Document Request No.</p>	<p>12</p>
<p>A. Documents or category of documents requested</p>	<p>Minutes/transcripts or any other records of the hearing held by the People’s Court of Licheng District on 5 June 2017 in case (2017) Shandong 0112 Administrative Trial No. 74.</p>
<p>B. Relevance and materiality:</p> <p>Reference to submissions</p> <p>Comments</p>	<p>Memorial on the Merits, para. 135; Exhibit R-0001.</p> <p>The hearing was held in the proceedings that eventually led to the enforcement of the eviction measures. This request must be viewed in the context of the Claimant’s allegation of due process violations. Bearing in mind the grave consequences of the decision taken in this proceeding, it is essential to ascertain the exact content of the views exchanged by the parties and, in particular, to what extent those views were properly considered by the People’s Court of Licheng District. By way of reminder, this decision was rendered roughly two months after the Request for Arbitration was filed with ICSID, as a consequence of which domestic proceedings should have been suspended.</p>
<p>C. Summary of objections by</p>	<p>China objects to the request on the grounds that: (i) the documents sought are in the possession, custody or control of</p>

<p>disputing Party to production of requested documents</p>	<p>the Claimant, which is fully apprised of the information it seeks; and (ii) the request is unreasonably burdensome in that situation.</p> <p><u>First</u>, the documents requested are in the possession, custody or control of the Claimant. The record shows that JHSF’s lawyers, Mr Jin and Mr Zhang of Dentons Beijing, “<i>attended the hearing and expressed their opinions</i>” (see Licheng District Court, Ruling of 12 June 2017, p. 2, Exhibit R-0001). The Claimant is therefore aware of “<i>the exact content of the views exchanged by the parties</i>” at the hearing its representatives participated in.</p> <p>Moreover, the reasoning and considerations of the court are apparent from its ruling, which has been submitted into evidence in this arbitration (Exhibit R-0001). Among other things, the court considered that the Expropriation Compensation Decision “<i>was clear in the findings of facts, sufficiently evidenced, in compliance with procedural requirements, and correct in the application of law</i>” (p. 3). It granted the municipality’s application to enforce the expropriation after the Claimant had obstructed the process without justification for several years (and at least since 2014) and despite repeated requests to clear the site: “<i>Given that [JHSF] did not apply for review or file a lawsuit, nor perform its obligations, within the period as stipulated in the laws, and that the Applicant, before applying for the enforcement, had summoned an exhortation, the Applicant’s application for our enforcement is in compliance with the laws.</i>” (p. 3). The Claimant’s request for production thus fails to comply with Article 3.3(c) of the IBA Rules.</p> <p><u>Second</u>, the Claimant’s request flouts Article 9.2(c) of the IBA Rules because having to produce the requested documents in a situation where the Claimant has all the relevant information would be disproportionate and wasteful.</p>
<p>D. Reply</p>	<p><u>Possession, custody or control:</u></p> <p>While the Claimant would normally have access to those documents through JHSF’s former lawyers of Dentons Beijing, those lawyers have refused to transfer the case file to the Claimant when prompted to do so by the lawyers of WAGNER Arbitration currently representing the Claimant in this arbitration.</p> <p><u>Information sought:</u></p>

	The purpose of this request is to seek information about the fairness of the proceeding, or the lack thereof. As explained above, it is essential to ascertain whether a fair hearing took place, and whether the views exchanged by the parties were properly considered by the People’s Court of Licheng District. The court’s ruling filed as Exhibit R-0001 is not sufficient to answer these questions.
E. Decision of the Tribunal	This request is upheld.

V. Documents relating to Hela Spice (Jinan) Co. Ltd

Document Request No.	13
A. Documents or category of documents requested	Registration documents concerning Hela Spice (Jinan) Co. Ltd.
B. Relevance and materiality:	
Reference to submissions	Counter-Memorial on the Merits, paras. 25, 26, 127.
Comments	The Respondent refers to the “required procedures” for the establishment of Hela Spice (Jinan), without reference to any evidence.
C. Summary of objections by disputing Party to production of requested documents	<p>China objects to the request on the grounds that: (i) the requested documents are already in the possession, custody or control of the Claimant; (ii) it would therefore also be vexatious for the Respondent to have to produce these documents; and (iii) the Claimant has not established that the requested documents are relevant and material.</p> <p><u>First</u>, Hela Spice (Jinan) Co. Ltd. is a fully-owned subsidiary of a subsidiary of one of the Claimant’s shareholders, Hela Gewürzwerk Hermann Laue GmbH (<i>see</i> Counter-Memorial §§ 25-26, 31; Memorial § 22; Consolidated Annual Report 2016 – Hela, 31 May 2017, p. 3, Exhibit R-0018; Company Information of Hela Spice (Jinan) Co. Ltd, p. 2, Exhibit R-</p>

	<p>0002). The Claimant has failed to explain why it would not be in the possession of the “[r]egistration documents” of this company or be unable to obtain them from its shareholder. The Claimant’s request for production is thus not in compliance with Article 3.3(c) of the IBA Rules.</p> <p><u>Second</u>, considering the above, Hela Schwarz’s request is also unjustifiably onerous and in contravention of Article 9.2(c) of the IBA Rules.</p> <p><u>Third</u>, the Claimant has failed to demonstrate how the requested documents are relevant and material to the outcome of this case as required by Articles 3.3(b) and 9.2(a) of the IBA Rules. In particular, the Claimant has not made any allegations in respect of the “<i>required procedures</i>” for the establishment of Hela Spice (Jinan), or explained how these procedures have a bearing on the outcome of the case.</p>
D. Reply	The Claimant confirms that it does not exercise any control over Hela Spice (Jinan) Co. Ltd. and that documents of the latter are not within its possession, custody or control. Hela Spice (Jinan) being an entity unrelated to Hela-Schwarz, the Claimant’s management does not have any legal rights to demand the disclosure of those documents.
E. Decision of the Tribunal	The request is denied on grounds of relevance and materiality.

Document Request No.	14
A. Documents or category of documents requested	All documents relating to the acquisition of the land-use right by Hela Spice (Jinan) Co., Ltd. in 2015, including the “Transfer Contract of State-owned Construction Land Use Right” referred to in Exhibit R-0014.
B. Relevance and materiality:	
Reference to submissions	Counter-Memorial on the Merits, paras. 99, 125.
Comments	While the Respondent bases its argument on the adequateness of compensation on the price allegedly paid by Hela Spice

	<p>(Jinan) for a new land-use right, no information has been provided about the circumstances of the acquisition of such right, including any ancillary commitments by Hela Spice (Jinan).</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>China objects to this request on the grounds set out above in respect of the Claimant’s request no. 13, <i>mutatis mutandis</i>. In particular, Hela Schwarz has failed to explain why it is not in the possession of the requested documents or cannot obtain them from its shareholder.</p>
<p>D. Reply</p>	<p><u>Possession, custody or control regarding the documents:</u></p> <p>See the Claimant’s reply in respect of request no. 13.</p> <p><u>Relevance of the requested documents:</u></p> <p>The requested documents are relevant in support of the Claimant’s assertion that the compensation offered for the expropriation of JHSF’s property rights was not adequate, and that it would not have enabled JHSF to relocate. In particular, the documents are necessary to rebut the Respondent’s argument that the square meter price paid by Hela Jinan to acquire its new land use right was lower than the square meter price used as a basis for the compensation of JHSF’s lost land use right (see Respondent’s Counter-Memorial on the Merits, paras. 99, 125, 128). As explained in the comments section above, the documents are needed to ascertain any ancillary commitments undertaken by Hela Spice in exchange for its land use right in addition to the payment of a one-off price.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld in respect of the <i>Transfer Contract of State-owned Construction Land Use Right</i> referred to in Exhibit R-0014.</p>

Document Request No.	15
A. Documents or category of documents requested	Minutes/transcripts or any other records of the meeting of 14 December 2015 between representatives of the Jinan Municipality (including Vice Mayor Zhang) and representatives of Hela Germany.
B. Relevance and materiality:	
Reference to submissions	Counter-Memorial on the Merits, paras. 24 and 36.
Comments	The meeting is referred to in the first paragraph of Exhibit R-0043, which in turn is referred to in paras. 24 and 36 of the Counter-Memorial on the Merits as alleged evidence of the “sour” relationship between Hela and Schwarz.
C. Summary of objections by disputing Party to production of requested documents	China objects to this request on the grounds set out above in respect of the Claimant’s request no. 13, <i>mutatis mutandis</i> . In particular, Hela Schwarz has failed to explain why it is not in the possession of the requested documents or cannot obtain them from its shareholder.
D. Reply	See the Claimant’s reply in respect of request no. 13.
E. Decision of the Tribunal	The request is upheld.

VI. Documents relating to the eviction/demolition of JHSF’s premises

Document Request No.	16
A. Documents or category of documents requested	Further written records and photographs of the eviction/demolition of JHSF’s premises from December 2017 to January 2018.
B. Relevance and materiality:	

<p>Reference to submissions</p>	<p>Counter-Memorial on the Merits, paras. 135-136.</p>
<p>Comments</p>	<p>Exhibit R-0049 only contains the records of 6 December 2017. However, the demolition works were resumed on 11 December 2017 and lasted for several weeks. The further records are believed to contain valuable information about the way the demolition works were carried out. Exhibit R-0049 makes reference to photographs taken during demolition works.</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>China objects to this request on the grounds that: (i) the requested documents are not relevant and material to the outcome of the case; and (ii) the request is unduly vague and broad.</p> <p><u>First</u>, the Claimant has failed to establish that its request is relevant and material to the outcome of this case as demanded by Articles 3.3(b) and 9.2(a) of the IBA Rules. “[T]he way the demolition works were carried out” does not bear on the legality of the demolition or any determination of the Respondent’s international legal responsibility. Indeed, the Claimant’s admission that it hopes to find “valuable information” in these documents, without specifying what information Hela Schwarz is looking for, proves that its request is a proverbial fishing trip.</p> <p><u>Second</u>, the Claimant’s request for “[f]urther written records and photographs of the eviction/demolition” (i.e. beyond the notarised certificate (Exhibit R-0050) and the written record (Exhibit R-0049)) is wide-ranging and vague, failing to identify the origin, recipient or content of the supposed documentation in any meaningful sense. This does not accord with Article 3.3(a) of the IBA Rules.</p>
<p>D. Reply</p>	<p><u>Relevance of the requested documents:</u></p> <p>The documents are needed to corroborate the statements of JHSF employees regarding the brutality of the eviction measures submitted as Exhibit C-0116 and to provide support to the Claimant’s claim that the eviction measures were conducted in breach of the Respondent’s obligation of fair and equitable treatment (see Claimant’s Memorial on the Merits, paras. 468 ff.).</p> <p><u>Narrowness of the request:</u></p>

	<p>The requested documents are easily identifiable and very limited in scope and time. While it is not known to the Claimant which entity was in charge of keeping record of the demolition measures, the requested documents should be retrievable from the same source as Exhibit R-0049. The Respondent is best informed in this regard.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is denied on grounds of materiality and burden.</p>

ANNEX 2

RESPONDENT’S REQUESTS FOR THE PRODUCTION OF DOCUMENTS

Document Request No.	1
<p>A. Documents or category of documents requested</p>	<p>(1) The German original of the articles of association of the Claimant, in force as at 26 May 2017, when Mrs Kristin Schwarz signed the Power of Attorney to Dr Philipp Wagner, Dr Florian Dupuy and Dr Joseph Schwartz (<i>see</i> Power of Attorney signed by Mrs Schwarz dated 26 May 2017);</p> <p>(2) The shareholders’ resolution of the Claimant issued in or before May 2017 authorizing Mrs Kristin Schwarz to sign the Power of Attorney dated 26 May 2017 to Dr Philipp Wagner, Dr Florian Dupuy and Dr Joseph Schwartz (<i>see</i> Power of Attorney signed by Mrs Schwarz dated 26 May 2017);</p> <p>(3) The shareholders’ resolution of the Claimant issued in or before February 2014 authorizing Mrs Kristin Schwarz to sign the Power of Attorney dated 10 February 2014 to Mr Helmut Naujoks, Mr Rudolf Scharping and others (<i>see</i> Exhibit C-0052); and</p> <p>(4) The joint venture contract of the Claimant between the two shareholders concluded in or about the early 1990s.</p>
<p>B. Relevance and materiality: (1) para ref to submissions (2) comments</p>	<p>(1) (i) Claimant’s Memorial, § 83; and (ii) Respondent’s Counter-Memorial, § 29 and footnote 41.</p> <p>(2) The requested Documents are relevant and material to whether the Claimant has taken all necessary internal actions to duly authorize the present proceedings and earlier negotiations.</p> <p>As mentioned in the Respondent’s Counter-Memorial on the Merits, the Claimant had only provided with its Memorial on the Merits an excerpt of its articles of association (<i>see</i> Exhibit C-0020), which among other things omitted the relevant section on the procedure and limits of authorizing representation. Indeed, the Chinese version of the Claimant’s articles of association introduced by the Respondent with the Counter-Memorial (<i>see</i> Exhibit R-0039) reveals in Annex 1 that any authorization of representation of Hela Schwarz must be adopted by a simple majority of the shareholders of Hela Schwarz at a shareholders meeting. The Claimant has not provided the shareholders resolution by which Mrs Schwarz was authorized to sign the powers of attorney the Claimant has presented in this arbitration, nor has the Claimant provided the</p>

	<p>shareholders resolution by which Mrs Schwarz was authorized to sign the power of attorney authorizing Mr Helmut Naujoks, Mr Rudolf Scharping and others to represent JSHF in its negotiations with local officials.</p> <p>The issue is of particular importance given that the Claimant concedes that the two shareholders of the Claimant were locked in dispute (<i>see</i> Claimant’s Observations on Bifurcation Request, § 6).</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>The Claimant has no objections in principle to providing the documents described in this request.</p> <p>With regard to the individual points of the request, the Claimant notes the following:</p> <p><u>Regarding point (1):</u> The Claimant will produce the Articles of Association of Hela-Schwarz and the amended version thereof of April 1995. It should be noted that the annexes have remained unchanged and therefore are not attached to the amended version.</p> <p><u>Regarding points (2) and (3):</u> The shareholder resolutions requested by the Respondent under points (2) and (3) do not exist. Contrary to the Respondent’s assertion, such shareholder resolutions were not required to authorize Ms. Schwarz to sign the powers of attorney in 2014 and 2017.</p> <p>The general rule under sec. 5 para. 1 of the Articles of Association is that the managing director is authorized to solely represent the company and take actions on behalf of it. While Annex 1 constitutes an exception to this, providing for an exhaustive list of actions for which the prior approval via a shareholder resolution is required, authorization for (legal) representation of the Claimant is plainly not included in this list. The Respondent’s argument appears to be based on point 1. i) of Annex 1 (“Erteilung von Prokura”), which, as the German wording of the Articles of Association demonstrates, refers to a distinct concept under German company law. According to Section 49(1) of the German Commercial Code (Handelsgesetzbuch (HGB)), the “Prokura” is a very wide form of statutory commercial representation. The “Prokurist”, the holder of the “Prokura”, is an employee of the company with special authorizations to perform certain legal acts associated with the operation of a commercial business. This does not concern the (legal) representation of the company.</p> <p>Hence, Ms. Schwarz, as the managing director of the Claimant at all relevant times, duly signed both the power of attorney in 2014</p>

	<p>and that of 2017 and validly authorized Mr. Naujoks, Mr. Scharping and others, as well as the lawyers of WAGNER Arbitration to act on behalf of the Claimant.</p> <p><u>Regarding point (4):</u> The joint venture contract and the Articles of Association are contained in the same document (See document produced under point (1)).</p>
D. Reply	<p>Regarding points (2) and (3): The Respondent takes note of the Claimant's representation that the requested shareholder resolutions do not exist. In light of this, the Respondent does not seek further orders from the Tribunal in relation to Request No. 1 at this stage.</p>
E. Decision of the Tribunal	<p>The Tribunal notes that no further action by the Tribunal is required in respect of this request.</p>

Document Request No.	2
A. Documents or category of documents requested	<p>Documents prepared by, for or exchanged with the Claimant regarding (i) Hela Gewürzwerk’s decision to set up a fully-owned separate entity in Jinan, namely Hela Spice (Jinan) Co. Ltd (Documents dated between 2012 and 2014), and (ii) Hela Gewürzwerk’s decision to build a new factory for Hela Spice (Jinan) Co. Ltd (Documents dated between 2014 and 2016), including:</p> <p>(1) any resolutions of the board of directors or the shareholder(s) of Hela Gewürzwerk relating to Hela Spice (Jinan) Co. Ltd; and</p> <p>(2) Documents containing or reflecting discussions or other communications concerning Hela Gewürzwerk’s decision to set up a fully-owned separate entity or to build a new factory in Jinan.</p>
B. Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) (i) Claimant’s Memorial, § 22; (ii) Respondent’s Preliminary Objections, §§ 18-21, 27; and (iii) Respondent’s Counter-Memorial, §§ 23-26, 31.</p> <p>(2) It is the Respondent’s position that the co-venture between the shareholders of the Claimant failed and that its owners fell out, and that the Claimant now seeks to make a profit out of an abortive venture through this ICSID arbitration.</p> <p>The requested Documents are relevant and material because they will illustrate the infighting between the shareholders of the Claimant and prove the Respondent’s position that any difficulties the Claimant and JHSF may be facing is owed to internal circumstances and not due to any treatment by the Respondent. In particular, they will elucidate the decision of Hela Gewürzwerk, one of the Claimant’s shareholders, to set up its own fully-owned subsidiary in China and abandon JHSF (and ultimately, the Claimant) and thereby lend further support to China’s position on the lack of any mistreatment and the absence of any causal link.</p>
C. Summary of objections by disputing Party to production of requested documents	<p>The Claimant objects to this request on grounds of relevance.</p> <p>First, it is common ground between the Parties that there was an internal dispute between the shareholders of the Claimant that eventually led to Hela Gewürzwerk’s decision to set up a fully-owned separate entity. As such, it is not a factual contention that is at issue and thus these documents are not relevant for the present</p>

	<p>arbitration. There are a number of documents (see Exhibits R-0002, R-0011, R-0016, R-0018, R-0022, R-0023, R-0043, R-0072) on the record that relate to the dispute between the shareholders of the Claimant. The vast number of additional documents that the Respondent is requesting in this document production and that go to that same point are not material to the outcome of the dispute. The Arbitral Tribunal is aware of the shareholder dispute.</p> <p>Second, and importantly, the Respondent has failed to articulate in any plausible way how the shareholder dispute may have led to the end of JHSF. In fact, the record shows that, whatever internal dispute the shareholders may have had, it did not stop JHSF from continuing to operate as a profitable business (see paras. 45 – 52 of the Claimant’s Memorial on the Merits; see also Exhibits C-0036, C-0037, C-0038, C-0039, C-0040). Tensions between the shareholders could have led to changes in the ultimate ownership structure, but not to the implosion of JHSF or the termination of its business in China.</p> <p>The Respondent’s effort to place the shareholder dispute at the center of this proceeding should not be supported where, in fact, this arbitration is about the measures taken by the Respondent in breach of the BIT that eventually led to the physical demolition of JHSF’s premises and the economic neutralization of its business without appropriate compensation. The present arbitration does not relate to “<i>difficulties the Claimant or JHSF may be facing</i>” (as phrased by the Respondent above) but to the outright destruction by the Chinese authorities of the Claimant’s business.</p> <p>It should be noted that the above considerations are not only valid in relation to Request no. 2, but also with respect to Requests no. 3, 4, 5, 6, 7 and 8. The Respondent must not be allowed to request such a large number of documents and place such a heavy burden on the Claimant in the hope of finding anything that could potentially help its case. Such so-called “fishing expeditions” are not admissible in international arbitration (see IBA Rules on the Taking of Evidence, Article 3.3).</p> <p>Regarding point (1), the Claimant further notes that it does not have possession, custody or control over internal documents of Hela Gewürzwerk.</p>
D. Reply	None of the Claimant’s objections in relation to Request No. 2 is valid.

First, the Claimant’s admission that there was indeed “*an internal dispute between the shareholders of the Claimant*” does not make the documents requested any less relevant. Whilst the existence of the dispute is common ground between the parties, what matters are the *consequences* of that dispute on the activity and future of JSHF. In the arbitration, the Claimant has made a claim for indirect expropriation, *viz.*, that the expropriation of JHSF’s land use rights and buildings caused the destruction of JHSF’s business operations and therefore was tantamount to an expropriation of the Claimant’s shareholding in JHSF. In defense, the Respondent contends that the Claimant had no intention to continue pursuing JHSF’s activities in China as result of the internal dispute between its shareholders, and found in the expropriation of JHSF’s land use rights and buildings a pretext to make up the losses arising from its aborted joint-venture. The documents requested are directly relevant and material to confirm that (i) the Claimant had no intention to pursue JHSF’s activities in China, (ii) had it had any intention to pursue JHSF’s activities in China, it could and should have relocated JHSF’s operations to a new location, and, as a result, (iii) the destruction of JHSF’s business did not result from the expropriation of JHSF’s land use rights and buildings but from the Claimant’s own business decisions. Thus, the requested documents are directly relevant and material to the Respondent’s defense against the Claimant’s claim for indirect expropriation.

Second, the Claimant’s allegation that “*the Respondent has failed to articulate in any plausible way how the shareholder dispute may have led to the end of JHSF*”, is legally irrelevant and factually incorrect. It is *legally irrelevant* because it is not a condition for document production that the Respondent already has established the facts and circumstances in support of which it is seeking the production of documents. The relevant test is that the requested documents are relevant and material to the Respondent’s defense (as they have been shown to be in the preceding paragraph). The Claimant’s allegation is furthermore *factually incorrect* since the Respondent in fact already has shown how the evidence already on record indicates that (i) Schwarz Cranz had no intention to maintain JHSF’s activities in China, but instead sought to exit the country and maximize compensation in the negotiations (Respondent’s Counter-Memorial, § 36; **Exhibit R-0043**), (ii) the compensation offered to JHSF was sufficient for it to relocate to a new site in Jinan (Respondent’s Counter-Memorial, §§ 125-126, 188) and therefore, (iii) had the Claimant actually wished to maintain JHSF’s operation, it could and should have accepted the compensation offered to JHSF and relocated JHSF to a new production site (Respondent’s Counter-Memorial, §§ 6, 14, 189-190, 343-344). In other words, the record already

contains abundant evidence that the alleged loss of JHSF's business resulted from the Claimant's own business decisions. As to the documents cited by the Claimant to purport to demonstrate that "*whatever internal dispute the shareholders may have had, it did not stop JHSF from continuing to operate as a profitable business*", (namely **Exhibits C-0036, C-0037, C-0038, C-0039, C-0040**), none of them supports the Claimant's position. **Exhibit C-0037** and **C-0038** are audited financial statements for 2010 and 2012, respectively, years before the expropriation of JHSF's land use right and buildings, **Exhibit C-0039** is unrelated to JHSF's profitability, and **Exhibit C-0040** is an internal document that does not mention any source, has no probative value and does not say anything of JHSF's future activities. Finally, the Claimant is particularly disingenuous in relying on **Exhibit C-0036** to purport to argue that JHSF was allegedly "*continuing to operate as a profitable business*" after 2014, when it itself admits in its objections to Request No. 12 that **Exhibit C-0036** in fact relates to activities performed "*in 2003-2004*", that is, years before the expropriation of JHSF's land use right and buildings. At any rate, the Claimant's misrepresentations in respect of these documents confirm that the consequences of the internal dispute between the Claimant's shareholders on JHSF's business are in debate, further highlighting the relevance and materiality of the documents requested by the Respondent.

Fourth, far from constituting a "*fishing expedition*" and placing any "*heavy burden*" on the Claimant, Request No. 2 refers to a narrow and specific category of documents in that it specifically describes the nature ("*resolutions of the board of directors or the shareholder(s) of Hela Gewürzwerk relating to Hela Spice (Jinan) Co. Ltd*") and "*[d]ocuments containing or reflecting discussions or other communications concerning Hela Gewürzwerk's decision to set up a fully-owned separate entity or to build a new factory in Jinan*") and date range (2014 to 2016) of the documents requested. It is also difficult to understand how producing board resolutions would place any "*heavy burden*" on the Claimant.

Finally, there is no basis to the Claimant's objection that it "*does not have possession, custody or control over internal documents of Hela Gewürzwerk*". It is well established in the case law and doctrine that documents in the possession, custody or control of a shareholder of one of the parties to the arbitration are considered to be in the possession, custody or control of that party.¹ Tellingly,

¹ See, for example, Reto Marghitola, *Document Production in International Arbitration* (Kluwer Law International, 2015), pp. 66-67, **Exhibit RL-0176** ("*...* the wording and purpose of Article 3(3)(c) IBA Rules seem to favour a wide interpretation of the expression 'possession, custody or control'. Accordingly,

	<p>the Claimant has not even attempted to substantiate that objection or explain why, in circumstances where Hela Gewürzwerk and Schwarz Craz own the Claimant equally, it could not easily obtain the requested document from its shareholders. Further, the Claimant had no difficulty producing with its Memorial documents issued by Hela Gewürzwerk, which confirms that it has access to these documents. At any rate, all internal documents exchanged with Hela Schwarz are squarely within the possession, custody and control of the Claimant.</p> <p>The Respondent therefore respectfully requests the Tribunal to order the production of all documents responsive to Request No. 2.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld as regards the following documents in the possession, custody or control of the Claimant:</p> <ul style="list-style-type: none"> • resolutions of the board of directors or shareholder/s of Hela Gewürzwerk relating to Hela Spice (Jinan) Co. Ltd between 2012 and 2014 insofar as they concern the decision to build a new factory for Hela Spice (Jinan) Co. Ltd, and • documents presented to the board of directors or shareholder/s of Hela Gewürzwerk relating to Hela Spice (Jinan) Co. Ltd between 2012 and 2014 insofar as they concern the decision to build a new factory for Hela Spice (Jinan) Co. Ltd. <p>For completeness, the Tribunal recalls paragraph 12 of Procedural Order No. 5, above.</p>

this book suggests the following definition: Documents are in the possession, custody or control of a party if the party or an entity of the same group of companies holds the requested documents or has a right to obtain the requested documents”) (emphasis added); Virginia Hamilton, “Document Production in ICC Arbitration”, in *ICC Bulletin, 2006 Special Supplement: Document Production in International Arbitration*, p. 74, **Exhibit RL-0177** (reporting a tribunal composed of European and North American arbitrators ruled as follows: “[...] ‘possession, custody or control’ shall include documents [...] (i) within the same group as Claimant or Respondent, as the case may be [...] An entity shall be deemed to belong to the same group as Claimant or Respondent if such entity directly or indirectly owns or controls Claimant or Respondent, or is directly or indirectly owned or controlled by Claimant or Respondent, or is directly or indirectly owned or controlled by the same entity as Claimant or Respondent.”) (emphasis added).

Document Request No.	3
<p>A. Documents or category of documents requested</p>	<p>Documents prepared by, for or exchanged with the Claimant between 2013 and 2016 regarding the attempt(s) of Hela Gewürzwerk to buy Schwarz Cranz’s interest in the Claimant in or after 2014, including:</p> <ol style="list-style-type: none"> (1) “[P]revious emails” relating to the “<i>negotiations with Laue on a buyout</i>” from Mr Scheil, as mentioned in the email from Mr Scheil to Mr Naujoks dated 19 July 2014 (<i>see Exhibit C-0075</i>), as well as the replies to those emails and to Exhibit C-0075; (2) the agreement between Hela Gewürzwerk and Schwarz Cranz dated about 6 August 2015 (<i>see Judgment of the Higher Regional Court Schleswig-Holstein dated 28 September 2016, Exhibit R-0016</i>); (3) Documents including correspondence relating to the negotiations of the agreement between Hela Gewürzwerk and Schwarz Cranz of about 6 August 2015; (4) Documents such as bank transfers showing that Hela Gewürzwerk paid EUR 5 million to Schwarz Cranz as the first installment to buy out Schwarz Cranz’s shares in or shortly before December 2015 (<i>see Report to Jinan Government by Hela dated 16 December 2015, Exhibit R-0043</i>), as well as Documents showing payment of any other sums by Hela Gewürzwerk from December 2015 until today in that respect; and (5) Documents including correspondence relating to the steps taken by Hela Gewürzwerk and/or Schwarz Cranz in relation to the implementation (or non-implementation) of the agreement between Hela Gewürzwerk and Schwarz Cranz dated about 6 August 2015.
<p>B. Relevance and materiality: (1) para ref to submissions (2) comments</p>	<ol style="list-style-type: none"> (1) (i) Respondent’s Preliminary Objections, §§ 19-24; and (ii) Respondent’s Counter-Memorial, §§ 24-28, 36. (2) The Respondent argues that the co-venture between the shareholders of the Claimant long turned sour and that the Claimant is misusing investment arbitration to make a profit out of an abandoned tie-up. In particular, as the Respondent explained in its Counter-Memorial, Hela Gewürzwerk and Schwarz Cranz had agreed in the summer of 2015 to end their

	<p>venture, but the deal foundered on the amount of compensation that Schwarz would receive from Hela.</p> <p>The requested Documents are relevant and material because they will elucidate the circumstances in which Schwarz Cranz attempted to exit the venture in 2015, as well as they will confirm the monetary compensation that Schwarz Cranz obtained from Hela Gewürzwerk at the time and the value that Hela Gewürzwerk and Schwarz Cranz themselves ascribed to their shares in the Claimant at the time. This will further establish the Respondent’s case (i) that the Claimant’s shareholder(s) had decided to discontinue the joint venture in China independently from the matters now claimed in the present arbitration to constitute a violation of the Respondent’s international treaty obligations that purportedly brought about the end of JHSF and (ii) that the Claimant’s purported valuation of damages is grossly overinflated as compared to its own assessment of the value of its shares in JHSF at the time.</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>The Claimant objects to the relevance of the requested documents.</p> <p>Again, it is undisputed that there was an internal dispute between the shareholders of the Claimant and that termination of the cooperation was considered. For the reasons explained above (see objections to Request no. 2), documents aimed at further illustrating the dispute between the shareholders of the Claimant are neither relevant nor material to the outcome of the dispute.</p> <p><u>Regarding point (5)</u>, the Claimant also notes that this request lacks specificity and narrowness. “Implementation” is vague and thus there is a broad array of activities that could potentially fall under this request.</p>
<p>D. Reply</p>	<p>The Claimant having objected to this Request on grounds identical to its objections to Request No. 2, the Respondent refers the Tribunal to its reply to the Claimant’s objections in relation to Request No. 2.</p> <p>In addition to the Respondents’ arguments in relation to Request No. 2, the Respondent notes that the relevance and materiality of the documents requested under Request No. 3 (namely documents “<i>regarding the attempt(s) of Hela Gewürzwerk to buy Schwarz Cranz’s interest in the Claimant in or after 2014</i>”) is confirmed in the clearest terms by JHSF’s own Audit Reports for 2015 and 2016, which the Claimant produced in response to</p>

	<p>Request No. 9 (see new Exhibit R-0085 and R-0086). These audit reports both refer to the agreement between Hela Gewürzwerk and Schwarz Cranz dated 6 August 2015, which the Respondent requests under point (2) of Request No. 3 above. According to the audit reports, pursuant to the agreement dated 6 August 2015, there was between the Claimant’s shareholders an “<i>initial agreement to shut down [JHSF]</i>”. The agreement dated 6 August 2015 (and all other documents related to the buy-out negotiations) are therefore directly relevant and material to the Respondent’s position that the Claimant had no intention to pursue JHSF’s activities in China.</p> <p>Regarding the Claimant’s objection that point (5) allegedly lacks “<i>specificity and narrowness</i>”, the Respondent observes that point (5) is expressed as narrowly as possible given that the Respondent has not been able to review the agreement between Hela Gewürzwerk and Schwarz Cranz dated on or about 6 August 2015 (<i>see</i> point (2)). Specifically, Point (5) refers to a narrow and specific category of documents in that it specifically identifies (i) the subject matter of the requested documents (“<i>relating to the steps taken by Hela Gewürzwerk and/or Schwarz Cranz in relation to the implementation (or non-implementation) of the agreement between Hela Gewürzwerk and Schwarz Cranz dated about 6 August 2015</i>”), as well as (ii) a reasonable date range (“<i>between 2013 and 2016</i>”).</p> <p>The Respondent therefore respectfully requests the Tribunal to order the production of all documents responsive to Request No. 3.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld as regards:</p> <ul style="list-style-type: none"> • emails from Mr Scheil relating to the negotiations with Laue on a buyout, as well as the replies to those emails and to the email at Exhibit C-0075; • the agreement between Hela Gewürzwerk and Schwarz Cranz dated about 6 August 2015; • documents including correspondence, between 1 January and 31 December 2015, relating to the negotiations of the agreement between Hela Gewürzwerk and Schwarz Cranz of about 6 August 2015; • documents such as bank transfers, between 1 October 2015 to 31 December 2016, showing payments by Hela

	<p>Gewürzwerk to Schwarz Crazn in respect of the buy-out of Schwarz Crazn's shares; and</p> <ul style="list-style-type: none">• documents including correspondence, between 1 January and 31 December 2015, relating to the steps taken by Hela Gewürzwerk and/or Schwarz Crazn in relation to the implementation (or non-implementation) of the agreement between Hela Gewürzwerk and Schwarz Crazn dated about 6 August 2015.
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Document Request No.	4
A. Documents or category of documents requested	<p>Documents prepared by, for or exchanged with the Claimant between 2013 and 2017 regarding the formulation and implementation of JHSF’s business strategy and objectives, including any analysis or discussion of:</p> <p>(1) which markets to target;</p> <p>(2) which products or businesses to include or exclude from JHSF’s portfolio;</p> <p>(3) whether to grow JHSF, and if so, how;</p> <p>(4) which capabilities and technologies to develop; and</p> <p>(5) how to differentiate JHSF from its competitors.</p>
B. Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) (i) Respondent’s Preliminary Objections, §§ 19-24; and (ii) Respondent’s Counter Memorial, §§ 24-28, 36.</p> <p>(2) The requested Documents are relevant and material because they will further corroborate the Respondent’s position that the Claimant’s shareholder(s) had decided to end their joint venture in China independently from the matters now alleged in the present arbitration to have caused the end of JHSF.</p>
C. Summary of objections by disputing Party to production of requested documents	<p>Such documents are not known to exist. The Claimant will produce a shareholder’s resolution of 7 February 2008 by which the shareholders expressly agreed that such plans would not have to be documented in writing, but only reported orally.</p> <p>In any event, such documents would be neither relevant nor material. There is ample evidence that JHSF was operating as a profitable and successful business (see paras. 45 – 52 of the Claimant’s Memorial on the Merits; see also Exhibits C-0036, C-0037, C-0038, C-0039, C-0040) and that it continued its operation up to the demolition of the buildings in December 2017 (see paras. 52, 142, 144 – 145 of the Claimant’s Memorial on the Merits; see also Exhibits C-0039, C-0040, C-0098).</p> <p>With regard to the relevance of the shareholders’ dispute, reference is made to the Claimant’s objection to Request no. 2.</p>
D. Reply	None of the Claimant’s objections in relation to Request No. 4 is valid.

	<p><i>First</i>, the Claimant’s assertion that no document exists regarding the formulation and implementation of JHSF’s business strategy and objectives is implausible and contradicted by the content of the resolution dated 7 February 2008 produced by the Claimant (see new Exhibit R-0083). Point (2) of that resolution states that no written records of <u>daily</u> business in relation to the annual financial planning and management reports of JHSF will be drawn up, which confirms that such annual planning and management reports exist in the first place. Likewise, point (4) of the resolution states that <u>documents</u> such as plans, monthly profit and loss accounts and similar processes will be explained verbally to the shareholders, which confirms that such documents exist in the first place (as in any normally operating company). It is implausible that, had JHSF been the flourishing business the Claimant depicts, such business was managed without planning, management reports or profit and loss accounts.</p> <p><i>Second</i>, the documents requested are squarely relevant and material to the Respondent’s position in this arbitration, as they will confirm that the Claimant did not intend to pursue its business operations in China as a result of the internal dispute between its shareholders. As mentioned in relation to Request No. 2, the Claimant’s contention that “[t]here is ample evidence that JHSF was operating as a profitable and successful business” is factually incorrect (as the Claimant misrepresents the content of the evidence on record, which in fact points to the opposite conclusion) and in any event legally irrelevant for the purpose of this document production (since the test is not whether the Parties have established their allegations but whether the documents requested are relevant to these allegations, which they plainly are).</p> <p>The Respondent therefore respectfully requests the Tribunal to order the production of all documents responsive to Request No. 4.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld as regards documents prepared by, for or exchanged with the Claimant between 2013 and 2017 regarding JHSF’s business strategy and objectives in China.</p> <p>For completeness, the Tribunal recalls paragraph 12 of Procedural Order No. 5, above.</p>

Document Request No.	5
A. Documents or category of documents requested	<p>Documents prepared by, for or exchanged with the Claimant regarding the attempts by Hela Gewürzwerk or Schwarz Cranz to appoint or remove any director(s) of the Claimant or JHSF between 2013 and 2016, including:</p> <ol style="list-style-type: none"> <li data-bbox="581 415 1414 667">(1) Documents dated between 2013 and 2014 (including resolutions of the board of directors or the shareholders of the Claimant and any Documents containing or reflecting discussions or other communications in that regard) relating to the removal of Mr Heiko Griese as a director of the Claimant in 2014 (<i>see</i> Excerpt of Commercial Register of Hela-Schwarz GmbH dated 13 March 2018, Exhibit R-0024); <li data-bbox="581 699 1414 877">(2) Documents dated between 2013 and 2015 regarding Hela Gewürzwerk’s attempt to appoint a director of the Claimant and the objections or responses from Schwarz Cranz (<i>see</i> Judgment of the Higher Regional Court Schleswig-Holstein dated 28 September 2016, Exhibit R-0016); <li data-bbox="581 909 1414 1203">(3) the “[D]ocument dated 21 October 2015” and any other Documents through which Mrs Kristin Schwarz “<i>revoked the appointment of Heiko [Griese] as Chairman and Paul Otto [Schwarz] as members of the board of directors of [JHSF] and appointed Messrs An J. (as chairman) and Lu Zai X. as new members</i>” as described in the Judgment of the Higher Regional Court Schleswig-Holstein dated 28 September 2016 (<i>see</i> Exhibit R-0016); <li data-bbox="581 1234 1414 1486">(4) Documents (including internal correspondence, judgments, court orders, submissions, pleadings, exhibits or statements) dated between 2015 and 2016 relating to the court cases concerning Schwarz Cranz’s attempt(s) to change the directors of JHSF, including in the cases before the Lübeck Regional Court and the Schleswig-Holstein Higher Regional Court, File No.: 9 U 36/16 (<i>see</i> Exhibit R-0016); and <li data-bbox="581 1518 1414 1770">(5) Documents (including internal correspondence, submissions, pleadings, exhibits or statements) dated between 2015 and 2016 regarding the judgment on “<i>interim injunction</i>” dated 9 February 2016 as well as the court’s judgment or order itself, as described in the Judgment of the Higher Regional Court Schleswig-Holstein dated 28 September 2016 (<i>see</i> Exhibit R-0016).

<p>B. Relevance and materiality: (1) para ref to submissions (2) comments</p>	<p>(1) (i) Claimant’s Memorial, § 25; (ii) Respondent’s Preliminary Objections, §§ 23, 25-26; and (iii) Respondent’s Counter-Memorial, §§ 27, 29-30, 32.</p> <p>(2) It is the Respondent’s case that the co-venture between the shareholders of the Claimant ended in acrimony and that this is the real reason for the present ICSID case, rather than any treatment of JHSF by the Respondent’s authorities in China as alleged. In particular, the Respondent showed in its Counter-Memorial how Mrs Kristin Schwarz relied on her invalid removal and appointment of the directors of JHSF to instigate a raid of JHSF’s premises in March 2017.</p> <p>The requested Documents are relevant and material because they will elucidate the circumstances of the dispute between the Claimant’s co-owners and the attempts by Mrs Schwarz to take control of JHSF at the expense of Hela Gewürzwerk. These documents will further establish the Respondent’s position that any difficulties said to have befallen JHSF are solely imputable to the Claimant and its co-owners’ conduct.</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>The Claimant objects to the relevance of this request for the reasons set out in the Claimant’s objection to Requests no. 2 and 3.</p> <p>The Claimant further notes that the categories of documents described in points (4) and (5) of this Request lack the required narrowness and specificity and would place an excessive burden on the Claimant.</p>
<p>D. Reply</p>	<p>The Claimant having objected to this Request on grounds identical to its objections to Requests No. 2 and 3, the Respondent refers the Tribunal to its reply to the Claimant’s objections under Requests No. 2 and 3.</p> <p>Regarding the Claimant’s objection that points (4) and (5) allegedly “<i>lack the required narrowness and specificity</i>” and would place “<i>an excessive burden on the Claimant</i>”, the Respondent observes that points (4) and (5) are expressed as narrowly as possible. Specifically, point (4) refers to a narrow and specific category of documents in that it specifically identifies (i) the subject matter of the requested documents (“<i>relating to the court cases concerning Schwarz Cranz’s attempt(s) to change the directors of JHSF, including in the cases before the Lübeck Regional Court and the Schleswig-Holstein Higher Regional</i></p>

	<p><i>Court, File No.: 9 U 36/16</i>) as well as (ii) a reasonable date range (“<i>between 2015 and 2016</i>”).</p> <p>Likewise, point (5) refers to a narrow a specific category of documents in that it specifically identifies (i) the subject matter of the requested documents (“<i>regarding the judgment on ‘interim injunction’ dated 9 February 2016</i>”) as well as (ii) a reasonable date range (“<i>between 2015 and 2016</i>”). The Respondent also provided a specific example of documents responsive to the request (“<i>the court’s judgment or order itself, as described in the Judgment of the Higher Regional Court Schleswig-Holstein dated 28 September 2016</i>”).</p> <p>The Respondent therefore respectfully requests the Tribunal to order the production of all documents responsive to Request No. 5.</p>
E. Decision of the Tribunal	<p>The request is upheld as regards the following documents, insofar as they address the appointment or removal of any director of the Claimant or JHSF between 2013 and 2016:</p> <ul style="list-style-type: none"> • resolutions of the board of directors or shareholders of the Claimant; • documents concerning the appointment of Heiko Griese as Chairman and Paul Otto Schwarz as members of the board of directors of JHSF and the appointment of Messrs An J. and Lu Zai X. as new members. <p>Other elements of the request are denied on grounds of proportionality and unreasonable burden.</p>

Document Request No.	6
A. Documents or category of documents requested	<p>Documents prepared by, for or exchanged with the Claimant from 2016 to 2017 regarding the incident of 31 March 2017, whereby Mr Helmut Naujoks and others attempted to break into JHSF’s factory and office building without authorization (<i>see</i> Civil Judgment of the People’s Court of Jinan Licheng District Court dated 16 March 2018, Exhibit R-0072), including:</p> <p>(1) any decision of the Claimant (including Mrs Schwarz) to take control of the premises of JHSF; and</p> <p>(2) Documents containing or reflecting discussions or assessments of that incident (including between Mrs Schwarz, any representatives of Hela Gewürzwerk or Schwarz Cranz, any lawyers from Dentons, Mr Naujoks or any other lawyers from his firm, Mr An Jie or Mr Lu Zaixin).</p>
B. Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Respondent’s Counter-Memorial, §§ 32-33.</p> <p>(2) The Respondent contends that JHSF was jettisoned for reasons unrelated to any treatment by China amidst quarrelling and dissension between its ultimate co-owners. The requested Documents will shed light on the reasons behind the co-owners’ quarrels and the true motives for the Claimant’s commencement of this arbitration.</p>
C. Summary of objections by disputing Party to production of requested documents	The Claimant objects to the relevance of this request for the reasons set out in the Claimant’s comments to Requests no. 2 and 3.
D. Reply	The Claimant having objected to this Request on grounds identical to its objections to Requests No. 2 and 3, the Respondent refers the Tribunal to its reply to the Claimant’s objections under Requests No. 2 and 3, and respectfully requests the Tribunal to order the production of all documents responsive to Request No. 6.
E. Decision of the Tribunal	<p>This request is upheld.</p> <p>For completeness, the Tribunal recalls paragraph 13 of Procedural Order No. 5, above.</p>

Document Request No.	7
A. Documents or category of documents requested	<p>Documents prepared by, for or exchanged with the Claimant regarding the report to the Jinan Government by Hela Gewürzwerk dated 16 December 2015 (<i>see Exhibit R-0043</i>), including Documents used in the report’s preparation or discussing its contents, and in particular in relation to the following statements in that report:</p> <p>(1) <i>“According to the [Mrs] Schwarz’ behavior, [Hela Gewürzwerk] feel that the focus has been in Jinan Hela Schwarz to maximise demolition compensation”;</i></p> <p>(2) <i>“[Mrs] Schwarz assigned business spy to sneak into Hela Jinan for sensitive business information with Shanghai audit firm during Nov 3-7, 2014”;</i> and</p> <p>(3) <i>“Schwarz [Cranz] once had an idea to start meat processing business in China, but the idea has never been implemented”.</i></p>
B. Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Respondent’s Counter-Memorial, §§ 23-24, 36 and footnote 34.</p> <p>(2) The requested Documents are relevant and material because they will further demonstrate that the Claimant is in truth attempting to <i>“maximise”</i> compensation, by whatever means necessary and irrespective of the value of JHSF’s assets or what may be appropriate, rather than being concerned about the continued operation of JHSF and an actual violation of international law. This will further show the allegations concerning the Respondent’s treaty obligations to lack merit.</p>
C. Summary of objections by disputing Party to production of requested documents	The Claimant objects to the relevance of this request for the reasons set out in the Claimant’s comments to Requests no. 2 and 3.
D. Reply	<p>The Claimant having objected to this Request on grounds identical to its objections to Requests No. 2 and 3, the Respondent refers the Tribunal to its reply to the Claimant’s objections under Requests No. 2 and 3.</p> <p>The documents requested are particularly relevant and material to this arbitration, as they will likely confirm that, contrary to the Claimant’s allegations, the Claimant had decided to exit the</p>

	<p>Chinese market as a result of the dispute between its shareholders.</p> <p>The Respondent therefore respectfully requests the Tribunal to order the production of all documents responsive to Request No. 7.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld as regards documents prepared by, for or exchanged with the Claimant regarding the report to the Jinan Government by Hela Gewürzwerk dated 16 December 2015.</p>

Document Request No.	8
A. Documents or category of documents requested	<p>Documents prepared by, for or exchanged with the Claimant in or after 2018 regarding any insolvency proceedings over the Claimant (whether provisional or otherwise), such as any internal communications or analyses, submissions (including the “<i>petition to commence insolvency proceedings</i>”), pleadings, exhibits, statements or any other Documents filed in the cases arising from the potential insolvency of the Claimant (File No.: 8 IN 35/18), as well as the decisions by the courts or other authorities of Germany in such proceedings (<i>see</i> Decision of Reinbek Local Court, 2 May 2018, Exhibit R-0022; Decision of Reinbek Local Court, 22 May 2018, Exhibit R-0023).</p>
<p>B. Relevance and materiality: (1) para ref to submissions (2) comments</p>	<p>(1) (i) Respondent’s Preliminary Objections, § 28; and (ii) Respondent’s Counter-Memorial, § 34.</p> <p>(2) The Respondent submits that, whatever problems the Claimant or JHSF may have had, they had nothing to do with any treatment by the Respondent. The requested Documents are relevant and material because they will show that the shareholder(s) of the Claimant had decided to abort and wind up the joint venture for reasons of their own.</p> <p>The requested Documents will also influence the determination of quantum and recoverability of losses claimed, as they likely contain financial information on the assets and financial stability of the Claimant, which the Claimant has withheld in this arbitration.</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>The Claimant objects to the relevance of this request for the reasons set out in the Claimant’s comments to Requests no. 2 and 3.</p> <p>As a reminder, the petition to commence provisional insolvency proceedings referenced by the Respondent was declared inadmissible on 29 May 2018. The District Court of Lübeck confirmed the inadmissibility on 10 September 2018 (<i>see</i> Claimant’s Observations of 29 October 2018 on Respondent’s Request for Bifurcation, para. 11).</p> <p>With regard to the financial situation of the Claimant, reference is made to the documents to be produced by the Claimant in response to Request no. 9. Such documents contain all the relevant information for assessing JHSF’s and the Claimant’s financial situation at all material times.</p>

	<p>In addition, the request lacks the required narrowness and would place an excessive burden on the Claimant.</p>
<p>D. Reply</p>	<p>The Claimant having objected to this Request on grounds identical to its objections to Requests No. 2 and 3, the Respondent refers the Tribunal to its reply to the Claimant’s objections under Requests No. 2 and 3.</p> <p>The documents requested are particularly relevant and material to this arbitration, as they will likely confirm that, after Hela’s decision to set up its own, separate production facility, JHSF’s business could be neither prosperous nor sustainable. The requested documents will also likely confirm that the Claimant’s shareholders had decided to abort and wind up the joint venture for reasons of their own. Contrary to the Claimant’s contention, whether the petition to commence provisional insolvency proceedings was eventually granted or not does not make the requested documents any less relevant.</p> <p>Regarding the Claimant’s objection that the request allegedly “<i>lacks the required narrowness</i>” and would place “<i>an excessive burden on the Claimant</i>”, the Respondent observes that the request is expressed as narrowly as possible. Specifically, the request refers to a narrow and specific category of documents in that it specifically identifies (i) the subject matter of the requested documents (“<i>regarding any insolvency proceedings over the Claimant (whether provisional or otherwise)</i>”) as well as (ii) a reasonable date range (“<i>in or after 2018</i>”). The Respondent also provided specific examples of documents responsive to the request (“<i>any internal communications or analyses, submissions (including the ‘petition to commence insolvency proceedings’), pleadings, exhibits, statements or any other Documents filed in the cases arising from the potential insolvency of the Claimant (File No.: 8 IN 35/18), as well as the decisions by the courts or other authorities of Germany in such proceedings</i>”).</p> <p>The Respondent therefore respectfully requests the Tribunal to order the production of all documents responsive to Request No. 8.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld as regards internal communications or analyses prepared by or for the Claimant in or after 2018 regarding any insolvency proceedings over the Claimant.</p> <p>Other elements of the request are denied on grounds of proportionality and unreasonable burden.</p>

Document Request No.	9
<p>A. Documents or category of documents requested</p>	<p>Documents prepared by, on behalf of, or for, or provided to the Claimant regarding the Claimant’s and JHSF’s financial position, net asset value, return and growth from 2011 until today, including:</p> <ul style="list-style-type: none"> (1) balance sheets, income statements and cash flow statements; (2) audited and unaudited accounts of JHSF for the years 2011 and 2013 to 2018; (3) annual board reports, executive resolutions, financial disclosures, meeting minutes and reports; (4) budgets, financial projections and forecast financial statements; (5) Documents used in the preparation of what is said to be JHSF’s Quarterly Statements for the year 2017 (<i>see Exhibit C-0040</i>), including the corresponding Excel spreadsheet(s) in native format and detailed underlying spreadsheets for each profit and loss item; and (6) to the extent not already covered above, any materials used in any determination of monetary loss and damage supposedly suffered by the Claimant and/or JHSF.
<p>B. Relevance and materiality: (1) para ref to submissions (2) comments</p>	<ul style="list-style-type: none"> (1) (i) Claimant’s Memorial §§ 48-52; and (ii) Respondent’s Counter-Memorial, §§ 14, 35, 330, 345-355. (2) The requested Documents are relevant and material to the determination of damages, if any, in this case. They will also bear on whether or not the Claimant ever suffered a substantial deprivation of value, which in turn influences the determination of liability for expropriation. In particular, the requested Documents will further support the Respondent’s position that JHSF was not a thriving business and that the damages claimed by the Claimant are unwarranted and speculative. <p>The Claimant has to date only submitted audited financial statements of JHSF for the years of 2010 and 2012 (<i>see Exhibit C-0037</i> and <i>Exhibit C-0038</i>). The requested Documents will show the true picture of JHSF’s operating results in recent years.</p>

<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>The Claimant has no objection in principle to providing the documents described in this request. It will produce all documents in its possession that are believed to fall within the categories identified above.</p> <p>As regards JHSF, this includes a) all requested audit reports from 2011 to 2018, which contain balance sheets, income statements and cash flow statements, b) target figures of September 2015, and c) an excel spreadsheet regarding (i) turnover and profit for the years 1996 to 1999, 2003 and 2009 to 2014 (ii) balance sheet results for the years 2012 to 2014 (iii) financial forecasts for the years 2015 to 2017 and (iv) balance sheets for the years 2013 and 2014.</p> <p>As regards the Claimant, the provided documents include annual reports for the years 2011 to 2013 (containing the relevant balance sheets and, for 2012 and 2013, a profit and loss calculation), as well as balance sheets for the years 2014 to 2016. It is noted that no annual reports of the Claimant are available for the period between 2014 and the present.</p>
<p>D. Reply</p>	<p>The Respondent notes the Claimant’s agreement to this request but observes that, although the Claimant has provided a number of documents, it has not specified to which points of the request these documents were responsive. The documents produced by the Claimant seem to be responsive to points (1)-(2) of the request, but no documents appears to have been produced in response to points (3) to (6).</p> <p>For the avoidance of doubt, the Respondent reiterates that Request No. 9 is not limited to the documents listed under points (1) to (6) but covers, more generally, all “[d]ocuments prepared by, on behalf of, or for, or provided to the Claimant regarding the Claimant’s and JHSF’s financial position, net asset value, return and growth from 2011 until today”. In particular, it is difficult to believe that a normally operating company would not have issued annual board reports, executive resolutions, financial disclosures, meeting minutes and reports, budgets, financial projections and forecast financial statements, which are requested under points (3) and (4).</p> <p>The Respondent therefore respectfully requests that the Tribunal order the production of any other documents responsive to Request No. 9, including all documents responsive to points (3) – (6).</p>

E. Decision of the Tribunal	This request is upheld as regards the six items specifically identified in the request but not more broadly, on grounds of proportionality and unreasonable burden.
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Document Request No.	10
A. Documents or category of documents requested	<p>Documents prepared by, on behalf of, or for, or provided to the Claimant regarding the value of the Claimant's shares in JHSF from 2011 until today, including:</p> <p>(1) comparisons of valuation ratios with equivalent public companies;</p> <p>(2) net tangible asset calculations;</p> <p>(3) internal rate of return assessments; and</p> <p>(4) discussions or analyses of the above.</p>
B. Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) (i) Claimant's Memorial §§ 48-52; (ii) Respondent's Preliminary Objections §§ 99-108; and (iii) Respondent's Counter-Memorial, §§ 14, 35, 182-183, 191, 330, 345-355.</p> <p>(2) The requested Documents will bear on liability for expropriation and the determination of monetary damages, if any. They will show that there was no diminution in share value because of any actions attributable to the Respondent and engaging its international responsibility.</p> <p>Furthermore, the requested Documents will show that the Claimant has failed to meet the investment requirements of the ICSID Convention and the BIT. Specifically, they are an element of the Respondent's case that the Claimant has not suffered any loss or damage and is instead attempting to bring a claim in respect of a subsidiary's assets rather than making a shareholder claim in its own right, as it must.</p>
C. Summary of objections by disputing Party to production of requested documents	Such documents are not known to exist.
D. Reply	The Respondent takes note of the Claimant's representation that the documents requested are not known to exist. In light of this, the Respondent does not seek further orders from the Tribunal in relation to Request No. 10 at this stage.
E. Decision of the Tribunal	The Tribunal notes that this request is withdrawn.

Document Request No.	11
<p>A. Documents or category of documents requested</p>	<p>Documents prepared by, for or exchanged with the Claimant between 1999 and 2001 regarding JHSF’s acquisition of land use rights and buildings in or about 2001, including:</p> <ol style="list-style-type: none"> (1) the signed version of the Letter of Intent for the Transfer of Land from Eastern Foundation to JHSF dated 10 February 2000 (<i>see Exhibit C-0027</i>) and Annexes 1-3 to the same letter; (2) Annexes 1-7 to the Land Use Right and Building Transfer Agreement between Eastern Foundation and JHSF dated 10 May 2001 (<i>see Exhibit C-0033</i>); (3) bank transfers or any other Documents evidencing the payment of RMB 3,592,04.66 for JHSF’s purchase of the land use right in 2001 (<i>see Exhibit C-0034</i>); and (4) bank transfers or any other Documents evidencing the alleged payment of RMB 17,430,000 for JHSF’s purchase of the existing development on the land in 2001 (<i>see Exhibit C-0035</i>).
<p>B. Relevance and materiality: (1) para ref to submissions (2) comments</p>	<ol style="list-style-type: none"> (1) (i) Claimant’s Memorial, §§ 44-46; and (ii) Respondent’s Counter-Memorial, §§ 123, 197. (2) The requested Documents are <i>inter alia</i> relevant and material to the Respondent’s claim that the compensation offered to JHSF was adequate and in accordance with Chinese law and the BIT. In particular, the requested Documents will demonstrate that JHSF paid the price of the land use rights at issue as land use rights for industrial use, and that the price paid for these land use rights was much less than what JHSF was offered as compensation for them.
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>Except for the signed Letter of Intent of 10 February 2000, the requested documents are no longer in the Claimant’s possession, custody or control. In any event, the Claimant objects to the relevance and materiality of the documents described in this request.</p> <p>As a general matter, the Claimant objects to the relevance and materiality of documents that would “<i>demonstrate that JHSF paid the price of the land use rights at issue as land use rights for industrial use</i>”, as this fact is not disputed: It is common ground between the Parties that JHSF’s land use right was for industrial use (<i>see para. 45 of the Claimant’s Memorial on the Merits</i>).</p>

	<p>As regards the price paid for the land use right, the Claimant refers to the evidence already on record (see paras. 45 – 46 of the Claimant’s Memorial on the Merits; see in particular Exhibits C-0034, C-0035).</p> <p>With regard to the documents respectively requested under points (1) to (4), the Claimant further notes the following:</p> <p><u>Regarding point (1):</u> The signed version of Exhibit C-0027 is already on the record. The annexes to this document are no longer in the Claimant’s possession. However, the Claimant does not believe that the annexes (listed at the end of p. 2) would have contained any information regarding the price of the land-use right.</p> <p><u>Regarding point (2):</u> The annexes to this document (Exhibit C-0033) are no longer in the Claimant’s possession. In any event, the Claimant objects to the relevance of those annexes (listed at p. 2), which are unlikely to provide any further information regarding the price paid by the Claimant beyond the evidence already on record.</p> <p><u>Regarding points (3) and (4):</u> The Claimant notes that, as is undisputed by the Respondent, JHSF was the valid owner of the land-use right of the land plot concerned as well as valid owner of the buildings on the land. The Respondent fails to mention any ground to believe that these amounts of money were not transferred.</p>
D. Reply	<p>None of the Claimant’s objections in relation to Request No. 11 is valid.</p> <p><i>First</i>, the Claimant has failed to explain why the documents requested are allegedly “<i>no longer in the Claimant’s possession, custody or control</i>”. These documents having all been created by, or exchanged with, JHSF, there is no reason to believe that the Claimant is not in their possession, custody or control.</p> <p><i>Second</i>, contrary to the Claimant’s allegations, the documents requested are relevant and material to this arbitration as they bear on the amount at which, and conditions under which, JHSF acquired its land use right and buildings. These documents are directly relevant and material to the Respondent’s position that the Claimant does not own valid certificates of ownership for some or all of its buildings. They are also directly relevant and material to the Respondent’s position that compensation due to JSHF for the expropriation of its land use right must be assessed by reference</p>

	<p>to the original use of the land use right (and thus any restriction imposed on the use of the land use right at the time of its acquisition would have an impact on the value of that right).</p> <p><i>Third</i>, with respect to points (3) and (4), the Claimant is misconceived in asserting that the Respondent does not dispute that JHSF was the valid owner of its land use right and buildings. As the Respondent pointed, the Claimant has failed to set out and substantiate detail of the sums invested as part of its alleged investment (see Respondent’s Memorial on Preliminary Objections, §§ 107-108). It is also the Respondent’s case that JHSF “<i>did not have valid certificates</i>” for the ownership of the buildings (see Respondent’s Counter-Memorial, §§ 64, 102, 120). The Claimant was made aware of this fact by its counsel as of January 2014 at the latest (see Exhibit C-0046).</p> <p><i>Finally</i>, whether or not some documents on the record refer to the alleged “<i>price paid for the land use right</i>” does not make other documents confirming or contradicting that information irrelevant – to the contrary, the fact that this information is debated confirms the relevance and materiality of the documents requested.</p> <p>The Respondent therefore respectfully requests the Tribunal to order the production of all documents responsive to Request No. 11.</p>
E. Decision of the Tribunal	<p>The request is upheld.</p> <p>For completeness, the Tribunal recalls paragraph 12 of Procedural Order No. 5, above.</p>

Document Request No.	12
<p>A. Documents or category of documents requested</p>	<p>Documents prepared by, for or exchanged with the Claimant between 2013 and 2014 relating to the construction activities carried out on JHSF’s premises in those years (<i>see</i> Expert Review Acceptance Notice regarding buildings on JHSF premises dated 15 May 2014, Exhibit C-0036), including with respect to:</p> <p>(1) the compliance of such construction activities with the freezing notices issued in 2009 and 2012, respectively (<i>see</i> Claimant’s Memorial, § 62, Exhibit C-0048);</p> <p>(2) decision(s) of the board of directors or the shareholders of the Claimant approving the construction activities of JHSF carried out in or about 2013 and 2014; and</p> <p>(3) the contractual Documents entered into by the Claimant, JHSF and third party contractors in or about 2013.</p>
<p>B. Relevance and materiality: (1) para ref to submissions (2) comments</p>	<p>(1) Respondent’s Counter-Memorial, § 60.</p> <p>(2) The requested Documents are relevant and material to the Respondent’s claim that JHSF started to erect new buildings on its land in or about 2013, in an attempt to increase the value of JHSF’s compensation, and despite the clear language of the freezing notices.</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>The Claimant observes that no construction activities were conducted on JHSF’s premises in 2013 and 2014 and that, for that reason, the requested documents do not exist.</p> <p>The Claimant admits a typographical error in Exhibit C-0036, which might have created the impression that JHSF started erecting new buildings on its land in 2013. After verification, the Claimant confirms that this document refers to the construction works performed in 2003-2004, as already indicated at paragraph 47 of the Claimant’s Memorial on the Merits. In this respect, the Claimant refers to Exhibit C-0034, a letter dated 25 March 2004 by Schwarz Cranz GmbH & Co. KG to the bank Hamburger Sparkasse, containing an overview of the expenses incurred by JHSF in relation to the construction activities that were ongoing during that time.</p>
<p>D. Reply</p>	<p>In light of the Claimant’s confirmation that no construction activities was conducted on JHSF’s premises in 2013 and 2014 and that the requested documents therefore do not exist, the</p>

	Respondent does not seek further orders from the Tribunal in relation to Request No. 12 at this stage.
E. Decision of the Tribunal	The Tribunal notes that this request is withdrawn.

Document Request No.	13
A. Documents or category of documents requested	<p>Documents prepared by, for or exchanged with the Claimant regarding discussions or assessments of the approximate amount of expropriation compensation for JHSF’s land use rights and buildings from 2012 until today, including:</p> <p>(1) the report on the value of JHSF’s assets conducted by the “<i>professional asset evaluation agent</i>”, as mentioned in the Internal SNB Memorandum dated 24 January 2014 (<i>see Exhibit C-0035</i>);</p> <p>(2) the “<i>approximate calculation of the Company’s potential settlement obligations in the event of a relocation</i>”, attached to the email from Mr Scheil to Mr Naujoks dated 24 February 2014 (<i>see Exhibit C-0053</i>), as well as any emails or other Documents responding or relating to Exhibit C-0053; and</p> <p>(3) The “<i>information provided by SNB as calculation documents</i>” mentioned in the email from Mr Scharping to Mrs Schwarz dated 16 July 2014 (<i>see Exhibit C-0060</i>).</p>
B. Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Respondent’s Counter-Memorial, §§ 64-67.</p> <p>(2) The requested Documents are relevant to the Respondent’s claim that the compensation awarded to JHSF was adequate and in full accordance with Chinese law and the BIT. In addition, the documentation will further establish the Claimant’s unreasonable and opportunistic conduct when resisting relocation and implementation measures.</p>
C. Summary of objections by disputing Party to production of requested documents	<p>The Claimant has no objections in principle to providing the documents described in this request.</p> <p>With regard to points (1) to (3) in the request, the Claimant notes the following:</p> <p><u>Regarding point (1):</u> The requested document does not exist, as no such professional asset evaluation agent was engaged. The SNB Memorandum submitted as Exhibit C-0035 only refers to the <i>possibility</i> of engaging such an asset evaluation agent.</p>

	<p><u>Regarding point (2):</u> The relevant document (the e-mail submitted as Exhibit C-0053 including its attachment) will be produced. No other emails or other documents responding or relating to Exhibit C-0053 are known to the Claimant.</p> <p><u>Regarding point (3):</u> The relevant document will be produced.</p>
D. Reply	<p>The Respondent notes the Claimant’s agreement to this request and observes that it has provided two documents in response to, respectively, points (2) and (3).</p> <p>The Respondent notes, however, that its request was not limited to the documents listed under points (1) to (3), and covered more generally all “[d]ocuments prepared by, for or exchanged with the Claimant regarding discussions or assessments of the approximate amount of expropriation compensation for JHSF’s land use rights and buildings from 2012 until today”).</p> <p>The Respondent therefore respectfully requests that the Tribunal order the Claimant to produce all documents responsive to Request No. 13.</p>
E. Decision of the Tribunal	<p>The Tribunal notes the Claimant’s statement in respect of item (1) and its offer to make voluntary production of items (2) and (3). The request more broadly is denied on grounds of proportionality and unreasonable burden.</p>

Document Request No.	14
A. Documents or category of documents requested	<p>Documents prepared by, for or exchanged with the Claimant between 2014 and 2017 regarding interactions with local entities or officials in relation to the compensation due for the recovery of JHSF’s land use right and the expropriation of its premises, including:</p> <p>(1) the Documents mentioned in the Internal SNB Memorandum dated 7 March 2014 (<i>see Exhibit C-0069</i>), namely the “<i>feedback</i>” from “<i>Shandong Sanxin Real Property Appraisal & Consulting Co., Ltd.</i>” on whether “<i>they could find a solution to get an appraisal result 10 mio Euro and if they would like to accept the engagement</i>” and any emails or other Documents relating to that “<i>feedback</i>” and proposed engagement;</p> <p>(2) Documents dated 9 June 2014 or thereafter by which Mr Scharping “<i>report[ed] at length</i>” and provided “<i>more information</i>” relating to the meeting with the local authorities on 9 June 2014 and provided “<i>more on the calculations</i>”, as mentioned in the email from Mr Scharping to Mrs Schwarz and Messrs Laue and Voigt (<i>see Exhibit C-0058</i>), as well as any Documents relating to that exchange;</p> <p>(3) the responses, instructions or Documents regarding the email from Mr Scharping to Mrs Schwarz and Mr Laue dated 16 July 2014 (<i>see Exhibit C-0060</i>), in particular relating to the following question from Mr Scharping:</p> <p style="padding-left: 40px;"><i>“The negotiations on 18.7. should be prepared carefully by further exchange; I ask for your advice as soon as possible, so that we may yet, before 18.7., be able to communicate with CECC or the province”.</i></p> <p>(4) the Documents mentioned in the email from Mr Scharping to Mrs Schwarz and Mr Laue dated 18 July 2014 (<i>see Exhibit C-0068</i>), namely:</p> <ul style="list-style-type: none"> i. the “<i>detailed record</i>” of the meeting of 18 July 2014, presumably circulated by Mr Heidemann on or shortly after 18 July 2014; ii. the “<i>previous assessment</i>” by Mr Scharping regarding the possibility of “<i>any material progress</i>” between February and July 2014; and

	<p>iii. the email or any other documents from Mr Scharping where he “[would] address” “a possible further date starting 28.7 in Jinan” on or shortly after 18 July 2014;</p> <p>(5) Documents attached to the email from Mr Scharping to Mrs Schwarz and Mr Laue dated 21 July 2014 (<i>see Exhibit C-0067</i>), namely the “three letters [Mr Scharping, Ms Schwarz and Mr Laue] had communicated about”, and which were described in the email from Mr Scharping to Mrs Schwarz and Mr Laue of 18 July 2014 (Exhibit C-0068), as well as emails or other Documents responding or relating to Exhibit C-0067;</p> <p>(6) Documents from SNB regarding the visit to Mr Zhao and Mr Li on or about 22 July 2014, as mentioned in the email from Ms Xu to Mr Feuerstein dated 21 July 2014 (<i>see Exhibit C-0079</i>), as well as Documents responding to or regarding those Documents; and</p> <p>(7) Documents from SNB regarding or reacting to the following questions from Mr Scharping in his email to Mrs Schwarz and Mr Laue of 23 July 2014 (<i>see Exhibit C-0070</i>):</p> <p><i>“With regard to the application: I understand the title and wording correctly in the sense that – as discussed - Regulation 161 (‘proceeds sharing’) deals with their use as a basis for calculation of compensation; so not a formal procedure, as we would understand here in Germany? Would an application of 161 as a formal procedure otherwise lead to the fact that the shareholders would have to wait for the sale of the area in question until ‘proceeds sharing’ was carried out? This, in addition to the temporal uncertainty, fraught with the risk that the real price would be difficult to determine? Here I ask for the opinion mainly from SNB, because until now the opinion has been so amicably argued that it related to a starting point on the German side for further negotiations; that also corresponds to the heading and wording of the application - right?”.</i></p>
<p>B. Relevance and materiality: (1) para ref to submissions (2) comments</p>	<p>(1) (i) Claimant’s Memorial, §§ 85, 90-92, 96-109; and (ii) Respondent’s Counter-Memorial, §§ 66-67, 71-84, 259-267, footnotes 109 and 115.</p> <p>(2) The requested Documents are relevant and material to the Respondent’s case that China acted in accordance with its</p>

	<p>laws, treaty obligations and due process during the discussions with JHSF and the Claimant, including in compensation talks.</p> <p>In particular, they will bear on (i) the local officials having genuinely engaged with and discussed the legal and factual position with the Claimant’s representatives, including in meetings between March and July 2014; (ii) the understanding of the Claimant of the approximate amount of compensation owing to JHSF, in advance of the issuance of the Expropriation Decision in September 2014; and (iii) the contemporaneous (mis)understanding of the Claimant as regards the (lack of) application of the proceeds sharing method and the responsibilities of the respective authorities.</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>The Claimant has no objections in principle to providing the documents described in this request.</p> <p>With regard to points (1) to (7) in the request, the Claimant notes the following:</p> <p><u>Regarding point (1)</u>: The relevant document will be produced.</p> <p><u>Regarding point (2)</u>: The relevant document will be produced.</p> <p><u>Regarding point (3)</u>: The relevant document (chain of e-mails in response to Exhibit C-0060) will be produced.</p> <p><u>Regarding point (4)(i)</u>: This document was filed by the Claimant as Exhibit C-0063.</p> <p><u>Regarding point (4)(ii)</u>: The phrase “previous assessment” in Mr. Scharping’s e-mail (Exhibit C-0068) does not refer to a previous communication but to the assessment made earlier in the very same e-mail. Hence the indication “see above” in brackets.</p> <p><u>Regarding point (4)(iii)</u>: The relevant document will be produced.</p> <p><u>Regarding point (5)</u>: The relevant document (the e-mail submitted as Exhibit C-0067 including attachments) will be produced.</p> <p><u>Regarding point (6)</u>: The relevant document will be produced.</p> <p><u>Regarding point (7)</u>: The relevant document will be produced.</p>

<p>D. Reply</p>	<p>The Respondent notes the Claimant’s agreements to this request and observes that the Claimant has provided seven documents, in response to, respectively, points (1)-(7) of Request No. 14.</p> <p>The Respondent notes, however, that its request was not limited to the documents listed under points (1) to (7), but covered more generally all “[d]ocuments prepared by, for or exchanged with the Claimant between 2014 and 2017 regarding interactions with local entities or officials in relation to the compensation due for the recovery of JHSF’s land use right and the expropriation of its premises”.</p> <p>For example, it appears from the documents already disclosed that the following documents are also responsive to Request No. 14, but were not produced by the Claimant:</p> <ul style="list-style-type: none"> (i) Documents regarding “<i>the information</i>” that was given to Shandong Sanxin Real Property Appraisal & Consulting Company, as recorded in the document produced in response to point (1) (see new Exhibit R-0084), as well as any other communication with Shandong Sanxin Real Property Appraisal & Consulting Company or other appraisal companies; (ii) the emails or other Documents responding or relating to the document produced in response to point (2), email chain starting with the email from Mr Laue to Mr Scharping of 11 June 2014 (see new Exhibit R-0076), including the email by which Mr Scharping sent the “<i>draft</i>” as requested by Mr Laue, as well as any Documents relating to that exchange; (iii) the emails or other Documents responding or relating to the document produced in response to point (3), email chain starting with the email from Naujoks to Mr Scharping of 16 July 2014 (see new Exhibit R-0077); (iv) the emails or other Documents responding or relating to the document produced in response to point (5), email from Mr Scharping to Ms Schwarz and others of 21 July 2014 (see new Exhibit R-0078); (v) the emails or other Documents responding or relating to the document produced in response to point (6), email chain starting with the email from Mr Naujoks to SNB and others of 23 July 2014 (see new Exhibit R-0079); and
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	<p>(vi) the emails or other Documents responding or relating to the document produced in response to point (7), email chain starting with the email from Mr Feuerstein to Mr Scharping of 24 July 2014 (see new Exhibit R-0080).</p> <p>The Respondent therefore respectfully requests that the Tribunal order the Claimant to produce all documents responsive to Request No. 14, including but not limited to the documents identified under items (i) to (vi) in the preceding paragraph.</p>
<p>E. Decision of the Tribunal</p>	<p>The Tribunal notes that the Claimant has already produced a number of documents that are the subject of this request. Beyond the documents already produced, this request is upheld as regards the seven items specifically identified in the request and the documents identified in subparagraphs (i) – (vi) of the Respondent’s Reply (at D above), but not more broadly, on grounds of proportionality and unreasonable burden.</p>

Document Request No.	15
<p>A. Documents or category of documents requested</p>	<p>Documents prepared by, for or exchanged with the Claimant between 2014 and the present relating to the various offers by the local authorities regarding the relocation of JHSF, including:</p> <p>(1) Documents responding or relating to the email from Mr Scharping to Mrs Schwarz and Mr Naujoks dated 20 March 2014 (<i>see Exhibit C-0057</i>), where Mr Scharping stated “<i>the topic ‘new location’ will certainly be called on by the city again; therefore a careful vote in the matter and wording is necessary</i>”; and</p> <p>(2) Documents discussing the proposals of relocation made by the local officials in meetings between March and July 2014, including in talks on 28 and 29 July 2014 (<i>see Witness Statement of Huang Bei, §§ 16-17</i>).</p>
<p>B. Relevance and materiality: (1) para ref to submissions (2) comments</p>	<p>(1) Respondent’s Counter-Memorial, §§ 6, 14, 81, 84, 125-126, 188-190, 336-344.</p> <p>(2) The Respondent asserts that, had JHSF been a profitable business, the Claimant would have taken its compensation and relocated. Instead, the Claimant deliberately let matters escalate against its better judgment. The requested Documents are relevant and material because they will show that the Claimant rejected the Respondent’s offers for relocation, as well as they will confirm the reasons behind the Claimant’s decision to reject these offers.</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>Such documents do not exist, as there has never been any offer by the local authorities regarding a replacement plot of land for the relocation of JHSF.</p> <p>In addition, had there been any such offers, the Respondent would be in possession, custody or control of those documents.</p> <p>Finally, the Claimant notes that point (1) of this request refers to an e-mail in which Mr. Scharping was referring to discussions between Mr. Griese on behalf of Hela Gewürzwerk and the Jinan authorities regarding a production facility for their new company Hela Spice. Hela Spice is a company unrelated to JHSF or to the Claimant.</p>
<p>D. Reply</p>	<p><i>First</i>, the Respondent notes that, contrary to the Claimant’s suggestion, the local authorities discussed offers of relocation of JHSF with the Claimant, as indicted in the Claimant’s internal correspondence (<i>see point (1) of this request; see also</i></p>

	<p>Respondent’s Counter-Memorial, §§ 81, 84). The Claimant’s attempt to present the reference to offers of a “<i>new location</i>” by the Jinan Municipality in an email from Mr. Scharping to Ms Schwarz of 20 March 2014 (Exhibit C-0057) as a reference to discussions conducted by Mr. Griese on behalf of Hela Gewürzwerk is evidently misconceived. A simple reading of the complete email suffices to confirm that Mr Scharping was referring to his own negotiations with the Jinan authorities on behalf of the Claimant.</p> <p>In light of the existing record showing that the local authorities discussed offers of relocation of JHSF with the Claimant, the Claimant’s statement that the requested documents “<i>do not exist</i>” lacks credibility.</p> <p><i>Second</i>, the Claimant’s assertion that the documents requested are in the possession, custody or control of the Respondent is plainly wrong: by definition, documents internal to the Claimant discussing the offers of relocation cannot be in the Respondent’s possession.</p> <p>The Respondent therefore respectfully requests that the Tribunal order the Claimant to produce all documents responsive to Request No. 15.</p>
E. Decision of the Tribunal	<p>The request is upheld.</p> <p>For completeness, the Tribunal recalls paragraph 12 of Procedural Order No. 5, above.</p>

Document Request No.	16
<p>A. Documents or category of documents requested</p>	<p>Documents prepared by, for or exchanged with the Claimant in 2016 regarding the incidents of 26 May 2016 (alleged harassment by means of soil supposedly dumped in front of JHSF’s factory and the purportedly targeted interruption of telephone and power lines) including:</p> <p>(1) the attachments to the email from Mr Li to Messrs Griese and Laue dated 27 May 2016 (<i>see Exhibit C-0096</i>); and</p> <p>(2) any Documents regarding correspondence between or among the Claimant and/or the police, other authorities or the media, as mentioned in the email from Mr Li to Messrs Griese and Laue dated 27 May 2016 (<i>see Exhibit C-0096</i>).</p>
<p>B. Relevance and materiality: (1) para ref to submissions (2) comments</p>	<p>(1) (i) Claimant’s Memorial, §§ 137, 457; and (ii) Respondent’s Counter-Memorial, § 271.</p> <p>(2) The requested Documents are relevant and material to the Respondent’s position that the alleged incidents of May 2016, assuming they took place at all, are simply a distorted portrayal of isolated and normal events. In particular, they will show that this was just ordinary construction work in the course of the Huashan Project that was ongoing around JHSF’s premises while the latter was willfully refusing to relocate.</p>
<p>C. Summary of objections by disputing Party to production of requested documents</p>	<p>The Claimant has no objections in principle to providing the documents described in this request.</p> <p><u>Regarding point (1)</u>, the Claimant will produce the e-mail by which Mr. Laue forwarded the attachments to Exhibit C-0096 to Mrs. Schwarz on 30 May 2016. The video-file identified as attachment no. 5 in Mr. Li’s e-mail appears to have been damaged and was not received as a readable video-file.</p> <p><u>Regarding point (2)</u>, the Claimant is not aware of any such written correspondence. It is further noted that any communications with the police or other authorities, if they exist, would be in the Respondent’s possession, control or custody.</p>
<p>D. Reply</p>	<p>The Respondent notes the Claimant’s agreements to this request and observes that it has provided only one document in response to point (1).</p> <p>The Respondent notes, however, that its request was not limited to the documents listed under points (1) and (2) but covered more</p>

	<p>generally all “[d]ocuments prepared by, for or exchanged with the Claimant in 2016 regarding the incidents of 26 May 2016 (alleged harassment by means of soil supposedly dumped in front of JHSF’s factory and the purportedly targeted interruption of telephone and power lines)”.</p> <p>As to the Claimant’s assertion that “any communications with the police or other authorities, if they exist, would be in the Respondent’s possession, control or custody”, the Respondent notes that it would be overly burdensome for it to request such documents from the police or other authorities, when they are readily and easily available to the Claimant. In any event, the Respondent is by definition not in the possession, custody or control of internal documents exchanged within the Claimant or with the media.</p> <p>The Respondent therefore respectfully requests that the Tribunal order the Claimant to produce any other documents responsive to Request No. 16.</p>
E. Decision of the Tribunal	This request is upheld.

Document Request No.	17
A. Documents or category of documents requested	<p>Documents prepared by, for or exchanged with the Claimant between 2017 and the present regarding the enforcement of the expropriation in late 2017, including:</p> <p>(1) the attachments to the email from Mr Li to Mrs Schwarz and Mr Laue dated 6 December 2017 (<i>see Exhibit C-0097</i>);</p> <p>(2) the email received by Mr Li from Mrs Schwarz at about 2:50 a.m. on 13 or 14 December 2017, as mentioned in the email from Mr Li to Mr Zhang of 14 December 2014 (<i>see Exhibit C-0115</i>); and</p> <p>(3) any Documents regarding the demolition work carried out by JHSF from November 2017 to 6 December 2017 (<i>see</i> Written Record of JHSF's Vacation, Exhibit R-0049).</p>
B. Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) (i) Claimant's Memorial, §§ 135, 142-143; and (ii) Respondent's Counter-Memorial, §§ 134-137, 300-304.</p> <p>(2) Given the Claimant's persistent obstruction, the enforcement of the expropriation and recovery measures could not take place until December 2017 after a long series of exchanges, meetings, and administrative and court proceedings instigated by the Claimant had finally run its course.</p> <p>The requested Documents are relevant and material to the Respondent's claim that the demolition work in December 2017 was carried out fairly and appropriately, and that JHSF's business had already been abandoned by that point. They will further demonstrate that the Claimant would have had ample time for the relocation of any equipment or files and for clearing the site.</p>
C. Summary of objections by disputing Party to production of requested documents	<p>The Claimant has no objections in principle to providing the documents described in this request.</p> <p>However, the request in point (3) is unclear in several respects. First, the Claimant cannot follow how the Respondent came to the conclusion that JHSF may have destroyed parts of its own buildings before the demolition works started on 6 December 2017. For the avoidance of doubt, this allegation is rejected. Second, the nature of the documents referred to in point (3) is unspecified. Finally, the Respondent has failed to articulate in relation to which of the Claimant's claims the requested documents may have any relevance.</p>

	<p>The documents identified under points (1) and (2) will be produced.</p>
<p>D. Reply</p>	<p>The Respondent notes the Claimant’s agreements to this request and observes that it has provided two documents in response to, respectively, points (1) and (2).</p> <p>The Respondent notes, however, that its request was not limited to the documents listed under points (1) to (3) but covered more generally all “[d]ocuments prepared by, for or exchanged with the Claimant between 2017 and the present regarding the enforcement of the expropriation in late 2017”), including emails or other documents responding or relating to the documents already produced in response to this request, namely the email from Mr Li to Mr Laue and Ms Schwarz of 6 December 2017 (see new Exhibit R-0081) and the email from Ms Schwarz to Mr Li of 13 December 2017 (see new Exhibit R-0082).</p> <p>With respect to point (3), it is the Respondent’s case that “[a] few buildings [...] already previously at some point had been cleared by JHSF” when the demolition began on 6 December 2017 (Respondent’s Counter-Memorial, § 135; see also Exhibit R-0049). The requested Documents are therefore relevant and material to the Respondent’s claim that the demolition work in December 2017 was carried out fairly and appropriately, and that JHSF’s business had already been abandoned by that time. They will further demonstrate that the Claimant had ample time for the relocation of any equipment or files and for clearing the site.</p> <p>Point (3) is also framed as narrowly as possible. Specifically, the request refers to a narrow and specific category of documents in that it specifically identifies (i) the subject matter of the requested documents (“regarding the demolition work carried out by JHSF”) as well as a reasonable date range (“from November 2017 to 6 December 2017”).</p> <p>The Respondent therefore respectfully requests that the Tribunal order the Claimant to produce all documents responsive to Request No. 17, including but not limited to the documents identified above.</p>
<p>E. Decision of the Tribunal</p>	<p>The request is upheld.</p>

ANNEX 3

REVISED PROCEDURAL TIMETABLE

Description	Party / Tribunal	Final date / period
Decision on Objections to Request for Production of Documents	Tribunal	29 July 2019 <i>4 weeks and 5 days after Document Production Application sent to the Tribunal</i>
Production of Documents ordered by the Tribunal	Parties	26 August 2019 <i>4 weeks after Tribunal's Decision on Document Production</i>
Reply on the Merits and Counter-Memorial on Preliminary Objections	Claimant	26 November 2019 <i>3 months after the Production of Documents</i>
Rejoinder on the Merits and Reply on Preliminary Objections	Respondent	26 February 2020 <i>3 months after the Reply on the Merits</i>
Rejoinder on Objections to Jurisdiction, Admissibility or Competence	Claimant	30 March 2020 <i>1 month after the Reply on Preliminary Objections</i>
Notification of Witnesses/Experts for Cross-Examination	Parties	<i>8 weeks before hearing</i>
Call of Witnesses/Experts not Called by the Parties, if any	Tribunal	<i>Within 2 weeks of Notification by Parties</i>
Pre-Hearing Organizational Meeting	Parties and Tribunal (or President)	<i>TBD</i>
Hearing	All	22 June to 1 July 2020 <i>5 to 8 day hearing, as appropriate</i>
[Post-Hearing Briefs]	Parties	<i>TBD</i>
Statements on Costs	Parties	<i>TBD</i>
Award	Tribunal	<i>TBD</i>