

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Naftiran Intertrade Co. (NICO) Limited**  
*(Claimant)*

**v.**

**Kingdom of Bahrain**  
*(Respondent)*

**(ICSID Case No. ARB/22/34)**

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**PROCEDURAL ORDER NO. 5**  
**On the Parties' Requests for Document Production**

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***Members of the Tribunal***

Dr. Claus von Wobeser, President of the Tribunal  
Prof. Bernard Hanotiau, Arbitrator  
Prof. Maxi Scherer, Arbitrator

***Secretary of the Tribunal***

Ms. Anna Holloway

February 21, 2025

**I. PROCEDURAL BACKGROUND**

1. The dispute in this matter concerns claims brought by the Malaysian-incorporated Naftiran Intertrade Company Limited (“**NICO**”) against the Kingdom of Bahrain (“**Bahrain**” or the “**Respondent**”) under the Agreement between the Government of Malaysia and the Government of the Kingdom of Bahrain for the Promotion and Protection of Investments, dated 15 June 1999 (the “**Bahrain-Malaysia BIT**” or “**Treaty**”).
2. The dispute relates to the Respondent’s alleged actions or omissions in relation to NICO’s claimed investments in two Bahraini banks.
3. On 3 June 2024, the Tribunal issued Procedural Order No. 3, setting forth the procedural calendar for this proceeding. In the Tribunal’s decision to bifurcate the proceeding (set forth in Procedural Order No. 4), the Tribunal directed the Parties to abide by the Scenario 1B of the procedural calendar.
4. In accordance with the applicable procedural calendar, on 27 January 2025, the parties sent their respective disputed document production requests to the Tribunal for the Tribunal’s ruling, in the form of Stern schedules (“**Schedules**”).
5. On 3 February 2025, the Claimant sought leave to submit a short response to “new arguments” it said Respondent had made on the basis of a new legal authority.
6. On 4 February 2025, the Respondent suggested that the Claimant had already had ample opportunity to make submissions on document production, but noted that if the Tribunal were minded to allow the Claimant’s request, that the Respondent reserved its right to reply. It provided further comments on 6 February 2025.
7. On 6 February 2025, the Tribunal granted the Claimant leave to submit a short response, and the Respondent leave to respond thereto. In accordance with the Tribunal’s directions, the Claimants filed its response on 10 February 2025, and the Respondent filed its response on 12 February 2025.
8. Having deliberated, the Tribunal now issues this procedural order setting forth its decisions with respect to the Parties’ document production requests.

9. Each requesting Party's requests for document production and the underlying reasoning are set out in that Party's respective Schedules. In each Schedule, the parties include their introductory comments, and then, for each of the requesting Party's specific requests, the opposing Party's specific objections are also set out, followed by the requesting Party's comments on the opposing Party's objections. The Tribunal's decisions on the Parties' respective requests for document production are set out in the last row of each request in the respective Schedules.
10. The Parties' Schedules, containing the Tribunal's decisions, are attached to this Procedural Order as **Annexes A and B** and constitute an integral part of this Procedural Order.

## **II. THE TRIBUNAL'S GENERAL CONSIDERATIONS**

11. Pursuant to the ICSID Convention and the ICSID Arbitration Rules, the Parties are permitted to agree upon the applicable procedure for the taking of evidence, and in the absence of any agreement, the Tribunal has the power to rule upon procedural matters. In particular, Article 43 of the ICSID Convention and Rule 36 of the ICSID Arbitration Rules grant the Tribunal the authority to order the parties to produce documents:

"Article 43

Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings, (a) call upon the parties to produce documents or other evidence [...]"

and:

"Rule 36

Evidence: General Principles

[...]

(3) The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding."

12. In accordance with the foregoing, Article 15 of Procedural Order No. 1 ("**PO. 1**") contains the following rules in respect of document production:

“15. Production of Documents

*Convention Article 43(a); Arbitration Rules 5 and 36-40*

15.1. The IBA Rules on the Taking of Evidence in International Arbitration 2020 will guide the Tribunal with respect to any requests for document production.

15.2. Requests to produce documents (if any) shall be exchanged at the stages identified in the procedural calendar.

15.3. Requests to produce documents or categories of documents, responses thereto and related applications to the Tribunal shall be made in the form of a Stern Schedule containing the production request, with a description of each document or a specifically and narrowly defined category of documents from specific date ranges, in one column and columns for each of the following: (a) the reasons for those requests; (b) the response to those requests; (c) the reply to the responses; and (d) the Tribunal’s decision. An electronic MS Word version of the Stern Schedule is to be transmitted to the Party to whom the request is made and, when requesting the Tribunal’s decision, to the Tribunal.

15.4. Document production requests shall include an explanation of: (i) how the documents requested are relevant, proportionate and material to the outcome of the arbitration and (ii) the issue to which issue they pertain, as well as a statement that the documents are not in the possession, custody or control of the requesting party.

15.5. Only documents pertaining to the stage of the proceedings at the time the request is made may be requested by the parties.

15.6. In the case of the failure by a party, without satisfactory explanation, to comply with an order of the Tribunal to produce a document, the Tribunal may, at the request of the other party and after giving the party that failed to produce the document an opportunity to comment on the request, draw the inferences that it deems appropriate.

15.7. Documents communicated by a party to the other party in response to a request or order shall not be considered to be on the record unless and until they have been submitted in the arbitration.”

13. In accordance with Article 15.1 of PO. 1, the Tribunal shall be guided by the IBA Rules on the Taking of Evidence in International Arbitration 2020 (“**IBA Rules**”). For the purposes of this Procedural Order, the following Articles of the IBA Rules are relevant:

“Article 3. Documents

[...]



3. A Request to Produce shall contain:
  - (a) (i) a description of each requested Document sufficient to identify it, or
  - (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;
  - (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
  - (c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and
  - (ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.
4. Within the time ordered by the Arbitral Tribunal, the Party to whom the Request to Produce is addressed shall produce to the other Parties and, if the Arbitral Tribunal so orders, to it, all the Documents requested in its possession, custody or control as to which it makes no objection.
5. If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be any of those set forth in Articles 9.2 or 9.3, or a failure to satisfy any of the requirements of Article 3.3. If so directed by the Arbitral Tribunal, and within the time so ordered, the requesting party may respond to the objection.
6. Upon receipt of any such objection and response, the Arbitral Tribunal may invite the relevant Parties to consult with each other with a view to resolving the objection.
7. Either Party may, within the time ordered by the Arbitral Tribunal, request the Arbitral Tribunal to rule on the objection. The Arbitral Tribunal shall then, in timely fashion, consider the Request to Produce, the objection and any response thereto. The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal

determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Articles 9.2 or 9.3 applies; and (iii) the requirements of Article 3.3 have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it.

[...]"

and:

"Article 9. Admissibility and Assessment of Evidence

[...]

2. The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection, in whole or in part, for any of the following reasons:

- (a) lack of sufficient relevance to the case or materiality to its outcome;
- (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable (see Article 9.4 below);
- (c) unreasonable burden to produce the requested evidence;
- (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
- (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
- (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
- (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling."

14. Accordingly, the Tribunal has been guided the following standards to rule on the Parties' document production requests:

- a. Specificity: a request for the production of documents or categories of documents must identify each document or category of documents with precision to enable them to be identified and located.
  - b. Relevance and materiality: a request for the production of documents or categories of documents must demonstrate the relevance of the requested documents to matters in dispute as well as their materiality to the outcome of the case. At this stage of the proceedings, the Tribunal is only in a position to assess the *prima facie* relevance of the documents requested, having regard to the factual allegations the Parties made so far. This *prima facie* assessment does not preclude a different assessment at a later time of the arbitration with the benefit of a more developed record.
  - c. Possession, custody or control: the requested documents must not be in the requesting party's possession, custody or control, and they should not otherwise be readily accessible to the requesting party.
  - d. Balance of interests: the Tribunal has evaluated the burden of production of the requested documents as well as matters of procedural economy, proportionality, and procedural fairness and equality between the Parties. The Tribunal has also weighed the legitimate interests of the requesting party with those of the requested party, and taken into account all relevant circumstances, including the applicable burden of proof, any legal privileges, and the need to safeguard confidentiality.
15. In respect of item b., the Tribunal has been particularly mindful of the very limited scope of the bifurcated issues identified in Procedural Order No. 4 (“**PO. 4**”) and has accordingly determined that production should be ordered of only those documents that have been demonstrated to be *prima facie* relevant to those issues and material to their resolution. The Tribunal's rejection of any document production request at this juncture shall not preclude the requesting party from requesting the same documents or categories of documents at any subsequent document production stage in this arbitration proceeding.

**III. DECISION**

16. On the basis of these general considerations, the Tribunal decides each document production request as stated in the last column of the Schedules that are attached as Annexes A (Claimant's Request for Documents) and B (Respondent's Request for Documents) hereto.
17. Pursuant to the Procedural Timetable (as contained in Scenario 1B of Annex A attached to Procedural Order No. 3), the documents ordered to be produced as stated in this Procedural Order, or agreed by the Parties, shall be produced ***on or before 10 March 2025.***

On behalf of the Tribunal,

[signed]

Dr. Claus von Wobeser  
President of the Tribunal  
Date: 21 February 2025

## Annex A

**ARBITRATION UNDER THE RULES OF THE INTERNATIONAL CENTRE FOR  
SETTLEMENT OF INVESTMENT DISPUTES**

**ICSID CASE NO. ARB/22/34**

**NAFTIRAN INTERTRADE CO. (NICO) LIMITED**

**(“Claimant”)**

**v.**

**KINGDOM OF BAHRAIN**

**(“Respondent”)**

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**CLAIMANT’S DOCUMENT PRODUCTION REQUESTS**

**UPDATED WITH RESPONDENT’S RESPONSES TO CLAIMANT’S REQUESTS**

**13 January 2025**

**UPDATED WITH CLAIMANT’S REPLIES OF JANUARY 27, 2025**

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## PRELIMINARY REMARKS

- Claimant submits its Requests for Production of Documents via this Stern Schedule in accordance with the Tribunal's directions at Paragraph 15 of Procedural Order No. 1. The burden rests on Respondent to prove their preliminary objections, and not on Claimant to disprove Respondent's unsupported case, when Bahrain has failed so far to substantiate its case with the required evidence. Claimant has accordingly limited its document production requests to those areas where the production of documents is material to the issues bifurcated by the Tribunal in Paragraph 77 of Procedural Order No. 4.
- For ease of reference, the capitalized terms and other abbreviations defined in Claimant's Memorial of May 9, 2024 ("**Memorial**"), Claimant's Observations on Respondent's Request for Bifurcation of July 8, 2024 ("**Observations on Bifurcation**"), Claimant's Rejoinder to Respondent's Request for Bifurcation of July 22, 2024 ("**Rejoinder on Bifurcation**"), and Counter-Memorial on Preliminary Objections of December 2, 2024 ("**CMPO**") are hereby adopted.
- "**Correspondence**" shall refer to any written communications, electronic messages, and faxes.
- "**Documents**" shall refer to any written communications, electronic messages, faxes, correspondence, memoranda, working drafts, notes, contemporaneous meeting notes, minutes, transcripts, reports, studies, analyses, opinions, instructions, recommendations, presentations, recordings and writings, whether in paper or electronic form, and whether or not prepared by Respondent, that are in the possession, custody or control of Respondent, which shall include the Bahraini State Organs (as defined below) as well as public and private entities under Respondent's actual or de facto control (such as, as the case may be, the Bahraini Banks as defined in Claimant's submissions).
- "**Bahraini State Organs**" shall refer to all organs of the Kingdom of Bahrain exercising legislative, executive, judicial or other State functions, including regulatory and supervisory bodies and central and/or local government authorities, institutions, bodies, agencies and instrumentalities and their affiliates, which shall, for the avoidance of doubt, include, without limitation, the King of Bahrain, the Cabinet, the Prime Minister's Office, the Ministry of Finance and National Economy, the Ministry of Foreign Affairs, the Ministry of Interior, the Shura Council, the Ministry of Defense (or equivalent bodies or ministries that existed at the relevant time) as well as the Central Bank of Bahrain ("**CBB**") and their respective officials, representatives, employees, chairmen or agents during the time periods relevant to Claimant's document requests. It shall also encompass persons and entities empowered by the law of Bahrain to exercise elements of the governmental authority when acting in that particular capacity (as per Article 5 of the ILC Articles on State Responsibility – see **CL-40**), but also to persons, groups of persons, or entities in fact acting on the instructions of, or under the direction or control of Bahrain (as per Article 8 of the ILC Articles on State Responsibility – see **CL-40**), in carrying out the actions and/or omissions complained of in this arbitration (as set out at Paragraph 242 of the Memorial, and Paragraphs 15 to 17, 19 to 20 and 81 to 94 of the CMPO).
- The requested Documents are not in Claimant's possession, custody or control, nor does Claimant otherwise have access to them.
- A Document should be treated as being in the possession, custody or control of Respondent if it was or is: (i) in the possession, custody or control of Respondent; or (ii) held by any third party on behalf of Respondent.
- Claimant expressly reserves the right to supplement or otherwise amend its document production requests, including, but not limited to, in case the documents produced by Respondent pursuant to the requests set forth in this document give rise to further document production requests.

## INTRODUCTION TO THE RESPONDENT'S RESPONSES

1. The Respondent sets out its detailed responses to the Claimant's document production requests of 23 December 2024 in the Stern Schedule below. The Claimant's requests do not meet the requisite criteria for disclosure to be ordered.
2. Unless stated otherwise, all abbreviations and defined terms have the meanings adopted in Bahrain's Memorial on Preliminary Objections dated 7 October 2024.
3. The present phase of the arbitration is limited to determining the issues bifurcated by the Tribunal in paragraph 77 of Procedural Order No. 4 (**PO4**) (the **Bifurcated Issues**). As the Tribunal remarked in PO4, "*any document production ordered in the preliminary stage would be limited*" (para 75). The parties' requests must therefore be necessary for the limited purpose of dealing with the Bifurcated Issues.
4. The Respondent has accepted this position and tailored its document requests accordingly.
5. The Claimant has not. Although the Claimant purports to accept that the requests must be "*limited ... to those areas where the production of documents is material to the issues bifurcated by the Tribunal in Paragraph 77 of Procedural Order No. 4*" (Claimant's Stern Schedule, Preliminary Remarks), the Claimant's document requests disregard the Tribunal's directions in PO4 and the IBA Rules on the Taking of Evidence in International Arbitration (the **IBA Rules**).<sup>1</sup> Far from limited requests, the Claimant has filed nine headline requests, which include 57 separate sub-requests, which are overbroad and irrelevant to the Bifurcated Issues. For ease of reference, Bahrain recalls those issues below:
  - a. To what extent does the Treaty apply to acts and omissions that occurred prior to its entry into force?
  - b. To what extent must NICO have nationality under the Treaty at the time of the alleged breach?
  - c. Was NICO incorporated in Malaysia and hence did it benefit from protection under the Treaty from December 2014-March 2018?
  - d. What effect, if any, does the 2018 Malaysian Court Decision have on NICO's standing and rights under the Treaty?
6. The Respondent objects to each of the Claimant's requests on the following grounds, which are supplemented under each document request as appropriate:
  - a. **The Claimant's requests are not relevant to the Bifurcated Issues in PO4 and are not material to the outcome of the bifurcated proceedings. As a result, they should be rejected under Articles 3.3(b) and 9.2(a) of the IBA Rules.**
    - i. Pursuant to each of its requests, the Claimant seeks "*Documents*" that, even if relevant and material (*quod non*), would only concern the merits of NICO's claims against Bahrain, which is a matter to be determined at a later stage, if necessary. For example, the requests pertain to: (i) the background, rationale, implementation, and impact of all CBB directives;<sup>2</sup> (ii) other measures allegedly affecting the Claimant's funds;<sup>3</sup> (iii) the nature and extent of the Respondent's alleged breaches of the Treaty;<sup>4</sup> (iv) the treatment

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<sup>1</sup> Which guide the Tribunal pursuant to Procedural Order No. 1, para 15.1.

<sup>2</sup> Document Requests 1-4.

<sup>3</sup> Document Requests 2, 3 and 4.

<sup>4</sup> See Section B of Document Requests 1, 2, 6 and 7.



of “ultimately owned Iranian” investments in Bahrain;<sup>5</sup> and (v) the Respondent’s assessment of and response to the Claimant’s letters and proposals.<sup>6</sup> These issues are not relevant or material to the outcome of the Bifurcated Issues. Consequently, the Tribunal should not entertain NICO’s requests at this stage of the proceedings. The tribunals in *Coeur Mining v. Mexico*<sup>7</sup> and *TC Energy and TransCanada Pipelines v. USA*<sup>8</sup> found that any requested documents must be relevant to the preliminary objections or material to the outcome of the present stage of the dispute. Similarly, the tribunal in *AIYY v. Czech Republic* denied one of the claimant’s requests “on grounds of insufficient materiality to the issues in the bifurcated jurisdictional phase of the proceedings”, because the documents pertained to an issue which had “been joined to the merits phase of the proceedings”.<sup>9</sup> Here too, the Claimant’s document requests seek to use the jurisdictional stage of proceedings to gather evidence for any future pleadings on the merits. The Claimant is attempting to circumvent the Tribunal’s bifurcation order and to obtain documents that are not needed for the resolution of the Bifurcated Issues.<sup>10</sup>

- ii. According to the Claimant, all of the requested documents (except for headline Request No. 5) are relevant to the Respondent’s *ratione temporis* and/or *ratione personae* objections. As explained further below for specific requests, these go beyond the scope of the Bifurcated Issues and should be rejected. The Respondent reserves its right to address these issues at the appropriate stage of the proceedings.

**b. The Claimant’s requests are overbroad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules.** The Claimant’s requests are excessively broad in terms of subject matter, document custodians and temporal scope.

- i. NICO designates the custodian of the requested documents as “*Bahraini State Organs*”. NICO defines Bahraini State Organs to cover all possible governmental authorities, including persons “*empowered by the law of Bahrain to exercise elements of the governmental authority*” or persons “*acting on the instructions of, or under the direction or control of Bahrain*”, irrespective of whether such governmental authority or person has any involvement in this dispute. Asking a State to conduct searches within every single organ is by itself overly broad and unduly burdensome. NICO also includes within requested custodians “*public and private entities under Respondent’s actual or de facto control*”, including by way of example (on NICO’s case) the Bahraini Banks,<sup>11</sup> Ithmaar and GFH. NICO has not explained why these entities are under the ‘control’ of Bahrain. The only apparent basis for NICO’s suggestion is that these private banks are incorporated in Bahrain and operate in a regulated sector, which clearly does not constitute control. Moreover, Ithmaar and GFH are only given as examples and not an exhaustive list of potential custodians, giving the impression that NICO’s document requests seek to designate every entity incorporated in Bahrain and operating in a regulated sector as a potential custodian. This is clearly impermissible. If Bahrain were ordered to search for the requested documents “*in the possession, custody or control of Respondent, which shall include the Bahraini State Organs (as defined below) as well as public and private entities under Respondent’s actual or de facto control (such as,*

<sup>5</sup> Document Requests 6 and 7.

<sup>6</sup> Document Requests 8 and 9.

<sup>7</sup> *Coeur Mining, Inc. v. United Mexican States*, ICSID Case No. UNCT/22/1, Procedural Order No. 5, 19 June 2024, para 26.

<sup>8</sup> *TC Energy Corporation and TransCanada Pipelines Limited v. United States of America*, ICSID Case No. ARB/21/63, Procedural Order No. 3, Annex A, 6 November 2023, pp 85-88.

<sup>9</sup> *AIYY LTD. v. Czech Republic*, ICSID Case No. UNCT/15/1, Procedural Order No. 5, 18 February 2016, p 9.

<sup>10</sup> For the avoidance of doubt, Bahrain does not accept that the document requests would be relevant and material to any merits stage.

<sup>11</sup> As defined in Claimant’s Memorial, para 80.

as the case may be, the Bahraini Banks as defined in Claimant's submissions)" that would impose an unreasonable and disproportionate burden onto Bahrain, inconsistent with considerations of procedural economy (IBA Rules, Articles 9(2)(c) and (g)).

- ii. Many of NICO's requests are also excessively broad temporally, seeking documents that date before and/or after the relevant period in dispute, or without specifying any time period at all. The issue of overbroad subject matter is addressed for individual requests below.

- c. **Documents held by the Bahraini Banks are not within the Respondent's possession custody or control.** The Claimant's definition of "*Bahraini State Organs*" seeks to expand its previously pleaded position on attribution from the alleged acts and/or omissions of a State's central bank to also encompass those of private banks. As mentioned, the Claimant now seeks documents from the Bahraini Banks, GFH and Ithmaar, which are private entities neither owned nor controlled by the Respondent. Indeed, the Respondent has no shareholding whatsoever in the Bahraini Banks. Moreover, the Claimant did not even seek to attribute the Bahraini Banks' actions to Bahrain in its Merits Memorial. Paragraphs 244-248 of the Claimant's Memorial (dealing with attribution) entirely omit any mention of the Bahraini Banks and only argue attribution for the actions of the CBB. The Claimant cannot adopt a case on disclosure which proceeds more widely than its merits case on the same issue. Despite this, the Claimant now asserts that the Bahraini Banks are "*under the Respondent's actual or de facto control*", without explanation. This is utterly insufficient to justify ordering a State to produce documents held by third party, private entities operating within its territory. The Claimant has not explained on what basis it says that the Bahraini Banks were empowered to, and did in fact, exercise elements of governmental authority, or were acting under the de facto control of the Respondent. To the contrary, the Claimant stated in its Memorial that the "*CBB Directive did not impose any specific process or demand*" on the Bahraini Banks and "*merely requested*" their compliance with the directions contained within.<sup>12</sup>

7. For these reasons, and the reasons to be explained below, the Respondent respectfully requests that the Tribunal reject the Claimant's document production requests and, in the case of Request 5(iii) (should the Claimant disagree with the Respondent's reformulation), narrow and clarify this request as indicated by the Respondent, to comply with the IBA Rules and PO4.

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<sup>12</sup>

Claimant's Memorial, para 113.

## CLAIMANT'S INTRODUCTORY REMARKS TO RESPONDENT'S OBJECTIONS

1. Claimant has addressed Respondent's introductory remarks in its Replies to each Objection below and does not repeat the same here to avoid repetition, save for the following remarks.
2. **First**, Claimant notes that Respondent has not adopted a bona fide approach to this document production phase – which it had itself requested with the expectation that it would be the main beneficiary therefrom – by objecting to virtually all of Claimant's Document Requests, and refraining from even offering a narrower scope of production when it considered the Requests to be overly broad or burdensome. This approach continues to be in line with Respondent's continued lack of transparency, and in fact dissimulation, as regards its breaches in this arbitration.
3. **Second**, contrary to Respondent's assertions, Claimant's Requested Documents are relevant and material to Claimant's legal and factual defenses in connection with the issues bifurcated by the Tribunal in PO4, and especially for purposes of determining whether the acts and omissions of Bahrain in breach of the BIT were known to Claimant prior to the BIT's entry into force on January 2011, or prior to Claimant being re-domiciled to Malaysia in January 2012, especially as the same will at the very least be relevant and material for purposes of ascertaining the foreseeability test in the context of Respondent's abuse of process objection. This is all the more so that Claimant's case is that Bahrain's acts and omissions as of 2010 had not been notified by Bahrain to Claimant at the time, but rather had been actively dissimulated, which is precisely what all of Claimant's Document Requests seek to ascertain in connection with Respondent's abuse of process objection, as well as its *ratione temporis* and *ratione personae* objections within the limits defined in the PO4.
4. In this respect, where Bahrain asserts that the "*Tribunal has expressly stated in PO4 that it will not determine its ratione temporis jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59)*," Claimant reminds Respondent that the Tribunal made this "*clarifi[cation]*" in the context of ordering bifurcation on the specific issues identified in PO4, and so as to not prejudge the merits of the dispute. This clarification cannot however prohibit the Tribunal from taking into consideration all relevant factors when determining the issues bifurcated in PO4, including for purposes of addressing the bifurcated abuse of process objection raised by Respondent, as well as notably the following two bifurcated issues by the Tribunal, namely to "*what extent does the Treaty apply to acts and omissions that occurred prior to its entry into force*" on January 2011 (in connection with Respondent's *ratione temporis* objection), and to "*what extent must NICO have nationality under the Treaty at the time of the alleged breach*" (in connection with Respondent's *ratione personae* objection). This is all the more so that Claimant's case is precisely that Bahrain's actions and omissions starting in 2010 had not been transparently disclosed to Claimant at the time, but rather actively dissimulated by Bahrain, and discovered by Claimant only in November 2012 when it eventually obtained a copy of the September 2010 CBB Directive, as recorded in contemporaneous evidence (see Exhibit C-74). Tellingly Bahrain has not alleged, let alone produced evidence to the contrary, in its pleadings to date,<sup>13</sup> including in this

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<sup>13</sup> In its Objections to Claimant's Document Requests, Respondent suggests (based on Paragraph 18 of its MPO) that Claimant would have acknowledged in its NoD dated August 5, 2022 and its RfA dated December 5, 2022, that Bahrain's breaches started in 2010. Yet, it never in fact disputes Claimant's position (as set forth at Paragraphs 20 and 81 *et seq.* of its CMPO) that NICO was not aware of Bahrain's actions and omissions starting in 2010 until November 2012. Nor does Respondent ever allege, let alone submit supporting evidence, that such actions and omissions would have been notified by Bahrain to NICO in 2010 or at any time material time thereafter, prior to NICO's first reference to the 2010 CBB Directive in its November 26, 2012 correspondence (submitted as Exhibit C-74).

document production phase. Yet, Bahrain's notification of its adverse acts and omissions starting in 2010 (which Claimant argue never occurred until at least November 2012) is, for the reasons already set out above, relevant and material to Respondent's abuse of process objection (and this by any standard) as well as its *ratione temporis* and *ratione personae* objections within the limits defined in the PO4.

5. **Third**, as regards Bahrain's argument that "*Claimant's definition of 'Bahraini State Organs' seeks to expand its previously pleaded position on attribution from the alleged acts and/or omissions of a State's central bank to also encompass those of private banks [to include] the Bahraini Banks,*" and that "*asking a State to conduct searches within every single organ is by itself overly broad and unduly burdensome,*" it does not stand if only for the following reasons.
6. As set out in the Preliminary Remarks to Claimant's Document Requests, the definition "*Bahraini State Organs*" was extended only to those "*persons and entities empowered by the law of Bahrain to exercise elements of the governmental authority when acting in that particular capacity (as per Article 5 of the ILC Articles on State Responsibility – see **CL-40**), but also to persons, groups of persons, or entities in fact acting on the instructions of, or under the direction or control of Bahrain (as per Article 8 of the ILC Articles on State Responsibility – see **CL-40**), in carrying out the actions and/or omissions complained of in this arbitration (as set out at Paragraph 242 of the Memorial, and Paragraphs 15 to 17, 19 to 20 and 81 to 94 of the CMPO)" (emphasis added). Given this express limitation, Claimant's Document Requests cannot be deemed for this reason alone to be overly broad, and indeed they are not, as they are expressly limited by reference to the authorities/entities potentially holding the responsive Documents, as well as by the subject-matter of each Request, which is sufficiently defined and narrowly limited so that there would be no need – nor could Claimant do so as it does not have sufficient knowledge of the underlying issues to do so – to further limit the scope of the Requested Documents by reference to a time-frame.*
7. In any event, Respondent –if in good faith – should have offered to voluntarily produce the responsive documents in its possession, including responsive documents exchanges with the Bahraini Banks, yet it has not, and this alone is telling.



<b><u>Document Request No. 1</u></b>	<b>The origin of, reasons for, process leading up to, and date of notification to NICO of the 2010 CBB Directive</b>
<b>A. Documents or category of documents requested (requesting Party)</b>	<p>All Documents recording:</p> <ul style="list-style-type: none"> <li>(i) Instructions/guidelines given to the CBB by other Bahraini State Organs prompting the issuance of the 2010 CBB Directive;</li> <li>(ii) The reasons for the issuance of the 2010 CBB Directive (including Documents showing that the issuance of the 2010 CBB Directive had been prompted and/or encouraged by requests from foreign States or foreign State entities/interests);</li> <li>(iii) The object and purpose underlying the issuance of the 2010 CBB Directive;</li> <li>(iv) The process (including any public purpose, due process, and proportionality factors considered as part thereof) leading up to the issuance of the 2010 CBB Directive;</li> <li>(v) All directions given by Respondent, including the CBB, to the Bahraini Banks in relation to the implementation of the 2010 CBB Directive as regards Iranian deposits and investments in general (hereafter “<b>Iranian Funds</b>”), and NICO’s Funds more specifically;</li> <li>(vi) The date and means by which the 2010 CBB Directive was notified to the Bahraini Banks;</li> <li>(vii) The date and means by which the 2010 CBB Directive would have been notified to Claimant;</li> <li>(viii) The reasons for the decision to not immediately communicate the 2010 CBB Directive to Claimant (even in this arbitration, Bahrain still does not set out when the 2010 CBB Directive would have been officially notified to Claimant – see Claimant’s Memorial Paragraphs. 111, 299; see CMPO Paragraphs. 20, 81);</li> <li>(ix) All Correspondence exchanged between the Bahraini Banks and the CBB and/or other Bahraini State Organs in relation to the implementation of the 2010 CBB Directive; and</li> <li>(x) All reporting prepared by the CBB and/or communicated to other Bahraini State Organs or to foreign States or foreign State entities/interests regarding the implementation of the 2010 CBB Directive in respect of Iranian Funds, and Funds placed by NICO more specifically.</li> </ul>
<b>B. Relevance and materiality, incl. references to submission (requesting Party)</b>	<p>Via PO4, the Tribunal decided to bifurcate these proceedings in order to address as preliminary issues the following:</p> <ul style="list-style-type: none"> <li>(i) Respondent’s fourth preliminary objection, which the Tribunal defined as Respondent’s allegation that NICO’s claims are inadmissible because they would result from “<i>a 2012 corporate restructuring designed to gain access to investment protection under the Treaty after the dispute had become foreseeable,</i>” and also because “<i>NICO [would have] sought to return to Malaysia in 2018 as a “conscious choice” in order to present its “fully cooked” Treaty claims as a further act of abusive behavior,</i>” including because “<i>Claimant’s alleged efforts to reacquire Malaysian nationality ex post facto to cover the period of December 2014 to</i> </li></ul>

- March 2018 [would have] constitute[d] a further breach of the abuse of process doctrine” (PO4, Paragraphs. 68 to 69);
- (ii) The following two questions put by the Tribunal to the Parties as regards Respondent’s second preliminary objection to the Tribunal’s jurisdiction *ratione temporis*, namely (a) “[t]o what extent does the Treaty apply to acts and omissions that occurred prior to its entry into force?;” and (b) “[t]o what extent must Claimant have nationality under the Treaty at the time of the alleged breach?” (PO4, Paragraph 77(a)(i)) ; as well as
  - (iii) The following two questions put by the Tribunal to the Parties as regards Respondent’s third preliminary objection to the Tribunal’s jurisdiction *ratione personae*, namely (a) “[w]as NICO incorporated in Malaysia and hence did it benefit from protection under the Treaty from December 2014-March 2018?;” and (b) “[w]hat effect, if any, does the 2018 Malaysian Court Decision have on Claimant’s standing and rights under the Treaty?” (PO4, Paragraph 77(a)(ii)).

The Requested Documents are relevant and material to all of the above for the reasons explained below.

In its CMPO, Claimant explained that “*Claimant’s case has always been, as set out in contemporaneous correspondence and in its Memorial [...] that Bahrain’s multiples breaches of its obligations under the BIT included, from the outset and on an ongoing basis, a material and standalone breach of its transparency obligation under Article 3(1) of the BIT, which notably included the fact that none of Bahrain’s adverse actions and/or omissions – which are now suspected to have perhaps begun in 2010 (although even in this arbitration, Bahrain still refrains from expressly setting out when its adverse measures against NICO would have begun) – had ever been notified to NICO at the time, and indeed they were not*” (CMPO, Paragraph 15).

Claimant further explained in its CMPO that “*Bahrain should thus now account for and engage on this material issue, including by way of submissions, as well as the production of documents and relevant witnesses*” (CMPO, Paragraph 16), and that “*it is against this background and context, and out of necessity with the above caveats, that Claimant has sought to identify to the best of its ability in its Memorial, while still being kept in the dark by Bahrain as to the precise nature, extent, and timing of its interferences with the release of NICO’s Deposits as events progressively unfolded, the following three tentative major dates of independent and ongoing breaches by Bahrain of its substantive and due process obligations*” under the BIT (CMPO, Paragraph 17), including the “*First Refusals, consisting in GFH’s first refusal on November 2, 2010, and Ithmaar’s first refusal on January 19, 2011, to comply with NICO’s request for the transfer of its Funds*” (CMPO, Paragraph 17.1); the “*Second Refusals, consisting in GFH’s further refusal on January 17, 2012, and Ithmaar’s further refusal on November 26, 2012, to release NICO’s funds*” (CMPO, Paragraph 17.2); and the “*Third Refusals, consisting in GFH and Ithmaar’s refusal once again to release NICO’s funds in January 2015 and onwards, and this despite the fact that all sanctions against Iranian interests were being lifted in the wake of the July 2015 JCPOA and the West rushing to secure a share of the Iranian market*” (CMPO, Paragraph 17.3).

For these reasons, Claimant set out in its CMPO that “*as regards the origin, continuation and the ultimate breaches leading to the First Refusals now*

*suspected to date back to November 2, 2010 and January 19, 2011, [...] it will be material to determine the exact timing and the nature and extent of the acts and omissions of Bahrain via submissions, the disclosure of documents and production/examination of witnesses, and potentially corresponding adverse inferences,”* hence why “*NICO provisionally [sets] the date of Bahrain’s first breaches as taking place from January 4, 2012 onwards*” (CMPO, Paragraph 20).

Against the above, the Requested Documents – which are strictly limited in terms of scope, as well as timeframe by reference to the subject-matter of the Requested Documents under Items (i) to (ix) above – are relevant and material to the resolution of the issues in dispute in these bifurcated proceedings.

This is because the Requested Documents will show the origin, nature, scope, and date of Bahrain’s actions and/or omissions in connection with the non-release of NICO’s Funds by the Bahraini Banks on the basis of the 2010 CBB Directive, as well as the date on which such actions and/or omissions would have been formally notified to NICO, and whether they were properly implemented or not by the Bahraini Banks – all of which will be relevant and material for establishing when any breach by Bahrain occurred or at least became known to Claimant.

Against the above, the Requested Documents will be relevant and material:

- (i) For purposes of jurisdiction *ratione temporis* in connection with the Tribunal’s questions in PO4 (Paragraph 77(a)(i)), to assess whether Bahrain’s breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia on January 4, 2012 (whereas Claimant demonstrated in its CMPO that such breaches were not known at the time due to Bahrain’s breach of its transparency obligation – see CMPO, Paragraphs 15 to 17 and 86 to 88), namely after the BIT’s entry into force on January 28, 2011, so as to fall within the BIT’s *ratione temporis* scope;
- (ii) For purposes of jurisdiction *ratione personae* in connection with the Tribunal’s questions in PO4 (Paragraph 77(a)(ii)), to show that Bahrain’s breaches occurred or in any event became known to Claimant only after it had re-domiciled to Malaysia on January 4, 2012 (for the reasons set out at CMPO, Paragraphs 127 to 128, and 130 to 136);
- (iii) For purposes of Respondent’s abuse of process objection (PO4, Paragraphs 68 to 69), to ascertain whether the 2010 CBB Directive and subsequent exchanges in relation to the implementation thereof with the Bahraini Banks, were prompted by NICO’s ultimate Iranian shareholding, which in turn will contradict the very basis of Respondent’s abuse of process objection, namely that NICO’s January 4, 2012 re-domiciliation to Malaysia would have been prompted by more favorable treaty protections under the Malaysia-Bahrain BIT, whereas the Requested Documents would show that Bahrain was at all times aware of NICO’s ultimate Iranian shareholding and thus of its obligations towards NICO under the Iran-Bahrain BIT (for the reasons set out at CMPO, Paragraphs 35 to 43); and in any event
- (iv) For purposes again of Respondent’s abuse of process objection (PO4, Paragraphs 68 to 69), to ascertain when the dispute became



	foreseeable, let alone to the high degree of foreseeability required under the BIT and international law (see in this respect Claimant's CMPO, Paragraphs 73 to 98).
<b>C. Reasoned objections to document production request (objecting Party)</b>	<p>The Respondent objects to the Claimant's requests for the following reasons:</p> <p><b>(a) The Claimant's requests are not relevant to the Bifurcated Issues in PO4 and are not material to the outcome of the bifurcated proceedings so should be rejected under Articles 3.3(b) and 9.2(a) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.a above, <i>mutatis mutandis</i>.</p> <p>The Claimant advances four arguments on the purported relevance of these documents. Addressing each in turn:</p> <p>(i) <b>For purposes of jurisdiction <i>ratione temporis</i>:</b> The Tribunal has expressly stated in PO4 that it will not determine its <i>ratione temporis</i> jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59). The bifurcated questions posed by the Tribunal on the <i>ratione temporis</i> objection are legal (not factual) questions. The Claimant's purported justification ("<i>to assess whether Bahrain's breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia</i>") is not relevant to the bifurcated legal questions and ignores the Tribunal's express limitation.<sup>14</sup> Therefore, the Claimant's requests for documents that go to the merits of the <i>ratione temporis</i> objection are clearly beyond the scope of the Bifurcated Issues and should be dismissed.</p> <p>(ii) <b>For purposes of jurisdiction <i>ratione personae</i>:</b> The Tribunal's questions on the <i>ratione personae</i> objection focus specifically on the Claimant's nationality from 2014-2018 and its access to the Treaty, not the factual circumstances surrounding the Respondent's alleged breaches. The Claimant's purported justification ("<i>to show that Bahrain's breaches occurred or in any event became known to Claimant only after it had re-domiciled to Malaysia</i>") is not relevant to the <i>ratione personae</i> questions bifurcated by the Tribunal. Moreover, documents reflecting the Claimant's awareness or knowledge would be in the Claimant's possession, not the Respondent's. The requested documents are irrelevant and immaterial to the question of whether the Tribunal has jurisdiction <i>ratione personae</i>.</p> <p>(iii) <b>For purposes of Respondent's abuse of process objection, to ascertain whether the 2010 CBB Directive and subsequent exchanges were prompted by NICO's ultimate Iranian shareholding:</b> The Claimant misstates the Respondent's abuse of process objection. The Respondent's reasons for implementing the 2010 CBB Directive (and understanding of NICO's shareholding) have no bearing on the Respondent's abuse of process objection. The requested documents are irrelevant and immaterial to the question of whether the Claimant committed an abuse of process.</p>

<sup>14</sup>

In any event, the Respondent has already demonstrated the Claimant's awareness of the allegations it raises in the arbitration prior to its re-domiciliation to Malaysia in January 2012 (Preliminary Objections, paras 27-29 citing Merits Memorial, para 142).



(iv) **For purposes of Respondent’s abuse of process objection, to ascertain when the dispute became foreseeable:** The relevant test for foreseeability requires that a dispute be “*foreseeable to the Claimant*” (see, e.g., Memorial, para 77; CMPO, paras 30-32, emphasis added), not to the Respondent. As such, the relevant documents should be in the Claimant’s possession, reflecting the Claimant’s understanding, and not the other way around. The requested documents are irrelevant and immaterial to the question of when the dispute became foreseeable to the Claimant and, consequently, whether the Claimant committed an abuse of process.

For completeness, the Claimant further argues that the documents requested would show “*whether the decision to not release NICO’s Funds was properly implemented by the Bahraini Banks during the same January 1, 2010 to December 31, 2012 period*” (emphasis added). It is unclear what the Claimant means by “*properly implemented*”, but in any event this issue would be irrelevant and immaterial to determining the Bifurcated Issues.

For these reasons, the requests constitute an impermissible fishing expedition and should be rejected.

**(b) The requests are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules.**

The Respondent repeats paragraph 6.b above, *mutatis mutandis*.

The scope of these requests (i.e. the background to the CBB Directive) is overbroad and outside the defined scope of the Bifurcated Issues. The Claimant, contrary to its assertion, has also not stipulated any time period for the requests.

Furthermore, the Claimant uses overbroad and ambiguous terms, for example, in request 1(i) (“*prompting*”), request 1(ii) (“*prompted and/or encouraged*” and “*foreign State entities/interests*”) and request 1(x) (“*foreign State entities/interests*”), which is far from a narrow and specific category of documents. Request 1(iii) is further unnecessary as the object and purpose of the 2010 CBB Directive can be found in the text of the directive itself, which has been submitted by the Claimant as Exhibit C-0008.

For these reasons, the requests impose an unreasonable and disproportionate burden on the Respondent, violating Article 9.2(c) and (g) of the IBA Rules.

**(c) Documents held by the Bahraini Banks are not within the Respondent’s possession, custody or control.**

To the extent that the Claimant is seeking documents held by the Bahraini Banks, the Respondent repeats paragraph 6.c above, *mutatis mutandis*.

**(d) The requests seek documents on the basis of arguments related to NICO’s ultimate shareholder and protections on the Bahrain-Iran BIT and are therefore outside of the Tribunal’s jurisdiction to order.**

Requests 1(v) and 1(x) seek documents relating to NICO’s ultimate shareholder and protections that may (or may not) be available to that shareholder under the Bahrain-Iran BIT. For the reasons explained in



	<p>paragraphs 106 to 109 of the Respondent’s Memorial on Preliminary Objections, this Tribunal does not have jurisdiction nor the authority to determine purported claims under the Bahrain-Iran BIT. Production of documents that relate to rights that may or may not be owed to NICO’s ultimate shareholder under a separate treaty are not relevant or material to the issues to be decided in the present proceedings.</p> <p><b>(e) Documents of political or institutional sensitivity are not disclosable pursuant to Article 9.2(e) and (f) of the IBA Rules.</b></p> <p>Requests 1(ii) and 1(x) seek documents between the Government of Bahrain and other foreign States and “<i>foreign State entities/interests</i>”. Disclosure of potentially politically sensitive inter-State communication would jeopardise the Respondent’s legitimate interests and harm its relations with other States. These documents may also be protected by the inviolability of official diplomatic correspondence under Article 27(2) of the Vienna Convention on Diplomatic Relations 1961. For these reasons, and pursuant to Article 9.2(e) and (f) of the IBA Rules, disclosure should not be ordered.</p> <p><b>(f) Documents are in the Claimant’s possession, custody or control.</b></p> <p>In relation to requests 1(vii) and 1(viii), any notification to the Claimant would be in the Claimant’s possession, custody or control.</p>
<p><b>D. Response to objections to document production request (requesting Party)</b></p>	<p>Claimant repeats the reasons underlying its Document Request as set out above, which show that the Requested Documents are relevant and material to the issues bifurcated via PO4 on abuse of process and within the limits defined in the same PO4, on jurisdiction <i>ratione temporis</i> and <i>ratione personae</i>. Claimant thus replies to Respondent’s Objections as follows:</p> <p><u><b>First</b></u>, Claimant notes that Respondent does not dispute the existence of the Requested Documents.</p> <p><u><b>Second</b></u>, Claimant reiterates that the Documents Requested are relevant and material to the issues bifurcated by the Tribunal in PO4:</p> <ol style="list-style-type: none"> <li>1. <u>For purpose of ascertaining when the dispute became foreseeable in connection with Respondent’s abuse of process objection:</u> Respondent’s <u>only</u> objection to the Requested Documents being material for this purpose is that the “<i>relevant test for foreseeability requires that a dispute be “foreseeable to <u>the Claimant</u>”</i> (emphasis in the original), and that accordingly “<i>the relevant documents should be in the Claimant’s possession, reflecting the Claimant’s understanding, and not the other way around.</i>” <p>Yet, Claimant’s case is precisely that it was not aware of Bahrain’s acts and omissions in breach of the BIT that had started in 2010 until at least November 2012 (see Exhibit C-74), and this because these acts and omissions had not been transparently disclosed to Claimant but rather had been dissimulated (and in fact actively) by Respondent (see CMPO, Paragraphs 80 to 87).</p> </li> </ol>

	<p>What is more, in its pleadings to date,<sup>15</sup> including in this document production phase, Bahrain has not even alleged that its actions and/or omissions starting in 2010 had been transparently disclosed to Claimant at any time prior to NICO's re-domiciliation to Malaysia on January 4, 2012, let alone produced evidence to the contrary.</p> <p>Against the above, Respondent's objection to the production of the Requested Documents that would show when Bahrain's acts and omissions as of 2010 would have been notified to Claimant prior to NICO's re-domiciliation to Malaysia on January 4, 2012, <u>is plainly irreconcilable with Bahrain's position that the dispute between NICO and Bahrain would have been foreseeable prior to such January 4, 2012 re-domiciliation</u>, and cannot possibly be sustained. For this reason alone, an order for the production of the Requested Documents cannot be objected to on the basis of relevance or materiality;</p> <p>2. <u>For purposes of ascertaining whether Bahrain's actions and omissions as of 2010 were prompted by NICO's ultimate Iranian shareholding in connection with Respondent's abuse of process objection</u>: Respondent's <u>only</u> response is that "<i>Respondent's reasons for implementing the 2010 CBB Directive (and understanding of NICO's shareholding) have no bearing on the Respondent's abuse of process objection.</i>" Yet, to the very contrary, if Bahrain's actions and omissions as of 2010 were prompted by NICO's ultimate Iranian shareholding (which the Requested Documents will show) that they targeted, then Bahrain knew or ought to have known that it was at all relevant times required under international law (and the 2002 Iran-Bahrain BIT more specifically) to afford NICO and its shareholders the corresponding international law protections, which in turn confirms that Bahrain knew or ought to have known that NICO did not need to re-domicile to Malaysia in 2012 to benefit from international treaty protection, and that Respondent's abuse of process objection is thus not raised in good faith. For this independent reason too, the Requested Documents are relevant and material;</p> <p>3. <u>For purposes of jurisdiction <i>ratione temporis</i> and <i>personae</i></u>: Claimant notes that <u>Respondent does not dispute</u> that the Requested Documents would as a matter of fact be relevant and material "<i>to</i></p>
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<sup>15</sup> In its Objections to Claimant's Document Requests, Respondent suggests (based on in Paragraph 18 of its MPO) that Claimant would have acknowledged in its NoD dated August 5, 2022 and its RfA dated December 5, 2022 that Bahrain's breaches started in 2010. Yet, it never in fact disputes Claimant's position (as set forth at Paragraphs 20 and 81 *et seq.* of its CMPO) that NICO was not aware of Bahrain's actions and omissions starting in 2010 until November 2012. Nor does Respondent ever allege, let alone submit supporting evidence, that such actions and omissions would have been notified by Bahrain to NICO in 2010 or at any time material time thereafter, prior to NICO's first reference to the 2010 CBB Directive in its November 26, 2012 correspondence (submitted as Exhibit C-74).

*assess whether Bahrain's breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia*" in January 2012, nor does Respondent dispute (to the very contrary, it admits in item (i) of its Objection above) that the Requested Documents could "go to the merits of the *ratione temporis* objection." For this reason alone, if the Tribunal were to accept that the assessment of "*whether Bahrain's breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia*" in January 2012, or more generally that factual inquiries and determinations (which Claimant submits are hardly dissociable in this case) as to when Bahrain's breaches occurred and became known to Claimant, would be relevant and material at this stage, the Parties are in agreement and production of the Requested Documents should be ordered;

4. As regards Respondent's allegation that the "*Tribunal has expressly stated in PO4 that it will not determine its ratione temporis jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59),*" Claimant reminds Respondent that the Tribunal made this "*clarifi[cation]*" in the context of ordering bifurcation on the specific issues identified in PO4, and so as to not prejudge the merits of the dispute. This clarification cannot however prohibit the Tribunal from taking into consideration all relevant factors when determining whether, and to what extent, the BIT applies "*to acts and omissions that occurred prior to [the BIT's] entry into force,*" including all factual evidence as to whether the "*acts and omissions that occurred prior to [the BIT's] entry into force*" – which eventually constituted a breach of the BIT – had been notified to Claimant at the time, or rather had been dissimulated by Bahrain, which is precisely what the Requested Documents seek to ascertain for purposes of jurisdiction *ratione temporis*, *ratione personae*, and abuse of process;
5. As to Respondent's allegation that "*documents reflecting the Claimant's awareness or knowledge would be in the Claimant's possession, not the Respondent's,*" it cannot serve to defeat Claimant's Document Requests. Claimant's position is that it was not aware of the acts and omissions of Bahrain starting in 2010, but rather that the same had been dissimulated by Bahrain and its organs until November 2012 (see notably, Paragraphs 80 to 97 of NICO's CMPO), and thus could not have been factored in Claimant's re-domiciliation to Malaysia in 2012. In addition, the acts and omissions of Bahrain are relevant and material to comprehensively rule on Respondent's *ratione personae* objection; to ascertain the nature and time of breach for abuse of process; and to show that there was a lack of transparency which constituted another independent breach.

**Third**, as regards Respondent’s objection that the Requested Documents are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules, Claimant notes that Respondent refrained from engaging by proposing a narrower scope of document categories. In any event:

1. Claimant has demonstrated above that the Requested Documents fall within the defined scope of the Bifurcated Issues;
2. Claimant has narrowly defined the scope of the Requested Documents via exhaustive items (i) to (x), which are sufficiently defined by reference to their subject matter, and thus do not need to be limited in time;
3. Respondent in fact was unable to identify a single specific sub-request that would be overly broad and the reasons why, save to argue that Claimant used “*ambiguous*” terms such as “*prompting*,” whereas it is evident what is meant by this term;

**Fourth**, as regards Respondent’s objections that the Requested Documents are not disclosable pursuant to Articles 9.2(e) and (f) of the IBA Rules:

1. Claimant takes note that Respondent does not dispute that the Requested Documents at paragraphs 1(ii) and 1(x) of Request No. 1 exist but rather hide behind an unsubstantiated defense of “political sensitivity” to avoid producing the said responsive documents. Yet, this cannot be relied upon in abstract without identifying which particular documents are concerned and what specific sensitivity would be jeopardized if the documents were produced, and if so why and how particular safeguards in terms of confidentiality/redactions could not be implemented, and this even more so that such defense of “political sensitivity” could not be used to prevent Claimant from making its case especially when the case is one of a pretextual and political taking and dissimulation.
2. Moreover, as stated clearly by the Commentary on the 2020 IBA rules, objections based on Articles 9.2(e) and (f) may be raised “*if there are compelling reasons to preserve confidentiality of the documents and a party has a legitimate ground to object to the disclosure of these documents.*” However, as stated also by the said commentary “*instead of excluding the entirety of the document from the production evidence, the arbitral tribunal may order appropriate measures to preserve confidentiality of the evidence under Article 9.5.*”<sup>16</sup> Here, however, Respondent has simply issued a blanket refusal on the grounds of “political sensitivity” which is not justified.
3. Respondent should know better since in the *BMI & BSI v. Bahrain* arbitration, Respondent (represented in fact in that case by the

	<p>learned Jan Paulsson who now acts as agent of Respondent in this case) was previously ordered by the tribunal at the time to produce documents exchanged between Bahrain and foreign states “<i>subject to potential redactions with reasons, on the ground of diplomatic relations,</i>” which it in fact did. Bahrain cannot now pretend that it is entirely unable to produce any such responsive document.</p> <p>4. This position is in line with the stance other tribunals have taken. For instance, in <i>Nord stream 2 AG v. European Union</i>,<sup>17</sup> “<i>the Tribunal [...] rejected certain objections based on political or institutional sensitivity under Article 9.2(f) of the IBA Rules due to the failure to identify the precise information that is considered politically or institutionally sensitive as well as the legal basis upon which it should be so classified.</i>” In the present case, however, Bahrain has not only failed to produce any documents at all responsive to Claimant’s request, but it has also failed to explain in detail and case by case why any such responsive documents would in reality be politically sensitive and therefore improper for production. Similarly, in <i>Elliott v Korea</i>,<sup>18</sup> the tribunal ruled that “<i>it is not sufficient for the Respondent to merely assert that its agreement to produce responsive documents is subject to its determination that the documents in question are not politically or institutionally sensitive. Pursuant to Article 9(2)(f) of the IBA Rules, the determination of whether a particular responsive document is excluded from document production on grounds of special political or institutional sensitivity is to be made, in the event the Parties disagree on the issue, by the Tribunal, which must find that the grounds invoked by the party opposing production are “compelling.”</i>” In the present case, Respondent has failed to provide any compelling grounds as to why any such responsive documents should not be produced. Also, in <i>Global Telecom Holding S.A.E. v. Canada</i>,<sup>19</sup> although the tribunal accepted the Respondent’s defense on “political sensitivity”, the tribunal in that case considered that a blanket refusal was not a compelling argument for non-production, stating first, as matter of principle, that “<i>the Tribunal has been given <u>no evidence of a blanket refusal by the Respondent on this ground.</u></i>” Similarly, in response to the respondent’s objection to produce documents on grounds of national security, that same tribunal also stated that “<i>the Respondent’s assertion of national security privilege is <u>not a case of a blanket refusal, as evidenced by its production of 235 documents responsive to [REDACTED]</u></i>”<sup>48</sup> which excludes bad faith. The Tribunal also notes that, of those documents, the Respondent</p>
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<sup>17</sup> *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 5 (Document Production), para. 10.

<sup>18</sup> *Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, Procedural Order No. 8, para. 25.

<sup>19</sup> *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 4 (Decision on the Claimant's Objections to the Respondent's Claims of Privilege), 3 November 2018, paras. 41 and 43, emphasis added.



	<p>redacted 128 and withheld a further 27 on national security grounds, asserting <u>Article 9.2(f) of the IBA Rules</u> for each instance of withheld information. The Respondent explains in great detail how it determined that the release of each withheld information "would" (not "could") be injurious to its national security.<sup>49,20</sup> Here, however, Respondent has (1) failed to produce any responsive documents, (2) failed to provide any compelling reasons for each withheld information and (3) has in fact provided a general blanket refusal to produce any such responsive documents on grounds of "political sensitivity". These grounds are unfounded and can only be rejected by the Tribunal.</p> <p><b><u>Fifth</u></b>, as regards Respondent's objection that the Requested Documents 1(vii) and 1(viii) are in Claimant's possession, custody or control:</p> <ol style="list-style-type: none"> <li>1. Claimant's position is that it was not notified of the 2010 CBB Directive until November 2012, as demonstrated at paragraphs 20 and 81 <i>et seq.</i> of Claimant's CMPO. However, if Bahrain's position is that no notification was given directly to NICO, then Claimant accepts this position.</li> <li>2. In addition, the documents requested at paragraph (viii) cannot be in Claimant's possession as they relate to issues only known to Bahrain, namely "<i>reasons for the decision to not immediately communicate the 2010 CBB Directive to Claimant.</i>" Such reasons are not known to Claimant therefore any such documentary evidence is not in Claimant's possession.</li> </ol>
<b>E. Decision (Tribunal)</b>	The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.
<b><u>Document Request No. 2</u></b>	<b>The origin and content of, reasons for, process leading up to, and date of notification to NICO of all other CBB directives (excluding the 2010 CBB Directive) notified to the Bahraini Banks between January 1, 2010 and December 31, 2012 in relation to the treatment of Iranian investments and NICO's Funds more specifically</b>
<b>A. Documents or category of documents requested (requesting Party)</b>	<p>All Documents recording the following, in connection with the Bahraini Banks' reliance on "<i>directives</i>" (plural) and "<i>circulars</i>" (here again plural) in their correspondence to NICO as of May 2011 (see for instance <b>C-72, C-12, C-212 and C-214</b>) to deny NICO's transfer requests:</p> <ol style="list-style-type: none"> <li>(i) The content of all (excluding the 2010 CBB Directive) written or oral directives/regulations (from the CBB or other Bahraini entities or State Organs as the case may be), whether formal or informal, communicated to the Bahraini Banks between January 1, 2010 and December 31, 2012, directing the Bahraini Banks to adopt a certain behavior towards the Funds of Iranian entities in general, and/or the Funds of NICO more specifically. The</li> </ol>

	<p>existence of such multiple directives/regulations was suggested in the Bahraini Banks’ correspondence to NICO as of May 2011 (see for instance <b>C-72</b>, <b>C-13</b>, <b>C-214</b> and <b>C-212</b>), yet no such directives/regulations were ever notified to Claimant at the time. In any event, the fact that the Bahraini Banks’ measures against Claimant as of 2010 had been prompted in the context of the 2010 CBB Directive, and thus potentially other written or oral directives/regulations (from the CBB or other Bahraini State Organs as the case may be), whether formal or informal, was admitted for the first time in Respondent’s Memorial on Preliminary Objections of October 7, 2024 (see Paragraphs. 3(b)(i), 5, 6, and 17 of Respondent’s Memorial on Preliminary Objections));</p> <ul style="list-style-type: none"> <li>(ii) All instructions/guidelines given to the CBB by other Bahraini State Organs, and the reasons therefor (including all Documents showing that this was due to pressure from foreign States or foreign State entities/interests), prompting the issuance of the directives referred to in item (i) above;</li> <li>(iii) The object and purpose underlying the issuance of the directives referred to in item (i) above;</li> <li>(iv) The process (including any public purpose, due process, and proportionality factors considered in this process) leading up to the issuance of the directives referred to in item (i) above;</li> <li>(v) All guidance/directions given by Bahraini State Organs to the Bahraini Banks in relation to the implementation of the directives referred to in item (i) above in respect of Iranian Funds in general, or NICO’s Funds more specifically;</li> <li>(vi) The date and means by which the directives referred to in item (i) above were notified to the Bahraini Banks;</li> <li>(vii) The date and means by which the directives referred to in item (i) above would have been notified to Claimant;</li> <li>(viii) The reasons for the decision to not immediately communicate to NICO the directives referred to in item (i) above (and indeed, even in this arbitration, Bahrain still does not set out when the directives referred to in item (i) above would have been officially notified to NICO (see Claimant’s Memorial Paragraphs 111, 299; see CMPO Paragraphs 20, 81);</li> <li>(ix) All Correspondence exchanged between the Bahraini Banks and the CBB and/or other Bahraini State Organs in relation to the implementation of the directives referred to in item (i) above; and</li> <li>(x) All reporting by the CBB to other Bahraini State Organs or to foreign States or foreign State entities/interests regarding the implementation of the directives referred to in item (i) above in respect of Iranian Funds in general, or NICO’s Funds more specifically.</li> </ul> <p><b>Non-exhaustive list of supporting evidence:</b></p> <ul style="list-style-type: none"> <li>- <b>C-72</b>, Letter from Ithmaar to NICO dated May 4, 2011: “<i>We appreciate your understanding that <u>these directives/circulars were sent by the Central Bank of Bahrain for recipients only and nobody else</u>, therefore release of these directives/circulars falls beyond our authority</i>” (emphasis added);</li> <li>- <b>C-13</b>, Letter from GFH to NICO dated September 27, 2011: “<i>in accordance with <u>the directives received from the Central Bank of</u></i></li> </ul>
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	<p><i>Bahrain, and as advised earlier this year, we have affected the freeze of your funds starting January 2011. Accordingly, we shall continue to hold the deposits placed by your organization with us in a current account status until a further directive is given by the Central Bank of Bahrain” (emphasis added);</i></p> <ul style="list-style-type: none"> <li>- <b>C-214</b>, Letter from Ithmaar to NICO dated October 9, 2011: “[i]n accordance with <u>the directives received from the Central Bank of Bahrain</u>, [Ithmaar] advises that [it] cannot comply with [NICO’s] request” (emphasis added); and</li> <li>- <b>C-212</b>, Letter from GFH to NICO dated October 11, 2011: “in accordance with <u>the directives received from the Central Bank of Bahrain</u>, we cannot currently comply with the requests as set out in your letter” (emphasis added).</li> </ul> <p><b>Time period:</b> January 1, 2010 to December 31, 2012</p>
<p><b>B. Relevance and materiality, incl. references to submission (requesting Party)</b></p>	<p>Via PO4, the Tribunal decided to bifurcate these proceedings in order to address as preliminary issues the following:</p> <ul style="list-style-type: none"> <li>(i) Respondent’s fourth preliminary objection, which the Tribunal defined as Respondent’s allegation that NICO’s claims are inadmissible since they “<i>resulted from a 2012 corporate restructuring designed to gain access to investment protection under the Treaty after the dispute had become foreseeable,</i>” and also because “<i>NICO [would have] sought to return to Malaysia in 2018 as a “conscious choice” in order to present its “fully cooked” Treaty claims as a further act of abusive behavior, including because “Claimant’s alleged efforts to reacquire Malaysian nationality ex post facto to cover the period of December 2014 to March 2018 [would have] constitute[d] a further breach of the abuse of process doctrine;</i>” (PO4, Paragraphs, 68 to 69);</li> <li>(ii) The following two questions put by the Tribunal to the Parties as regards Respondent’s second preliminary objection to the Tribunal’s jurisdiction <i>ratione temporis</i>, namely (a) “[t]o what extent does the Treaty apply to acts and omissions that occurred prior to its entry into force?;” and (b) “[t]o what extent must Claimant have nationality under the Treaty at the time of the alleged breach?” (PO4, Paragraph 77(a)(i)); as well as</li> <li>(iii) The following two questions put by the Tribunal to the Parties as regards Respondent’s third preliminary objection to the Tribunal’s jurisdiction <i>ratione personae</i>, namely (a) “[w]as NICO incorporated in Malaysia and hence did it benefit from protection under the Treaty from December 2014-March 2018?;” and (b) “[w]hat effect, if any, does the 2018 Malaysian Court Decision have on Claimant’s standing and rights under the Treaty?” (PO4, Paragraph 77(a)(ii)).</li> </ul> <p>The Requested Documents are relevant and material to all of the above for the reasons explained below.</p> <p>In its CMPO, Claimant explained that “<i>Claimant’s case has always been, as set out in contemporaneous correspondence and in its Memorial [...] that Bahrain’s multiples breaches of its obligations under the BIT included, from the outset and on an ongoing basis, a material and standalone breach of its transparency obligation under Article 3(1) of the BIT, which notably</i></p>

*included the fact that none of Bahrain's adverse actions and/or omissions – which are now suspected to have perhaps begun in 2010 (although even in this arbitration, Bahrain still refrains from expressly setting out when its adverse measures against NICO would have begun) – had ever been notified to NICO at the time, and indeed they were not” (CMPO, Paragraph 15).*

Claimant further explained in its CMPO that “*Bahrain should thus now account for and engage on this material issue, including by way of submissions, as well as the production of documents and relevant witnesses” (CMPO, Paragraph 16), and that “it is against this background and context, and out of necessity with the above caveats, that Claimant has sought to identify to the best of its ability in its Memorial, while still being kept in the dark by Bahrain as to the precise nature, extent, and timing of its interferences with the release of NICO's Deposits as events progressively unfolded, the following three tentative major dates of independent and ongoing breaches by Bahrain of its substantive and due process obligations” under the BIT (CMPO, Paragraph 17), including the “First Refusals, consisting in GFH's first refusal on November 2, 2010, and Ithmaar's first refusal on January 19, 2011, to comply with NICO's request for the transfer of its Funds” (CMPO, Paragraph 17.1); the “Second Refusals, consisting in GFH's further refusal on January 17, 2012, and Ithmaar's further refusal on November 26, 2012, to release NICO's funds” (CMPO, Paragraph 17.2); and the “Third Refusals, consisting in GFH and Ithmaar's refusal once again to release NICO's funds in January 2015 and onwards, and this despite the fact that all sanctions against Iranian interests were being lifted in the wake of the July 2015 JCPOA and the West rushing to secure a share of the Iranian market” (CMPO, Paragraph 17.3).*

For these reasons, Claimant sets out in its CMPO that “*as regards the origin, continuation and the ultimate breaches leading to the First Refusals now suspected to date back to November 2, 2010 and January 19, 2011, [...] it will be material to determine the exact timing and the nature and extent of the acts and omissions of Bahrain via submissions, the disclosure of documents and production/examination of witnesses, and potentially corresponding adverse inferences,*” hence why “*NICO provisionally [sets] the date of Bahrain's first breaches as taking place from January 4, 2012 onwards” (CMPO, Paragraph 20).*

Against the above, the Requested Documents – which are strictly limited in terms of scope, subject matter, and time period (i.e. from January 1, 2010 to December 31, 2012) – are relevant and material to the resolution of the issues in dispute in these bifurcated proceedings.

This is because the Requested Documents will show the origin, nature, scope, and date of Bahrain's actions and/or omissions in connection with the blocking by the Bahraini Banks of NICO's Funds on the basis of the directives/regulations/circulars (other than the 2010 CBB Directive) issued by the CBB and/or other Bahraini State Organs between January 1, 2010 and December 31, 2012, as well as whether the decision to not release NICO's Funds was properly implemented by the Bahraini Banks during the same January 1, 2010 to December 31, 2012 period.

	<p>All of the above Requested Documents will thus be relevant and material for purposes of establishing when any breach by Bahrain occurred or at least became known to Claimant.</p> <p>Against the above, the Requested Documents will be relevant and material:</p> <ul style="list-style-type: none"> <li>(i) For purposes of jurisdiction <i>ratione temporis</i> in connection with the Tribunal's questions in PO4 (Paragraph 77(a)(i)), to assess whether Bahrain's breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia on January 4, 2012 (whereas Claimant demonstrated in its CMPO that such breaches were not known at the time due to Bahrain's breach of its transparency obligation – see CMPO, Paragraphs 15 to 17 and 86 to 88), namely after the BIT's entry into force on January 28, 2011, so as to fall within the BIT's <i>ratione temporis</i> scope;</li> <li>(ii) For purposes of jurisdiction <i>ratione personae</i> in connection with the Tribunal's questions in PO4 (Paragraph 77(a)(ii)), to show that Bahrain's breaches occurred or in any event became known to Claimant only after it had re-domiciled to Malaysia on January 4, 2012 (for the reasons set out at CMPO, Paragraphs 127 to 128, and 130 to 136);</li> <li>(iii) For purposes of Respondent's abuse of process objection (PO4, Paragraphs 68 to 69), to ascertain whether the directives issued to the Bahraini Banks between January 1, 2010 and December 2012 (other than the 2010 CBB Directive) in respect of NICO's Funds, as well as the subsequent exchanges in relation to the implementation thereof with the Bahraini Banks, were prompted by NICO's ultimate Iranian shareholding, which in turn will contradict the very basis of Respondent's abuse of process objection, namely that NICO's January 4, 2012 re-domiciliation to Malaysia would have been prompted by more favorable treaty protections under the Malaysia-Bahrain BIT, whereas the Requested Documents would show that Bahrain was at all times aware of NICO's ultimate Iranian shareholding and thus of its obligations towards NICO under the Iran-Bahrain BIT (for the reasons set out at CMPO, Paragraphs 35 to 43); and in any event</li> <li>(iv) For purposes again of Respondent's abuse of process objection (PO4, Paragraphs 68 to 69), to ascertain when the dispute became foreseeable, let alone to the high degree of foreseeability required under the BIT and international law (see in this respect Claimant's CMPO, Paragraphs 73 to 98).</li> </ul>
<p><b>C. Reasoned objections to document production request (objecting Party)</b></p>	<p>The Respondent objects to these requests for the following reasons:</p> <p><b>(a) The Claimant's requests are not relevant to the Bifurcated Issues in PO4 and are not material to the outcome of the bifurcated proceedings so should be rejected under Articles 3.3(b) and 9.2(a) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.a above, <i>mutatis mutandis</i>.</p> <p>The Claimant advances four arguments on the purported relevance of these documents. Addressing each in turn:</p> <ul style="list-style-type: none"> <li>(i) <b>For purposes of jurisdiction <i>ratione temporis</i>:</b> The Tribunal has expressly stated in PO4 that it will not determine its <i>ratione temporis</i> jurisdiction over any specific breaches alleged by the Claimant (PO4,</li> </ul>



para 59). The bifurcated questions posed on the *ratione temporis* objection are legal (not factual) questions. The Claimant's purported justification ("*to assess whether Bahrain's breaches occurred and ... became known to Claimant prior to its re-domiciliation*") is not relevant to the bifurcated legal questions and ignores the Tribunal's express limitation.<sup>21</sup> Therefore, the Claimant's requests for documents that go to the merits of the *ratione temporis* objection are clearly beyond the scope of the Bifurcated Issues and should be dismissed.

(ii) **For purposes of jurisdiction *ratione personae*:** The Tribunal's questions on the *ratione personae* objection focus specifically on the Claimant's nationality from 2014-2018 and its access to the Treaty, not the factual circumstances surrounding the Respondent's alleged breaches. The Claimant's purported justification ("*to show that Bahrain's breaches occurred or in any event became known to Claimant only after it had re-domiciled to Malaysia*") is not relevant to the *ratione personae* questions bifurcated by the Tribunal. Moreover, documents reflecting the Claimant's awareness or knowledge would be in the Claimant's possession, not the Respondent's. The requested documents are irrelevant and immaterial to the question of whether the Tribunal has jurisdiction *ratione personae*.

(iii) **For purposes of Respondent's abuse of process objection, to ascertain whether the directives issued and subsequent exchanges were prompted by NICO's ultimate Iranian shareholding:** The Claimant misstates the Respondent's abuse of process objection. The Respondent's reasons for implementing directives other than the 2010 CBB Directive (and understanding of NICO's shareholding), which the Claimant cites as the justification for this request, have no bearing on the Respondent's abuse of process objection. The requested documents are irrelevant and immaterial to the question of whether the Claimant committed an abuse of process.

(iv) **For purposes of Respondent's abuse of process objection, to ascertain when the dispute became foreseeable:** The relevant test for foreseeability requires that a dispute be "*foreseeable to the Claimant*" (see, e.g., Memorial, para 77; CMPO, paras 30-32, emphasis added), not to the Respondent. As such, the relevant documents should be in the Claimant's possession, reflecting the Claimant's understanding, and not the other way around. The requested documents are irrelevant and immaterial to the question of when the dispute became foreseeable to the Claimant and, consequently, whether the Claimant committed an abuse of process.

For completeness, the Claimant further argues that the documents requested would show "*whether the decision to not release NICO's Funds was properly implemented by the Bahraini Banks during the same January 1, 2010 to December 31, 2012 period*" (emphasis added). It is unclear what the

<sup>21</sup> In any event, the Respondent has already demonstrated the Claimant's awareness of the allegations it raises in the arbitration prior to its re-domiciliation to Malaysia in January 2012 (Preliminary Objections, paras 27-29 citing Merits Memorial, para 142).



Claimant means by “*properly implemented*” and how the Claimant says that would aid at all in determining the Bifurcated Issues. The Respondent’s position is that it is irrelevant.

For these reasons, the requests constitute an impermissible fishing expedition and should be rejected.

**(b) The requests are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules.**

The Respondent repeats paragraph 6.b above, *mutatis mutandis*.

The scope of these requests (i.e. the background to and content of all other CBB directives) is overbroad and outside the defined scope of the Bifurcated Issues, as explained under (a) above. The Claimant’s stipulated time period of 1 January 2010 to 31 December 2012 is also excessive, unexplained and arbitrary, especially in circumstances where the Claimant claims to be seeking documents that are alluded to in letters dated between May and October 2011. Furthermore, the Claimant uses overbroad and ambiguous terms, for example, in request 2(i) (“*a certain behavior*”) and request 2(ii) (“*foreign State entities/interests*” and “*prompting*”), which is far from a narrow and specific category of documents.

For these reasons, the requests impose an unreasonable and disproportionate burden on the Respondent, violating Article 9.2(c) and (g) of the IBA Rules.

**(c) Documents held by the Bahraini Banks are not within the Respondent’s possession, custody or control.**

To the extent that the Claimant is seeking documents held by the Bahraini Banks, the Respondent repeats paragraph 6.c above, *mutatis mutandis*.

**(d) The Requests seek documents on the basis of arguments related to NICO’s ultimate shareholder and protections on the Bahrain-Iran BIT and are therefore outside of the Tribunal’s jurisdiction to order.**

Requests 2(i), 2(v) and 2(x) seek documents relating to NICO’s ultimate shareholder and protections that may (or may not) be available to that shareholder under the Bahrain-Iran BIT. For the reasons explained in paragraphs 106 to 109 of the Respondent’s Memorial on Preliminary Objections, this Tribunal does not have jurisdiction nor the authority to determine purported claims under the Bahrain-Iran BIT. Production of documents that relate to rights that may or may not be owed to NICO’s ultimate shareholder under a separate treaty are not relevant or material to the issues to be decided in the present proceedings.

**(e) Documents of political or institutional sensitivity are not disclosable pursuant to Article 9.2(e) and (f) of the IBA Rules.**

Requests 2(ii) and 2(x) seek documents between Bahrain and other foreign States and “*foreign State entities/interests*”. Disclosure of politically sensitive inter-State communication would jeopardise the Respondent’s legitimate interests and harm its relations with other States. These documents may also be protected by the inviolability of official diplomatic correspondence under Article 27(2) of the Vienna Convention on



	<p>Diplomatic Relations 1961. For these reasons, and pursuant to Article 9.2(e) and (f) of the IBA Rules, disclosure should not be ordered.</p> <p><b>(f) Documents are in the Claimant’s possession, custody or control.</b></p> <p>In relation to requests 2(vii) and 2(viii), any notification to the Claimant would be in the Claimant’s possession, custody or control.</p>
<p><b>D. Response to objections to document production request (requesting Party)</b></p>	<p>Claimant repeats the reasons underlying its Document Request as set out above which show that the Requested Documents are relevant and material to the issues bifurcated via PO4 on abuse of process and within the limits defined in the same PO4, on jurisdiction <i>ratione temporis</i> and <i>ratione personae</i>. Claimant thus replies to Respondent’s Objections as follows:</p> <p><u><b>First</b></u>, Claimant notes that Respondent does not dispute the existence of the Requested Documents.</p> <p><u><b>Second</b></u>, Claimant reiterates that the Documents Requested are relevant and material to the issues bifurcated by the Tribunal in PO4:</p> <ol style="list-style-type: none"> <li>1. <u>For purposes of ascertaining when the dispute became foreseeable in connection with Respondent’s abuse of process objection:</u> Respondent’s <u>only</u> response is that the “<i>relevant test for foreseeability requires that a dispute be “foreseeable to the Claimant”</i> (emphasis in the original), and that accordingly “<i>the relevant documents should be in the Claimant’s possession, reflecting the Claimant’s understanding, and not the other way around.</i>”</li> </ol> <p>Yet, Claimant’s case is precisely that it was not aware of Bahrain’s acts and omissions in breach of the BIT that had started in 2010 until at least November 2012 (see Exhibit C-74), and this because these acts and omissions had not been transparently disclosed to Claimant but rather had been dissimulated (and in fact actively) by Respondent (see CMPO, Paragraphs 80 to 87).</p> <p>What is more, in its pleadings to date,<sup>22</sup> including in this document production phase, Bahrain has not even alleged that its actions and/or omissions starting in 2010 had been transparently disclosed to Claimant at any time prior to NICO’s re-domiciliation to Malaysia on January 4, 2012, let alone produced evidence to the contrary.</p>

<sup>22</sup> In its Objections to Claimant’s Document Requests, Respondent suggests (based on Paragraph 18 of its MPO) that Claimant would have acknowledged in its NoD dated August 5, 2022 and its RfA dated December 5, 2022 that Bahrain’s breaches started in 2010. Yet, it never in fact disputes Claimant’s position (as set forth at Paragraphs 20 and 81 *et seq.* of its CMPO) that NICO was not aware of Bahrain’s actions and omissions starting in 2010 until November 2012. Nor does Respondent ever allege, let alone submit supporting evidence, that such actions and omissions would have been notified by Bahrain to NICO in 2010 or at any time material time thereafter, prior to NICO’s first reference to the 2010 CBB Directive in its November 26, 2012 correspondence (submitted as Exhibit C-74).

Against the above, Respondent's objection to the production of the Requested Documents that would show when Bahrain's acts and omissions as of 2010 would have been notified to Claimant prior to NICO's re-domiciliation to Malaysia on January 4, 2012, is plainly irreconcilable with Bahrain's position that the dispute between NICO and Bahrain would have been foreseeable prior to such January 4, 2012 re-domiciliation, and cannot possibly be sustained. For this reason alone, an order for the production of the Requested Documents cannot be objected to on the basis of relevance or materiality;

2. For purposes of ascertaining whether Bahrain's actions and omissions as of 2010 were prompted by NICO's ultimate Iranian shareholding in connection with Respondent's abuse of process objection: Respondent's only response is that "*Respondent's reasons for implementing directives other than the 2010 CBB Directive (and understanding of NICO's shareholding), which the Claimant cites as the justification for this request, have no bearing on the Respondent's abuse of process objection.*" Yet, to the very contrary, if Bahrain's actions and omissions as of 2010 were prompted by NICO's ultimate Iranian shareholding (which the Requested Documents will show) that they targeted, then Bahrain knew or ought to have known that it was at all relevant times required under international law (and the 2002 Iran-Bahrain BIT more specifically) to afford NICO and its shareholders the corresponding international law protections, which in turn confirms that Bahrain knew or ought to have known that NICO did not need to re-domicile to Malaysia in 2012 to benefit from international treaty protection, and that Respondent's abuse of process objection is thus not raised in good faith. For this independent reason too, the Requested Documents are relevant and material;
3. For purposes of jurisdiction *ratione temporis* and *personae*: Claimant notes that Respondent does not dispute that the Requested Documents would as a matter of fact be relevant and material "*to assess whether Bahrain's breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia*" in January 2012, nor does Respondent dispute (to the very contrary, it admits in item (i) of its Objection above) that the Requested Documents could "*go to the merits of the *ratione temporis* objection.*" For this reason alone, if the Tribunal were to accept that the assessment of "*whether Bahrain's breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia*" in January 2012, or more generally that factual inquiries and determinations (which Claimant submits are hardly dissociable in this case) as to when Bahrain's breaches occurred and became known to Claimant, would be relevant and material at this stage, the

Parties are in agreement and production of the Requested Documents should be ordered;

4. As regards Respondent's allegation that the "*Tribunal has expressly stated in PO4 that it will not determine its ratione temporis jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59),*" Claimant reminds Respondent that the Tribunal made this "*clarifi[cation]*" in the context of ordering bifurcation on the specific issues identified in PO4, and so as to not prejudice the merits of the dispute. This clarification cannot however prohibit the Tribunal from taking into consideration all relevant factors when determining whether, and to what extent, the BIT applies "*to acts and omissions that occurred prior to [the BIT's] entry into force,*" including all factual evidence as to whether the "*acts and omissions that occurred prior to [the BIT's] entry into force*" – which eventually constituted a breach of the BIT – had been notified to Claimant at the time, or rather had been dissimulated by Bahrain, which is precisely what the Requested Documents seek to ascertain for purposes of jurisdiction *ratione temporis*, *ratione personae*, and abuse of process;
5. As to Respondent's allegation that "*documents reflecting the Claimant's awareness or knowledge would be in the Claimant's possession, not the Respondent's,*" it cannot serve to defeat Claimant's Document Requests. Claimant's position is that it was not aware of the acts and omissions of Bahrain starting in 2010, but rather that the same had been dissimulated by Bahrain and its organs until November 2012 (see notably, Paragraphs 80 to 97 of NICO's CMPO), and thus could not have been factored in Claimant's re-domiciliation to Malaysia in 2012. In addition, the acts and omissions of Bahrain are relevant and material to comprehensively rule on Respondent's *ratione personae* objection; to ascertain the nature and time of breach for abuse of process; and to show that there was a lack of transparency which constituted another independent breach.

**Third,** as regards Respondent's objection that the Requested Documents are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules, Claimant notes that Respondent refrained from engaging by proposing a narrower scope of document categories. In any event:

1. Claimant has demonstrated above that the Requested Documents fall within the defined scope of the Bifurcated Issues;
2. Claimant has narrowly defined the scope of the Requested Documents via exhaustive items (i) to (x). Although the items are sufficiently defined by reference to their subject matter, and limited in time from 1 January 2010 to 31 December 2012, Respondent alleges that it is "*excessive, unexplained and arbitrary.*" The chosen



	<p>time period of only three years refers to the period during which the purported CBB directives were notified to the Bahraini Banks. The time period is therefore justified;</p> <p>3. Respondent in fact was unable to identify a single specific sub-request that would be overly broad and the reasons why, save to argue that Claimant used “<i>ambiguous</i>” terms such as “<i>a certain behavior</i>”, “<i>foreign State entities/interests</i>” and “<i>prompting</i>,” whereas it is evident what is meant by these terms.</p> <p><b><u>Fourth</u></b>, as regards Respondent’s objections that the Requested Documents are not disclosable pursuant to Articles 9.2(e) and (f) of the IBA Rules:</p> <p>1. Claimant takes note that Respondent does not dispute that the Requested Documents at paragraphs 2(ii) and 2(x) of Request No. 2 exist but rather hide behind an unsubstantiated defense of “political sensitivity” to avoid producing the said responsive documents. Yet, this cannot be relied upon in abstract without identifying which particular documents are concerned and what specific sensitivity would be jeopardized if the documents were produced, and if so why and how particular safeguards in terms of confidentiality/redactions could not be implemented, and this even more so that such defense of “political sensitivity” could not be used to prevent Claimant from making its case especially when the case is one of a pretextual and political taking and dissimulation.</p> <p>2. Moreover, as stated clearly by the Commentary on the 2020 IBA rules, objections based on Articles 9.2(e) and (f) may be raised “<i>if there are compelling reasons to preserve confidentiality of the documents and a party has a legitimate ground to object to the disclosure of these documents.</i>” However, as stated also by the said commentary “<i>instead of excluding the entirety of the document from the production evidence, the arbitral tribunal may order appropriate measures to preserve confidentiality of the evidence under Article 9.5.</i>”<sup>23</sup> Here, however, Respondent has simply issued a blanket refusal on the grounds of “political sensitivity” which is not justified.</p> <p>3. Respondent should know better since in the <i>BMI &amp; BSI v. Bahrain</i> arbitration, Respondent (represented in fact in that case by the learned Jan Paulsson who now acts as agent of Respondent in this case) was previously ordered by the tribunal at the time to produce documents exchanged between Bahrain and foreign states “<i>subject to potential redactions with reasons, on the ground of diplomatic relations,</i>” which it in fact did. Bahrain cannot now pretend that it is entirely unable to produce any such responsive document.</p>
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Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, adopted in January 2021, p. 29.

4. This position is in line with the stance other tribunals have taken. For instance, in *Nord stream 2 AG v. European Union*,<sup>24</sup> “the Tribunal [...] rejected certain objections based on political or institutional sensitivity under Article 9.2(f) of the IBA Rules due to the failure to identify the precise information that is considered politically or institutionally sensitive as well as the legal basis upon which it should be so classified.” In the present case, however, Bahrain has not only failed to produce any documents at all responsive to Claimant’s request, but it has also failed to explain in detail and case by case why any such responsive documents would in reality be politically sensitive and therefore improper for production. Similarly, in *Elliott v Korea*,<sup>25</sup> the tribunal ruled that “it is not sufficient for the Respondent to merely assert that its agreement to produce responsive documents is subject to its determination that the documents in question are not politically or institutionally sensitive. Pursuant to Article 9(2)(f) of the IBA Rules, the determination of whether a particular responsive document is excluded from document production on grounds of special political or institutional sensitivity is to be made, in the event the Parties disagree on the issue, by the Tribunal, which must find that the grounds invoked by the party opposing production are “compelling.”” In the present case, Respondent has failed to provide any compelling grounds as to why any such responsive documents should not be produced. Also, in *Global Telecom Holding S.A.E. v. Canada*,<sup>26</sup> although the tribunal accepted the Respondent’s defense on “political sensitivity”, the tribunal in that case considered that a blanket refusal was not a compelling argument for non-production, stating first, as matter of principle, that “the Tribunal has been given no evidence of a blanket refusal by the Respondent on this ground.” Similarly, in response to the respondent’s objection to produce documents on grounds of national security, that same tribunal also stated that “the Respondent’s assertion of national security privilege is not a case of a blanket refusal, as evidenced by its production of 235 documents responsive to [REDACTED]”<sup>48</sup> which excludes bad faith. The Tribunal also notes that, of those documents, the Respondent redacted 128 and withheld a further 27 on national security grounds, asserting Article 9.2(f) of the IBA Rules for each instance of withheld information. The Respondent explains in great detail how it determined that the release of each withheld information “would” (not “could”) be injurious to its national security.<sup>49”</sup><sup>27</sup> Here,

<sup>24</sup> *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 5 (Document Production), para. 10.

<sup>25</sup> *Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, Procedural Order No. 8, para. 25.

<sup>26</sup> *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 4 (Decision on the Claimant's Objections to the Respondent's Claims of Privilege), 3 November 2018, paras. 41 and 43, emphasis added.

<sup>27</sup> *Ibid*, para. 43, emphasis added.

	<p>however, Respondent has (1) failed to produce any responsive documents, (2) failed to provide any compelling reasons for each withheld information and (3) has in fact provided a general blanket refusal to produce any such responsive documents on grounds of “political sensitivity”. These grounds are unfounded and can only be rejected by the Tribunal.</p> <p><b><u>Fifth</u></b>, as regards Respondent’s objection that the Requested Documents 2(vii) and 2(viii) are in Claimant’s possession, custody or control:</p> <ol style="list-style-type: none"> <li>1. Claimant’s position is that it was not notified of the 2010 CBB Directive until November 2012, as demonstrated at paragraphs 20 and 81 <i>et seq</i> of Claimant’s CMPO. However, if Bahrain’s position is that no notification was given directly to NICO, then Claimant accepts this position.</li> <li>2. In addition, the documents requested at paragraph (viii) cannot be in Claimant’s possession as they relate to issues only known to Bahrain, namely “<i>reasons for the decision to not immediately communicate to NICO the directives referred to in item (i) above</i>”. Such reasons are not known to Claimant therefore any such documentary evidence is not in Claimant’s possession.</li> </ol>
<b>E. Decision (Tribunal)</b>	The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.
<b><u>Document Request No. 3</u></b>	<b>The origin and content of, reasons for, process leading up to, and date of notification to NICO of, all CBB directives notified to the Bahraini Banks from January 1, 2013 to December 31, 2014 origin and content of, reasons for, process leading up to, and date of notification to NICO of, all CBB directives notified to the Bahraini Banks from January 1, 2013 to December 31, 2014 in relation to the treatment of Iranian Funds in general and NICO’s Funds more specifically</b>
<b>A. Documents or category of documents requested (requesting Party)</b>	<p>All Documents recording, in connection with, but not limited to, Ithmaar’s reliance on the “<i>CBB’s regulations</i>” in its correspondence to NICO as of December 2013 (see <b>C-223, C-224, and C-227</b>):</p> <ol style="list-style-type: none"> <li>(i) The content of any written or oral directives/regulations (from the CBB or other Bahraini State Organs as the case may be), whether formal or informal, communicated to the Bahraini Banks between January 1, 2012 and December 31, 2014, directing the Bahraini Banks to adopt a certain behavior towards the Funds of Iranian entities in general, and the Funds of NICO more specifically – the existence of such directives/regulations was suggested in the Bahraini Banks’ correspondence to NICO as of December 2013 (see for instance <b>C-223, C-224, and C-227</b>), but never notified to Claimant at the time. Yet the fact that the Bahraini Banks’ measures against Claimant as of 2013 had been prompted by written or oral directives/regulations (from the CBB or other Bahraini State Organs as the case may be), whether formal or informal, was admitted for the first time in</li> </ol>

	<p>Respondent’s Memorial on Preliminary Objections of October 7, 2024 (Paragraphs 3(b)(i), 5,6, and 17));</p> <ul style="list-style-type: none"> <li>(ii) All instructions/guidelines put to the CBB, and the reasons therefor (including documents showing that this was due to pressure from foreign States or foreign State entities/interests), prompting the issuance of the directives referred to in item (i) above;</li> <li>(iii) The object and purpose underlying the issuance of the directives referred to in item (i) above;</li> <li>(iv) The process (including in terms of public purpose, due process, and proportionality) leading up to the issuance of the directives referred to in item (i) above;</li> <li>(v) All directions given by the CBB or other Bahraini State Organs, to the Bahraini Banks in relation to the implementation of the directives referred to in item (i) above in respect of Iranian Funds in general, or NICO’s Funds more specifically;</li> <li>(vi) The date and means by which the directives referred to in item (i) above were notified to the Bahraini Banks;</li> <li>(vii) The date and means by which the directives referred to in item (i) above would have been notified to Claimant;</li> <li>(viii) The reasons for the decision to not immediately communicate the directives referred to in item (i) above to NICO (even in this arbitration, Bahrain still does not set out when the directives referred to in item (i) above would have been officially notified to NICO – see Claimant’s Memorial Paragraphs 111, 299; see also CMPO Paragraphs 20, 81);</li> <li>(ix) All Correspondence exchanged between the Bahraini Banks and the CBB and/or other Bahraini State Organs in relation to the implementation of the directives referred to in item (i) above; and</li> <li>(x) All reporting made by the CBB or other Bahraini State Organs regarding the implementation of the directives referred to in item (i) above in respect of Iranian Funds in general, or NICO’s Funds more specifically.</li> </ul> <p><b>Non-exhaustive list of supporting evidence:</b></p> <ul style="list-style-type: none"> <li>- <b>C-223</b>, Letter from Ithmaar to NICO dated December 30, 2013: <i>“Ithmaar Bank is subject to <u>the Central Bank of Bahrain’s (CBB) regulations</u> and any decision on the way forward will also be subject to the CBB’s consent (emphasis added).”</i></li> <li>- <b>C-224</b>, Letter from Ithmaar to NICO dated February 10, 2014: <i>“Kindly note that we enquired about the status of the <u>sanctions</u> on [NICO] <u>with the local regulators</u> and discussed with them the possibilities of releasing funds as proposed by you[...]. We are very confident that you do appreciate our position and the fact that our decision is bound by <u>regulatory rules</u>.[...] Alternatively, but subject to <u>prior approvals from the regulators</u>, we will endeavour to offering you some overseas assets in settlement of deposits (emphasis added).”</i></li> <li>- <b>C-227</b>, Letter from Ithmaar to NICO dated March 20, 2014 in which a reference to liaising with “our regulators” or “relevant regulators” was made hinting at the need to seek CBB directives before any attempt to release NICO’s Funds: <i>“we are not in a position to comment on the content of the Letter (including the proposal) until we have had the opportunity to examine both with our legal counsel</i></li> </ul>
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	<p><i>prior to liaising with our regulators in respect of this matter. Once we have had the opportunity to confer with our legal counsel and relevant regulators, we hope that a further meeting with you can be scheduled to discuss the Bank's position (emphasis added)."</i></p> <p><b>Time period:</b> January 1, 2013 to December 31, 2014</p>
<p><b>B. Relevance and materiality, incl. references to submission (requesting Party)</b></p>	<p>Via PO4, the Tribunal decided to bifurcate these proceedings in order to address as preliminary issues:</p> <ul style="list-style-type: none"> <li>(i) Respondent's fourth preliminary objection, which the Tribunal defined as Respondent's allegation that NICO's claims are inadmissible since they <i>"resulted from a 2012 corporate restructuring designed to gain access to investment protection under the Treaty after the dispute had become foreseeable,"</i> and also because <i>"NICO [would have] sought to return to Malaysia in 2018 as a "conscious choice" in order to present its "fully cooked" Treaty claims as a further act of abusive behavior, including because "Claimant's alleged efforts to reacquire Malaysian nationality ex post facto to cover the period of December 2014 to March 2018 [would have] constitute[d] a further breach of the abuse of process doctrine;"</i> (PO4, Paragraphs 68 to 69); as well as</li> <li>(ii) The following two questions put by the Tribunal to the Parties as regards Respondent's second preliminary objection to the Tribunal's jurisdiction <i>ratione temporis</i>, namely (a) <i>"[t]o what extent does the Treaty apply to acts and omissions that occurred prior to its entry into force?;"</i> and (b) <i>"[t]o what extent must Claimant have nationality under the Treaty at the time of the alleged breach?"</i> (PO4, Paragraph 77(a)(i)).</li> </ul> <p>The Requested Documents are relevant and material to all of the above for the reasons explained below.</p> <p><u>First</u>, Claimant in its CMPO explained that <i>"it is not disputed that the Second Refusals towards Claimant occurred during the January 4, 2012 (when NICO was re-domiciled to Malaysia) to December 2014 period when Bahrain does not dispute that NICO was a Malaysian national and that the Bahrain-Malaysia BIT was in force. In other words, there can be no dispute as to [the Tribunal's] ratione personae and ratione temporis jurisdiction over any breaches of Bahrain in relation to this Second Refusals and that time period"</i> (CMPO, Paragraph 18).</p> <p><u>Second</u>, Claimant in its CMPO explained that <i>"[the Third] refusals ["consisting in GFH and Ithmaar's refusal once again to release NICO's funds in January 2015 and onwards, and this despite the fact that all sanctions against Iranian interests were being lifted in the wake of the July 2015 JCPOA and the West rushing to secure a share of the Iranian market" (CMPO, Paragraph 17.3)] likely originated from acts and/omissions that had taken place in the previous months, starting at least in December 2014 when NICO was undisputedly incorporated in Malaysia, and still ongoing moreover in March 2018. During this period, the Tribunal's jurisdiction over any breaches of Bahrain can similarly not be disputed"</i> (CMPO, Paragraph 19).</p> <p><u>Third</u>, Claimant in its CMPO explained that <i>"the fact that NICO became aware of the 2010 CBB Directive only in November 2012 does not prevent</i></p>



*it from asserting independent breaches in respect of Bahrain's prior breaches, as it only became aware of the same in November 2012 (namely almost ten months after NICO had re-domiciled to Malaysia in January 2012) and this only to a limited extent, with the precise nature, extent, and timing of the same to be confirmed via document production and witness testimony from Respondent. Hence why NICO in its Memorial has since set out the date and different acts and/or omissions of Bahrain in breach of the BIT, which are further particularized in Section I above [of the CMPO], with caveats given how NICO was kept in the dark as regards the nature and timing of Bahrain's prior breaches and interferences. In any event, what matters for assessing whether there was an abuse of process is not what has come to light in the meantime, but whether a dispute with the State was foreseeable to the required high degree of probability at the relevant time" (CMPO, Paragraph 82).*

*Fourth, Claimant also explained in its CMPO that "contrary to Bahrain's assertion, the breaches of the BIT here cannot be reduced to mere "continuing effects" of the CBB Directive of 2010, but are separate and standalone breaches, which were continuous in nature. In particular, Bahrain's independent breaches in 2015 regarding the Third Refusals were not and could not be "subsequent acts [that] simply confirm the same dispute" as they did not originate from the US sanctions but Bahrain's political agenda" (CMPO, Paragraph 133).*

*Further, Claimant in its CMPO demonstrated that "whereas NICO acquired Malaysian nationality on January 4, 2012, namely almost a year after the BIT's entry into force on January 28, 2011, Claimant was never able, and still to this date upon the evidence submitted by Respondent in this arbitration, remains unable to ascertain the exact timing, as well as the precise and full nature/extent of the actions/omissions of Bahrain's involved organs. Hence Claimant's position in Section I above, namely that a large bulk of its claims relate to breaches that occurred as of January 4, 2012 at the time when the BIT was in force and NICO effectively re-domiciled in Malaysia, which is not disputed" (CMPO, Paragraph 135).*

For all of the above reasons, the Requested Documents – which are strictly limited in terms of scope and time period to the best of Claimant's ability – are relevant and material to the resolution of the issues in dispute in these bifurcated proceedings as they are necessary to (i) to assess whether the breaches occurred within the BIT's *ratione temporis* scope; (ii) to ascertain whether the directives issued to the Bahraini Banks between January 1, 2012 and December 31, 2014, in respect of NICO's Funds, were prompted by NICO's ultimate Iranian shareholding, which will be material for the abuse of process objection (for the reasons set out at CMPO, Paragraphs 80 to 87); and in any event (iii) to ascertain when the dispute became foreseeable, let alone to the high degree of foreseeability required under international law (see on this CMPO, Paragraphs 73 to 98), which will also be material for the abuse of process objection.

This is all the more so that as per the case put by Claimant in Section II of its CMPO, absent the Requested Documents, there is ample evidence on record showing that at least several of Respondent's independent breaches occurred during the January 2012 to December 2014 period when it is undisputed that NICO was a Malaysian company.

<p><b>C. Reasoned objections to document production request (objecting Party)</b></p>	<p>The Respondent objects to the Claimant's requests for the following reasons:</p> <p><b>(a) The Claimant's requests are not relevant to the Bifurcated Issues in PO4 and are not material to the outcome of the bifurcated proceedings so should be rejected under Articles 3.3(b) and 9.2(a) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.a above, <i>mutatis mutandis</i>.</p> <p>The Claimant advances three arguments on the purported relevance of these documents. Addressing each in turn:</p> <p>(i) <b>For purposes of jurisdiction <i>ratione temporis</i>:</b> The Tribunal has expressly stated in PO4 that it will “<i>not determine its ratione temporis jurisdiction over any specific breaches alleged by the Claimant</i>” (PO4, para 59). The bifurcated questions posed by the Tribunal on the <i>ratione temporis</i> objection are legal (not factual) questions. The Claimant's purported justification (“<i>to assess whether the breaches occurred within the BIT's ratione temporis scope</i>”) is not relevant to the bifurcated legal questions and ignores the Tribunal's express limitation. Therefore, the Claimant's requests for documents that go to the merits of the <i>ratione temporis</i> objection are clearly beyond the scope of the Bifurcated Issues and should be dismissed.</p> <p>(ii) <b>For purposes of ascertaining whether the directives issued to the Bahraini Banks between January 1, 2012 and December 31, 2014 were prompted by NICO's ultimate Iranian shareholding:</b> The Claimant misstates the Respondent's abuse of process objection. The Respondent's reasons for implementing directives (to the extent that they exist) and understanding of NICO's shareholding, which the Claimant cites as the justification for this request, have no bearing on the Respondent's abuse of process objection. The requested documents are irrelevant and immaterial to the question of whether the Claimant committed an abuse of process.</p> <p>(iii) <b>For purposes of Respondent's abuse of process objection, to ascertain when the dispute became foreseeable:</b> The relevant test for foreseeability requires that a dispute be “<i>foreseeable to the Claimant</i>” (see, e.g., Memorial, para 77; CMPO, paras 30-32, emphasis added), not to the Respondent. As such, the relevant documents should be in the Claimant's possession, reflecting the Claimant's understanding, and not the other way around. The requested documents are irrelevant and immaterial to the question of when the dispute became foreseeable to the Claimant and, consequently, whether the Claimant committed an abuse of process.</p> <p>For these reasons, the requests constitute an impermissible fishing expedition and should be rejected.</p> <p><b>(b) The requests are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.b above, <i>mutatis mutandis</i>.</p>
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The scope of these requests (i.e. all CBB directives relating to Iranian funds) is overbroad and outside the defined scope of the Bifurcated Issues, as explained under (a) above.

Additionally, there is an inconsistency in the time period that the Claimant requests: while the Claimant writes at the bottom of its document requests that the time period of the requests is “January 1, 2013 to December 31, 2014”, the document requests themselves include other time periods. For example, Request 3(i) asks for “*content of any written or oral directives/regulations...communicated...between January 1, 2012 and December 31, 2014*”. In addition, the time period of 1 January 2013 to 31 December 2014 is overbroad, unexplained and seemingly arbitrary, especially in circumstances where the Claimant claims to be seeking documents that are alluded to in letters dated between December 2013 and March 2014.

Furthermore, the Claimant uses overbroad and ambiguous terms, for example, in the introduction to the individual document requests (“[a]ll Documents recording, in connection with, but not limited to”) and request 3(i) (“*directing the Bahraini Banks to adopt a certain behavior towards the Funds of Iranian entities in general, and the Funds of NICO more specifically*” (emphasis added)), which is far from a narrow and specific category of documents.

For these reasons, the requests impose an unreasonable and disproportionate burden on the Respondent, violating Article 9.2(c) and (g) of the IBA Rules.

**(c) Documents held by the Bahraini Banks are not within the Respondent’s possession, custody or control.**

To the extent that the Claimant is seeking documents held by the Bahraini Banks, the Respondent repeats paragraph 6.c above, *mutatis mutandis*.

**(d) The Requests seek documents on the basis of arguments related to NICO’s ultimate shareholder and protections on the Bahrain-Iran BIT and are therefore outside of the Tribunal’s jurisdiction to order.**

Requests 3(i), 3(v) and 3(x) seek documents relating to NICO’s ultimate shareholder and protections that may (or may not) be available to that shareholder under the Bahrain-Iran BIT. For the reasons explained in paragraphs 106 to 109 of the Respondent’s Memorial on Preliminary Objections, this Tribunal does not have jurisdiction nor the authority to determine purported claims under the Bahrain-Iran BIT. Production of documents that relate to rights that may or may not be owed to NICO’s ultimate shareholder under a separate treaty are not relevant or material to the issues to be decided in the present proceedings.

**(e) Documents of political or institutional sensitivity are not disclosable pursuant to Article 9.2(e) and (f) of the IBA Rules.**

Requests 3(ii) and 3(x) seek documents between Bahrain and other foreign States and “*foreign State entities/interests*”. Disclosure of politically sensitive inter-State communication would jeopardise the Respondent’s legitimate interests and harm its relations with other States. These documents may also be protected by the inviolability of official diplomatic correspondence under Article 27(2) of the Vienna Convention on Diplomatic Relations 1961. For these reasons, and pursuant to Article 9.2(e) and (f) of the IBA Rules, disclosure should not be ordered.

**(f) Documents are in the Claimant’s possession, custody or control.**



	In relation to requests 3(vii) and 3(viii), any notification to the Claimant would be in the Claimant's possession, custody or control.
<b>D. Response to objections to document production request (requesting Party)</b>	<p>Claimant repeats the reasons underlying its Document Request as set out above which show that the Requested Documents are relevant and material to the issues bifurcated via PO4 on abuse of process and within the limits defined in the same PO4, on jurisdiction <i>ratione temporis</i>. Claimant thus replies to Respondent's Objections as follows:</p> <p><u><b>First</b></u>, Claimant notes that Respondent does not dispute the existence of the Requested Documents.</p> <p><u><b>Second</b></u>, Claimant reiterates that the Documents Requested are relevant and material to the issues bifurcated by the Tribunal in PO4:</p> <ol style="list-style-type: none"> <li>1. <u>For purposes of ascertaining when the dispute became foreseeable in connection with Respondent's abuse of process objection:</u> Respondent's <u>only</u> response is that the "<i>relevant test for foreseeability requires that a dispute be "foreseeable to the Claimant"</i>" (emphasis in the original), and that accordingly "<i>the relevant documents should be in the Claimant's possession, reflecting the Claimant's understanding, and not the other way around.</i>"</li> </ol> <p>Yet, Claimant's case is precisely that it was not aware of Bahrain's acts and omissions in breach of the BIT that had started in 2010 until at least November 2012 (see Exhibit C-74), and this because these acts and omissions had not been transparently disclosed to Claimant but rather had been dissimulated (and in fact actively) by Respondent (see CMPO, Paragraphs 80 to 87).</p> <p>What is more, in its pleadings to date,<sup>28</sup> including in this document production phase, Bahrain has not even alleged that its actions and/or omissions starting in 2010 had been transparently disclosed to Claimant at any time prior to NICO's re-domiciliation to Malaysia on January 4, 2012, let alone produced evidence to the contrary.</p> <p>Against the above, Respondent's objection to the production of the Requested Documents that would show when Bahrain's acts and omissions as of 2010 would have been notified to Claimant prior to NICO's re-domiciliation to Malaysia on January 4, 2012, <u>is plainly irreconcilable with Bahrain's position that the dispute between NICO</u></p>

<sup>28</sup> In its Objections to Claimant's Document Requests, Respondent suggests (based on Paragraph 18 of its MPO) that Claimant would have acknowledged in its NoD dated August 5, 2022 and its RfA dated December 5, 2022 that Bahrain's breaches started in 2010. Yet, it never in fact disputes Claimant's position (as set forth at Paragraphs 20 and 81 *et seq.* of its CMPO) that NICO was not aware of Bahrain's actions and omissions starting in 2010 until November 2012. Nor does Respondent ever allege, let alone submit supporting evidence, that such actions and omissions would have been notified by Bahrain to NICO in 2010 or at any time material time thereafter, prior to NICO's first reference to the 2010 CBB Directive in its November 26, 2012 correspondence (submitted as Exhibit C-74).

	<p>and Bahrain would have been foreseeable prior to such January 4, 2012 re-domiciliation, and cannot possibly be sustained. For this reason alone, an order for the production of the Requested Documents cannot be objected to on the basis of relevance or materiality;</p> <p>2. <u>For purposes of ascertaining whether the directives issued to the Bahraini Banks between January 1, 2012 and December 31, 2014 were prompted by NICO's ultimate Iranian shareholding in connection with Respondent's abuse of process objection:</u> Respondent's <u>only</u> response is that "<i>Respondent's reasons for implementing directives (to the extent that they exist) and understanding of NICO's shareholding, which the Claimant cites as the justification for this request, have no bearing on the Respondent's abuse of process objection.</i>" Yet, to the very contrary, if <u>the directives issued to the Bahraini Banks between January 1, 2012 and December 31, 2014</u> were prompted by NICO's ultimate Iranian shareholding (which the Requested Documents will show) that they targeted, then Bahrain knew or ought to have known that it was at all relevant times required under international law (and the 2002 Iran-Bahrain BIT more specifically) to afford NICO and its shareholders the corresponding international law protections, which in turn confirms that Bahrain knew or ought to have known that NICO did not need to re-domicile to Malaysia in 2012 to benefit from international treaty protection, and that Respondent's abuse of process objection is thus not raised in good faith. For this independent reason too, the Requested Documents are relevant and material;</p> <p>3. <u>For purposes of jurisdiction <i>ratione temporis</i>:</u> Claimant notes that <u>Respondent does not dispute</u> that the Requested Documents would as a matter of fact be relevant and material "<i>to assess whether the breaches occurred within the BIT's <i>ratione temporis</i> scope,</i>", nor does Respondent dispute (to the very contrary, it admits in item (i) of its Objection above) that the Requested Documents could "<i>go to the merits of the <i>ratione temporis</i> objection.</i>" For this reason alone, if the Tribunal were to accept that the assessment of "<i>whether the breaches occurred within the BIT's <i>ratione temporis</i> scope,</i>" or more generally that factual inquiries and determinations (which Claimant submits are hardly dissociable in this case) as to when Bahrain's breaches occurred and became known to Claimant, would be relevant and material at this stage, the Parties are in agreement and production of the Requested Documents should be ordered;</p> <p>4. As regards Respondent's allegation that the "<i>Tribunal has expressly stated in PO4 that it will not determine its <i>ratione temporis</i> jurisdiction over any specific breaches alleged by the Claimant</i>"</p>
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(PO4, para 59),” Claimant reminds Respondent that the Tribunal made this “*clarifi[cation]*” in the context of ordering bifurcation on the specific issues identified in PO4, and so as to not prejudge the merits of the dispute. This clarification cannot however prohibit the Tribunal from taking into consideration all relevant factors when determining whether, and to what extent, the BIT applies “*to acts and omissions that occurred prior to [the BIT’s] entry into force,*” including all factual evidence as to whether the “*acts and omissions that occurred prior to [the BIT’s] entry into force*” – which eventually constituted a breach of the BIT – had been notified to Claimant at the time, or rather had been dissimulated by Bahrain, which is precisely what the Requested Documents seek to ascertain for purposes of jurisdiction *ratione temporis* and abuse of process;

**Third.** as regards Respondent’s objection that the Requested Documents are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules, Claimant notes that Respondent refrained from engaging by proposing a narrower scope of document categories. In any event:

1. Claimant has demonstrated above that the Requested Documents fall within the defined scope of the Bifurcated Issues;
2. Claimant has narrowly defined the scope of the Requested Documents via exhaustive items (i) to (x). Although the items are sufficiently defined by reference to their subject matter, and limited in time from 1 January 2013 to 31 December 2014, Respondent alleges that it is “*excessive, unexplained and arbitrary.*” The chosen time period of only two years refers to the period during which the purported CBB directives were notified to the Bahraini Banks. The time period is therefore justified;
3. Respondent in fact was unable to identify a single specific sub-request that would be overly broad and the reasons why, save to argue that Claimant used “*ambiguous*” terms such as “[a]ll Documents recording, in connection with, but not limited to”) and request 3(i) (“*directing the Bahraini Banks to adopt a certain behavior towards the Funds of Iranian entities in general, and the Funds of NICO more specifically,*” whereas it is evident what is meant by these terms;
4. Respondent alleges that the “*there is an inconsistency in the time period that the Claimant requests: while the Claimant writes at the bottom of its document requests that the time period of the requests is “January 1, 2013 to December 31, 2014”, the document requests themselves include other time periods. For example, Request 3(i) asks for “content of any written or oral directives/regulations...communicated...between January 1, 2012 and December 31, 2014.”*” Claimant takes note of the discrepancy

highlighted and confirms that the relevant period is January 1, 2013 to December 31, 2014.

**Fourth**, as regards Respondent's objections that the Requested Documents are not disclosable pursuant to Articles 9.2(e) and (f) of the IBA Rules:

1. Claimant takes note that Respondent does not dispute that the Requested Documents at paragraphs 3(ii) and 3(x) of Request No. 3 exist but rather hide behind an unsubstantiated defense of "*political sensitivity*" to avoid producing the said responsive documents. Yet, this cannot be relied upon in abstract without identifying which particular documents are concerned and what specific sensitivity would be jeopardized if the documents were produced, and if so why and how particular safeguards in terms of confidentiality/redactions could not be implemented, and this even more so that such defense of "political sensitivity" could not be used to prevent Claimant from making its case especially when the case is one of a pretextual and political taking and dissimulation.
2. Moreover, as stated clearly by the Commentary on the 2020 IBA rules, objections based on Articles 9.2(e) and (f) may be raised "*if there are compelling reasons to preserve confidentiality of the documents and a party has a legitimate ground to object to the disclosure of these documents.*" However, as stated also by the said commentary "*instead of excluding the entirety of the document from the production evidence, the arbitral tribunal may order appropriate measures to preserve confidentiality of the evidence under Article 9.5.*"<sup>29</sup> Here, however, Respondent has simply issued a blanket refusal on the grounds of "political sensitivity" which is not justified.
3. Respondent should know better since in the *BMI & BSI v. Bahrain* arbitration, Respondent (represented in fact in that case by the learned Jan Paulsson who now acts as agent of Respondent in this case) was previously ordered by the tribunal at the time to produce documents exchanged between Bahrain and foreign states "*subject to potential redactions with reasons, on the ground of diplomatic relations,*" which it in fact did. Bahrain cannot now pretend that it is entirely unable to produce any such responsive document.
4. This position is in line with the stance other tribunals have taken. For instance, in *Nord stream 2 AG v. European Union*,<sup>30</sup> "*the Tribunal [...] rejected certain objections based on political or institutional sensitivity under Article 9.2(f) of the IBA Rules due to the failure to identify the precise information that is considered politically or institutionally sensitive as well as the legal basis upon which it*

<sup>29</sup> Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, adopted in January 2021, p. 29.

<sup>30</sup> *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 5 (Document Production), para. 10.

	<p><i>should be so classified.”</i> In the present case, however, Bahrain has not only failed to produce any documents at all responsive to Claimant’s request, but it has also failed to explain in detail and case by case why any such responsive documents would in reality be politically sensitive and therefore improper for production.</p> <p>Similarly, in <i>Elliott v Korea</i>,<sup>31</sup> the tribunal ruled that “<i>it is not sufficient for the Respondent to merely assert that its agreement to produce responsive documents is subject to its determination that the documents in question are not politically or institutionally sensitive. Pursuant to Article 9(2)(f) of the IBA Rules, the determination of whether a particular responsive document is excluded from document production on grounds of special political or institutional sensitivity is to be made, in the event the Parties disagree on the issue, by the Tribunal, which must find that the grounds invoked by the party opposing production are “compelling.”</i>” In the present case, Respondent has failed to provide any compelling grounds as to why any such responsive documents should not be produced.</p> <p>Also, in <i>Global Telecom Holding S.A.E. v. Canada</i>,<sup>32</sup> although the tribunal accepted the Respondent’s defense on “political sensitivity”, the tribunal in that case considered that a blanket refusal was not a compelling argument for non-production, stating first, as matter of principle, that “<i>the Tribunal has been given <u>no evidence of a blanket refusal by the Respondent on this ground.</u></i>” Similarly, in response to the respondent’s objection to produce documents on grounds of national security, that same tribunal also stated that “<i>the Respondent’s assertion of national security privilege is not a case of a blanket refusal, as evidenced by its production of 235 documents responsive to [REDACTED]</i>”<sup>48</sup> which excludes bad faith. The Tribunal also notes that, of those documents, the Respondent redacted 128 and withheld a further 27 on national security grounds, asserting <i>Article 9.2(f) of the IBA Rules</i> for each instance of withheld information. The Respondent explains in great detail how it determined that the release of each withheld information “would” (not “could”) be injurious to its national security.<sup>49”33</sup> Here, however, Respondent has (1) failed to produce any responsive documents, (2) failed to provide any compelling reasons for each withheld information and (3) has in fact provided a general blanket refusal to produce any such responsive documents on grounds of “political sensitivity”. These grounds are unfounded and can only be rejected by the Tribunal.</p>
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<sup>31</sup> *Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, Procedural Order No. 8, para. 25.

<sup>32</sup> *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 4 (Decision on the Claimant's Objections to the Respondent's Claims of Privilege), 3 November 2018, paras. 41 and 43, emphasis added.

<sup>33</sup> *Ibid*, para. 43, emphasis added.



	<p><b><u>Fifth</u></b>, as regards Respondent’s objection that the Requested Documents 3(vii) and 3(viii) are in Claimant’s possession, custody or control:</p> <ol style="list-style-type: none"> <li>1. Claimant’s position is that it was not notified of the 2010 CBB Directive until November 2012, as demonstrated at paragraphs 20 and 81 <i>et seq</i> of Claimant’s CMPO. However, if Bahrain’s position is that no notification was given directly to NICO, then Claimant accepts this position.</li> <li>2. In addition, the documents requested at paragraph (viii) cannot be in Claimant’s possession as they relate to issues only known to Bahrain, namely “<i>reasons for the decision to not immediately communicate the directives referred to in item (i) above to NICO</i>”. Such reasons are not known to Claimant therefore any such documentary evidence is not in Claimant’s possession.</li> </ol>
<b>E. Decision (Tribunal)</b>	The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.
<b><u>Document Request No. 4</u></b>	<b>The origin and content of, reasons for, process leading up to, and date of notification to NICO, of all CBB directives notified to the Bahraini Banks from January 1, 2015 to December 31, 2018 in relation to the treatment of Iranian Funds in general and NICO’s Funds more specifically</b>
<b>A. Documents or category of documents requested (requesting Party)</b>	<p>All Documents recording, in connection with, but not limited to, the Bahraini Banks’ continued reliance on “<i>sanctions</i>” in their correspondence with NICO as of January 2015 (see <b>C-86, C-88, C-15, C-93, and C-16</b>), whereas such “<i>sanctions</i>” were to be soon lifted in the wake of the JCPOA executed in July 2015 (CMPO Paragraphs 17.3, 96; <b>C- 161, C-160, C-242</b>):</p> <ol style="list-style-type: none"> <li>(i) The content of all written or oral directives/regulations (from the CBB or other Bahraini State Organs as the case may be), whether formal or informal, communicated to the Bahraini Banks between January 1, 2015 and December 31, 2018, directing the Bahraini Banks to adopt a certain behavior towards the Funds of Iranian entities in general, and the Funds of NICO more specifically – the existence of such multiple directives/regulations is presumed due to the Bahraini Banks’ continuing refusal to execute NICO’s transfer requests as of January 2015 despite the execution of the JCPOA in July 2015 (see <b>C-160, C-161</b>) that would eventually lift all sanctions against Iran and Iranian-related interests (see for instance <b>C-86, C-88, C-15, C-93, C-16</b>). Yet, such multiple directives/regulations were never communicated to Claimant, whereas it is undisputable that NICO’s transfer requests as of January 2015 were never executed by the Bahraini Banks (see <b>C-94, C-95, C-97, C-248, C-249, C-250, C-251, C-252, C-253, C-254</b>; Claimant’s Memorial, Paragraphs 172 to 180);</li> <li>(ii) All instructions/guidelines given to the CBB, and the reasons therefor (including documents showing that this was due to pressure from foreign States or foreign State entities/interests),</li> </ol>

	<p>prompting the issuance of the directives referred to in item (i) above;</p> <ul style="list-style-type: none"> <li>(iii) The object and purpose underlying the issuance of the directives referred to in item (i) above;</li> <li>(iv) The process (including in terms of public purpose, due process, and proportionality) leading up to the issuance of the directives referred to in item (i) above;</li> <li>(v) All directions given by the CBB or other Bahraini State Organs to the Bahraini Banks in relation to the implementation of the directives referred to in item (i) above in respect of Iranian Funds in general, or NICO's Funds more specifically;</li> <li>(vi) The date and means by which the directives referred to in item (i) above were notified to the Bahraini Banks;</li> <li>(vii) The date and means by which the directives referred to in item (i) above would have been notified to Claimant;</li> <li>(viii) The reasons for the decision to not immediately communicate the directives/regulations referred to in item (i) above to NICO (even in this arbitration, Bahrain still does not define when said CBB directives/regulations would have been officially notified to NICO – see Claimant's Memorial Paragraphs 111, 299; see CMPO Paragraphs 20, 81);</li> <li>(ix) All Correspondence exchanged between the Bahraini Banks and the CBB and/or other Bahraini State Organs in relation to the implementation of the directives/regulations referred to in item (i) above; and</li> <li>(x) All reporting made by the CBB to other Bahraini State Organs or to foreign States or foreign State entities/interests regarding the implementation of the directives/regulations referred to in item (i) above in respect of Iranian Funds in general, or NICO's Funds more specifically.</li> </ul> <p><b>Non-exhaustive list of supporting evidence:</b></p> <ul style="list-style-type: none"> <li>– C-15, Letter from Ithmaar to NICO dated May 17, 2015: “<i>Please note that these balances are <u>subject to freeze under US and UN sanctions</u>.</i>” (emphasis added); and</li> <li>– C-93, Email from GFH to NICO dated November 19, 2015: “<i>We will target to pay the full amount once <u>sanction accordingly is lifted</u> in March/April 2016.</i>” (emphasis added).</li> </ul> <p><b>Time period:</b> January 1, 2015 to December 31, 2018</p>
<p><b>B. Relevance and materiality, incl. references to submission (requesting Party)</b></p>	<p>Via PO4, the Tribunal decided to bifurcate these proceedings in order to address as preliminary issues:</p> <ul style="list-style-type: none"> <li>(i) Respondent's fourth preliminary objection, which the Tribunal defined as Respondent's allegation that NICO's claims are inadmissible since they “<i>resulted from a 2012 corporate restructuring designed to gain access to investment protection under the Treaty after the dispute had become foreseeable,</i>” and also because “<i>NICO [would have] sought to return to Malaysia in 2018 as a “conscious choice” in order to present its “fully cooked” Treaty claims as a further act of abusive behavior,</i> including because “<i>Claimant's alleged efforts to reacquire Malaysian nationality ex post facto to cover the period of December 2014 to March 2018</i>” </li> </ul>



	<p>[would have] constitute[d] a further breach of the abuse of process doctrine;” (PO4, Paragraphs 68 to 69); as well as</p> <p>(ii) The following two questions put by the Tribunal to the Parties as regards Respondent’s second preliminary objection to the Tribunal’s jurisdiction <i>ratione temporis</i>, namely (a) “[t]o what extent does the Treaty apply to acts and omissions that occurred prior to its entry into force?;” and (b) “[t]o what extent must Claimant have nationality under the Treaty at the time of the alleged breach?” (PO4, Paragraph 77(a)(i)).</p> <p>The Requested Documents are relevant and material for the same reasons as set out under Requests Nos. 1 to 3 above, including because they will show that the directives/regulations under item (i) above were prompted and/or motivated – not by any alleged US or other sanctions-related reasons – but by entirely different reasons, namely pretextual and/or political motives; and thus constituted entirely new and independent breaches of Bahrain’s obligations under the BIT, which could not have been known, let alone foreseen by Claimants, especially as the date of such breaches in fact continues to remain unknown given Respondent’s failure to set the same out in its submissions to date.</p> <p>For these reasons alone, as well as the reasons set out under Requests Nos. 1 to 3 above, the Requested Documents are relevant and material for purposes of addressing (i) the Tribunal’s above <i>ratione temporis</i> questions, and in particular the date(s) on which Bahrain’s independent breaches became known to, and actionable by, Claimant, as well as (ii) Respondent’s abuse of process objection, i.e. to ascertain when the dispute, particularly regarding Bahrain’s independent breaches as of 2015 for entirely different pretextual and/or political reasons, could have been foreseeable, let alone to the required high degree of probability, so as to potentially trigger an abuse of process objection.</p>
<p><b>C. Reasoned objections to document production request (objecting Party)</b></p>	<p>The Respondent objects to these requests for the following reasons:</p> <p><b>(a) The Claimant’s requests are not relevant to the Bifurcated Issues in PO4 and are not material to the outcome of the bifurcated proceedings so should be rejected under Articles 3.3(b) and 9.2(a) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.a above, <i>mutatis mutandis</i>.</p> <p>The Claimant repeats its arguments on the relevance of the documents requested pursuant to requests 1 to 3 above. These arguments should fail for the reasons set out in the Respondent’s reasoned objections to requests 1 to 3 above, namely because:</p> <p><b>(i) Jurisdiction <i>ratione temporis</i> questions:</b> Pursuant to PO4 (para 59), the bifurcated questions posed on the <i>ratione temporis</i> objection are legal (not factual) questions. The Claimant’s purported justification (“that the directives/regulations...constituted entirely new and independent breaches of Bahrain’s obligations under the BIT”) is not relevant to the bifurcated legal questions, ignores the Tribunal’s express limitation and is beyond the scope of the Bifurcated Issues and should be dismissed.</p> <p><b>(ii) Abuse of process objection:</b> The test for foreseeability requires that a dispute be “<i>foreseeable to the Claimant</i>” (see, e.g., Memorial, para 77; CMPO, paras 30-32, emphasis added), not to the</p>



Respondent, for which the relevant documents should be in the Claimant's possession. The requested documents are irrelevant and immaterial to the question of when the dispute became foreseeable to the Claimant and, consequently, whether the Claimant committed an abuse of process.

For these reasons, the requests constitute an impermissible fishing expedition and should be rejected.

**(b) The requests are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules.**

The Respondent repeats paragraph 6.b above, *mutatis mutandis*.

The scope of these requests (i.e. all correspondence related to sanctions and treatment of Iranian funds) is overbroad and outside the defined scope of the Bifurcated Issues, as explained under (a) above. The Claimant's stipulated time period of between 1 January 2015 and 31 December 2018 is also excessive, unexplained and arbitrary, especially in circumstances where the Claimant claims to be seeking documents that are alluded to in letters dated between May and November 2015.

Furthermore, the Claimant uses overbroad and ambiguous terms, for example, in its introduction to the individual document requests (“[a]ll Documents recording, in connection with, but not limited to”) and in request 4(i) (“directing the Bahraini Banks to adopt a certain behavior towards the Funds of Iranian entities in general, and the Funds of NICO more specifically” (emphasis added)), which is far from a narrow and specific category of documents.

For these reasons, the requests impose an unreasonable and disproportionate burden on the Respondent, violating Article 9.2(c) and (g) of the IBA Rules

**(c) Documents held by the Bahraini Banks are not within the Respondent's possession, custody or control.**

To the extent that the Claimant is seeking documents held by the Bahraini Banks, the Respondent repeats paragraph 6.c above, *mutatis mutandis*.

**(d) The Requests seek documents on the basis of arguments related to NICO's ultimate shareholder and protections on the Bahrain-Iran BIT and are therefore outside of the Tribunal's jurisdiction to order.**

Requests 4(i), 4(v) and 4(x) seek documents relating to NICO's ultimate shareholder and protections that may (or may not) be available to that shareholder under the Bahrain-Iran BIT. For the reasons explained in paragraphs 106 to 109 of the Respondent's Memorial on Preliminary Objections, this Tribunal does not have jurisdiction nor the authority to determine purported claims under the Bahrain-Iran BIT. Production of documents that relate to rights that may or may not be owed to NICO's ultimate shareholder under a separate treaty are not relevant or material to the issues to be decided in the present proceedings.



	<p><b>(e) Documents of political or institutional sensitivity are not disclosable pursuant to Article 9.2(e) and (f) of the IBA Rules.</b></p> <p>Requests 4(ii) and 4(x) seek documents between Bahrain and other foreign States and “<i>foreign State entities/interests</i>”. Disclosure of politically sensitive inter-State communication would jeopardise the Respondent’s legitimate interests and harm its relations with other States. These documents may also be protected by the inviolability of official diplomatic correspondence under Article 27(2) of the Vienna Convention on Diplomatic Relations 1961. For these reasons, and pursuant to Article 9.2(e) and (f) of the IBA Rules, disclosure should not be ordered.</p> <p><b>(f) Documents are in the Claimant’s possession, custody or control.</b></p> <p>In relation to requests 4(vii) and 4(viii), any notification to the Claimant would be in the Claimant’s possession, custody or control.</p>
<p><b>D. Response to objections to document production request (requesting Party)</b></p>	<p>Claimant repeats the reasons underlying its Document Request as set out above which show that the Requested Documents are relevant and material to the issues bifurcated via PO4 on abuse of process and within the limits defined in the same PO4, on jurisdiction <i>ratione temporis</i>. Claimant thus replies to Respondent’s Objections as follows:</p> <p><u><b>First</b></u>, Claimant notes that Respondent does not dispute the existence of the Requested Documents.</p> <p><u><b>Second</b></u>, Claimant reiterates that the Documents Requested are relevant and material to the issues bifurcated by the Tribunal in PO4:</p> <ol style="list-style-type: none"> <li>1. <u>For purposes of ascertaining when the dispute became foreseeable in connection with Respondent’s abuse of process objection:</u> Respondent’s <u>only</u> response is that the “<i>test for foreseeability requires that a dispute be “foreseeable to the Claimant”</i>” (emphasis in the original), and that accordingly “<i>the relevant documents should be in the Claimant’s possession.</i>”</li> </ol> <p>Yet, Claimant’s case is precisely that it was not aware of Bahrain’s acts and omissions in breach of the BIT that had started in 2010 until at least November 2012 (see Exhibit C-74), and this because these acts and omissions had not been transparently disclosed to Claimant but rather had been dissimulated (and in fact actively) by Respondent (see CMPO, Paragraphs 80 to 87).</p> <p>What is more, in its pleadings to date,<sup>34</sup> including in this document production phase, Bahrain has not even alleged that its actions and/or</p>

<sup>34</sup> In its Objections to Claimant’s Document Requests, Respondent suggests (based on Paragraph 18 of its MPO) that Claimant would have acknowledged in its NoD dated August 5, 2022 and its RfA dated December 5, 2022 that Bahrain’s breaches started in 2010. Yet, it never in fact disputes Claimant’s position (as set forth at Paragraphs 20 and 81 *et seq.* of its CMPO) that NICO was not aware of Bahrain’s actions and omissions starting in 2010 until November 2012. Nor does Respondent ever allege, let alone submit supporting evidence, that such actions and omissions would have been notified by Bahrain to NICO in 2010 or at any time material time thereafter, prior to NICO’s first reference to the 2010 CBB Directive in its November 26, 2012 correspondence (submitted as Exhibit C-74).



omissions starting in 2010 had been transparently disclosed to Claimant at any time prior to NICO's re-domiciliation to Malaysia on January 4, 2012, let alone produced evidence to the contrary.

Against the above, Respondent's objection to the production of the Requested Documents that would show when Bahrain's acts and omissions as of 2010 would have been notified to Claimant prior to NICO's re-domiciliation to Malaysia on January 4, 2012, is plainly irreconcilable with Bahrain's position that the dispute between NICO and Bahrain would have been foreseeable prior to such January 4, 2012 re-domiciliation, and cannot possibly be sustained. For this reason alone, an order for the production of the Requested Documents cannot be objected to on the basis of relevance or materiality;

2. For purposes of jurisdiction *ratione temporis*: Claimant notes that Respondent does not dispute that the Requested Documents would as a matter of fact be relevant and material to the demonstration that *"the directives/regulations...constituted entirely new and independent breaches of Bahrain's obligations under the BIT."* For this reason alone, if the Tribunal were to accept that the such factual assessments, or more generally that factual inquiries and determinations (which Claimant submits are hardly dissociable in this case) as to whether the 2015-2018 *"directives/regulations ... constituted entirely new and independent breaches of Bahrain's obligations under the BIT,"* would be relevant and material at this stage, the Parties are in agreement and production of the Requested Documents should be ordered;
3. As regards Respondent's allegation that the *"Tribunal has expressly stated in PO4 that it will not determine its ratione temporis jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59),"* Claimant reminds that the Tribunal made this *"clarifi[cation]"* in the context of ordering bifurcation on the specific issues identified in PO4, and so as to not prejudice the merits of the dispute. This clarification cannot however prohibit the Tribunal from taking into consideration all relevant factors when determining whether, and to what extent, the BIT applies *"to acts and omissions that occurred prior to [the BIT's] entry into force,"* including all factual evidence as to whether the *"acts and omissions that occurred prior to [the BIT's] entry into force"* – which eventually constituted a breach of the BIT – had been notified to Claimants at the time, or rather had been dissimulated by Bahrain, which is precisely what the Requested Documents seek to ascertain for purposes of jurisdiction *ratione temporis* and abuse of process;

4. As to Respondent's allegation that "*documents reflecting the Claimant's awareness or knowledge would be in the Claimant's possession, not the Respondent's,*" it cannot serve to defeat Claimants' Document Requests. Claimant's position is that it was not aware of the acts and omissions of Bahrain starting in 2010, but rather that the same had been dissimulated by Bahrain and its organs until November 2012 (see notably, Paragraphs 80 to 97 of NICO's CMPO), and thus could not have been factored in Claimant's re-domiciliation to Malaysia in 2012. In addition, the acts and omissions of Bahrain are relevant and material to ascertain the nature and time of breach for abuse of process, and to show that there was a lack of transparency which constituted another independent breach.

**Third**, as regards Respondent's objection that the Requested Documents are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules, Claimant notes that Respondent refrained from engaging by proposing a narrower scope of document categories. In any event:

1. Claimant has demonstrated above that the Requested Documents fall within the defined scope of the Bifurcated Issues;
2. Claimant has narrowly defined the scope of the Requested Documents via exhaustive items (i) to (x). Although the items are sufficiently defined by reference to their subject matter, and limited in time from January 1, 2015 to December 31, 2018, Respondent alleges that it is "*excessive, unexplained and arbitrary.*" The chosen time period of only four years refers to the period during which the purported CBB directives were notified to the Bahraini Banks. The time period is therefore justified;
3. Respondent in fact was unable to identify a single specific sub-request that would be overly broad and the reasons why, save to argue that Claimant used "*ambiguous*" terms such as "[a]ll Documents recording, in connection with, but not limited to") and in request 4(i) ("*directing the Bahraini Banks to adopt a certain behavior towards the Funds of Iranian entities in general, and the Funds of NICO more specifically,*" whereas it is evident what is meant by this sentence;

**Fourth**, as regards Respondent's objections that the Requested Documents are not disclosable pursuant to Articles 9.2(e) and (f) of the IBA Rules:

1. Claimant takes note that Respondent does not dispute that the Requested Documents at paragraphs 4(ii) and 4(x) of Request No. 4 exist but rather hide behind an unsubstantiated defense of "political sensitivity" to avoid producing the said responsive documents. Yet, this cannot be relied upon in abstract without identifying which particular documents are concerned and what specific sensitivity would be jeopardized if the documents were produced, and if so why and how particular safeguards in terms of confidentiality/redactions

	<p>could not be implemented, and this even more so that such defense of “political sensitivity” could not be used to prevent Claimant from making its case especially when the case is one of a pretextual and political taking and dissimulation.</p> <ol style="list-style-type: none"> <li>2. Moreover, as stated clearly by the Commentary on the 2020 IBA rules, objections based on Articles 9.2(e) and (f) may be raised “<i>if there are compelling reasons to preserve confidentiality of the documents and a party has a legitimate ground to object to the disclosure of these documents.</i>” However, as stated also by the said commentary “<i>instead of excluding the entirety of the document from the production evidence, the arbitral tribunal may order appropriate measures to preserve confidentiality of the evidence under Article 9.5.</i>”<sup>35</sup> Here, however, Respondent has simply issued a blanket refusal on the grounds of “political sensitivity” which is not justified.</li> <li>3. Respondent should know better since in the <i>BMI &amp; BSI v. Bahrain</i> arbitration, Respondent (represented in fact in that case by the learned Jan Paulsson who now acts as agent of Respondent in this case) was previously ordered by the tribunal at the time to produce documents exchanged between Bahrain and foreign states “<i>subject to potential redactions with reasons, on the ground of diplomatic relations,</i>” which it in fact did. Bahrain can now pretend that it is entirely unable to produce any such responsive document.</li> <li>4. This position is in line with the stance other tribunals have taken. For instance, in <i>Nord stream 2 AG v. European Union</i>,<sup>36</sup> “<i>the Tribunal [...] rejected certain objections based on political or institutional sensitivity under Article 9.2(f) of the IBA Rules due to the failure to identify the precise information that is considered politically or institutionally sensitive as well as the legal basis upon which it should be so classified.</i>” In the present case, however, Bahrain has not only failed to produce any documents at all responsive to Claimant’s request, but it has also failed to explain in detail and case by case why any such responsive documents would in reality be politically sensitive and therefore improper for production. Similarly, in <i>Elliott v Korea</i>,<sup>37</sup> the tribunal ruled that “<i>it is not sufficient for the Respondent to merely assert that its agreement to produce responsive documents is subject to its determination that the documents in question are not politically or institutionally sensitive. Pursuant to Article 9(2)(f) of the IBA Rules, the determination of whether a particular responsive document is excluded from document production on grounds of special political or institutional sensitivity is to be made, in the event the Parties disagree on the</i> </li></ol>
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<sup>35</sup> Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, adopted in January 2021, p. 29.

<sup>36</sup> *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 5 (Document Production), para. 10.

<sup>37</sup> *Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, Procedural Order No. 8, para. 25.

issue, by the Tribunal, which must find that the grounds invoked by the party opposing production are “compelling.”” In the present case, Respondent has failed to provide any compelling grounds as to why any such responsive documents should not be produced. Also, in *Global Telecom Holding S.A.E. v. Canada*,<sup>38</sup> although the tribunal accepted the Respondent’s defense on “political sensitivity”, the tribunal in that case considered that a blanket refusal was not a compelling argument for non-production, stating first, as matter of principle, that “*the Tribunal has been given no evidence of a blanket refusal by the Respondent on this ground.*” Similarly, in response to the respondent’s objection to produce documents on grounds of national security, that same tribunal also stated that “*the Respondent’s assertion of national security privilege is not a case of a blanket refusal, as evidenced by its production of 235 documents responsive to [REDACTED]*”<sup>48</sup> which excludes bad faith. The Tribunal also notes that, of those documents, the Respondent redacted 128 and withheld a further 27 on national security grounds, asserting Article 9.2(f) of the IBA Rules for each instance of withheld information. The Respondent explains in great detail how it determined that the release of each withheld information “would” (not “could”) be injurious to its national security.<sup>49”</sup><sup>39</sup> Here, however, Respondent has (1) failed to produce any responsive documents, (2) failed to provide any compelling reasons for each withheld information and (3) has in fact provided a general blanket refusal to produce any such responsive documents on grounds of “political sensitivity”. These grounds are unfounded and can only be rejected by the Tribunal.

**Fifth**, as regards Respondent’s objection that the Requested Documents 4(vii) and 4(viii) are in Claimant’s possession, custody or control:

1. Claimant’s position is that it was not notified of the 2010 CBB Directive until November 2012, as demonstrated at paragraphs 20 and 81 *et seq.* of Claimant’s CMPO. However, if Bahrain’s position is that no notification was given directly to NICO, then Claimant accepts this position.
2. In addition, the documents requested at paragraph (viii) cannot be in Claimant’s possession as they relate to issues only known to Bahrain, namely “*reasons for the decision to not immediately communicate the 2010 CBB Directive to Claimant.*” Such reasons are not known to Claimant therefore any such documentary evidence is not in Claimant’s possession.

<sup>38</sup> *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 4 (Decision on the Claimant's Objections to the Respondent's Claims of Privilege), 3 November 2018, paras. 41 and 43, emphasis added.

<sup>39</sup> *Ibid*, para. 43, emphasis added.



<b>E. Decision (Tribunal)</b>	The request is rejected as overly broad and lacking in specificity, and as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.
<b><u>Document Request No. 5</u></b>	<b>Respondent’s knowledge of NICO’s incorporation status and in any event of NICO’s ultimate Iranian shareholding at the time of the First, Second, and Third Refusals</b>
<b>A. Documents or category of documents requested (requesting Party)</b>	<p>All Documents evidencing:</p> <ul style="list-style-type: none"> <li>(i) Bahrain’s knowledge of NICO’s ultimate ownership in the period between NICO’s first 2009 investment in Bahrain (see Memorial, Paragraphs 87 to 97) and NICO’s ultimate December 5, 2022 filing of a Request for Arbitration in this case;</li> <li>(ii) Bahrain’s knowledge of NICO’s ultimate Iranian ownership at the time of issuing the directives/regulations under Requests Nos. 1 to 4 above; and</li> <li>(iii) Bahrain’s understanding as to NICO’s incorporation status in the period between December 2014 and March 2018, namely the only period during which NICO’s Malaysian nationality is disputed (see CMPO Paragraphs 101 to 102), and material for the Second and Third Refusals.</li> </ul>
<b>B. Relevance and materiality, incl. references to submission (requesting Party)</b>	<p>Via PO4, the Tribunal decided to bifurcate these proceedings in order to address as preliminary issues the following:</p> <ul style="list-style-type: none"> <li>(i) Respondent’s fourth preliminary objection, which the Tribunal defined as Respondent’s allegation that NICO’s claims are inadmissible since they “<i>resulted from a 2012 corporate restructuring designed to gain access to investment protection under the Treaty after the dispute had become foreseeable,</i>” and also because “<i>NICO [would have] sought to return to Malaysia in 2018 as a “conscious choice” in order to present its “fully cooked” Treaty claims as a further act of abusive behavior,</i>” including because “<i>Claimant’s alleged efforts to reacquire Malaysian nationality ex post facto to cover the period of December 2014 to March 2018 [would have] constitute[d] a further breach of the abuse of process doctrine</i>” (PO4, Paragraphs 68 to 69); as well as</li> <li>(ii) The two questions put by the Tribunal to the Parties as regards Respondent’s third preliminary objection regarding the Tribunal’s jurisdiction <i>ratione personae</i>, namely (a) “[w]as NICO incorporated in Malaysia and hence did it benefit from protection under the Treaty from December 2014-March 2018?”; and (b) “[w]hat effect, if any, does the 2018 Malaysian Court Decision have on Claimant’s standing and rights under the Treaty?” (PO4, Paragraph 77(a)(ii)).</li> </ul> <p>The Requested Documents are relevant and material to the abuse of process and <i>ratione personae</i> issues above for the reasons explained below.</p> <p><u>First</u>, in its CMPO, Claimant argued that “<i>NICO was always owned by Iranian shareholders, and this ever since its first 2009 investment in Bahrain. Nor is it alleged that Bahrain was not aware of this fact, which is</i></p>

*in any event undisputable based on contemporaneous evidence. As a result, NICO was at all times protected under the Iran-Bahrain BIT, which had been in force since 2004, and provided for both arbitral jurisdiction and substantive protections under international law” (CMPO, Paragraph 6).*

*Second, Claimant argued on this basis that there could be no abuse of process because “it is undisputed that NICO was at all relevant times ultimately owned by an Iranian shareholder” and that “it is undisputable that the Iran-Bahrain BIT provides for investor-State arbitration and for substantive treaty protections. In fact, both the Malaysia-Bahrain BIT and the Iran-Bahrain BIT provide for treaty protection for expropriation, free transfer of investments, and access to international investment arbitration.” Thus, “the availability of a BIT in force that provides an investor-State arbitration clause and substantive protections for NICO’s ultimate Iranian shareholders, constitutes irrebuttable evidence that NICO was in no need of additional treaty protection and that there accordingly could not be any treaty shopping agenda underlying NICO’s corporate restructuring via its 2012 re-domiciliation to Malaysia in 2012, nor the 2018 Decision” (CMPO, Paragraphs 36, 38, 39).*

*Third, Claimant explained that “the fact that NICO would have been understood to no longer be a Malaysian investor could in any event not have impacted Bahrain’s obligations towards NICO as it is undisputed that NICO’s Iranian shareholders always benefited from equivalent treaty protections under the Iran-Bahrain BIT in force since 2004, and that NICO’s Iranian shareholding (with Iran being in its name) was always known and transparently disclosed, so that there could have been no material impact or detriment to Bahrain” (CMPO, Paragraph 127).*

Against the above, the Requested Documents – which are strictly limited in terms of scope and time period – will be relevant and material to:

- (i) Whether Bahrain was at all relevant times (and in particular at the time of the First, Second, and Third Refusals) aware that NICO was ultimately owned by Iranian interests, which will be material for the abuse of process objection as (1) it will establish that Bahrain treated and targeted NICO as an Iranian investor at all relevant times, which will thus be also relevant and material for purposes of ascertaining whether Bahrain wilfully engaged in breaches of its obligations under the Iran-Bahrain BIT (that provided for substantive and due process obligations equivalent to those provided under the Malaysia-Bahrain BIT); (2) the Requested Documents will also demonstrate that Bahrain at all times was aware that NICO would not have gained any benefits from re-domiciling to Malaysia in January 2012, let alone any benefits rising to the level of an abuse of process (given that NICO would in any event, via its Iranian shareholder, have had access to treaty protections under the Iran-Bahrain BIT which was in force at all relevant times), and thus will demonstrate and establish that Bahrain’s abuse of process objection is disingenuous and artificial in nature, and has no legal basis (for the reasons set out at Paragraphs 6, 35 to 43 of the CMPO); and
- (ii) Whether any of Bahrain’s actions and/or omissions in relation to the First, Second, and Third Refusals were undertaken on the assumption that NICO was no longer a Malaysian company from December 2014 to March 2018. This is because if Bahrain operated under such an



	<p>assumption, there would have necessarily been contemporaneous documents recording such an assumption. The Requested Documents will thus be relevant and material to show that Respondent's position in this arbitration, namely that NICO was not understood by Bahrain as being a Malaysian company from December 2014 to March 2018, is a post-facto argument that is not supported, but rather contradicted by contemporaneous documents which will show that Bahrain always understood NICO to have remained a Malaysian company, and in any event Iranian-owned at all material times. This notwithstanding Claimant's position that any such assumption by Bahrain (namely that NICO would no longer have been a Malaysian company from December 2014 to March 2018) would in any event be wrong for the reasons set out in the CMPO (see Paragraphs 58 to 72); and unopposable for <i>ratione personae</i> purposes (see CMPO, Paragraphs 128 <i>et seq.</i>), and further in any event irrelevant for abuse of process purposes as NICO always remained, as a matter of Malaysian law, incorporated in Malaysia since January 2012 (see CMPO, Paragraphs 99 <i>et seq.</i>).</p>
<p><b>C. Reasoned objections to document production request (objecting Party)</b></p>	<p>The Respondent objects to requests 5(i) and 5(ii) and, in the case of request 5(iii), proposes a revised formulation, for the following reasons:</p> <p><b>(a) The Claimant's requests are not relevant to the Bifurcated Issues in PO4 and are not material to the outcome of the bifurcated proceedings so should be rejected under Articles 3.3(b) and 9.2(a) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.a above, <i>mutatis mutandis</i>.</p> <p>Requests 5(i) and 5(ii) seek documents that are wholly irrelevant to the Bifurcated Issues or at best (and this is not accepted by Bahrain), would only go to the merits of the dispute. The Claimant's purported justification that the documents are "<i>relevant and material to [...] establish that Bahrain treated and targeted NICO as an Iranian investor at all relevant times, which will thus be also relevant and material for purposes of ascertaining whether Bahrain wilfully engaged in breaches of its obligations under the Iran-Bahrain BIT</i>", is on its face not relevant to the Bifurcated Issues.</p> <p>Furthermore, the relevant test for foreseeability requires that a dispute be "<i>foreseeable to the Claimant</i>" (see, e.g., Memorial, para 77; CMPO, paras 30-32, emphasis added), not to the Respondent. As such, the relevant documents should be in the Claimant's possession, reflecting the Claimant's understanding, and not the other way around. The requested documents are irrelevant and immaterial to the question of when the dispute became foreseeable to the Claimant and, consequently, whether the Claimant committed an abuse of process.</p> <p>Therefore, requests 5(i) and 5(ii) lack sufficient relevance and are not material to the Bifurcated Issues. For these reasons, the requests constitute an impermissible fishing expedition and should be rejected.</p> <p>As to request 5(iii), see below.</p> <p><b>(b) The requests are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.b above, <i>mutatis mutandis</i>.</p>



The scope of these requests (i.e. Bahrain's knowledge of NICO's ownership) is overbroad and outside the defined scope of the Bifurcated Issues, as explained under (a) above. The Claimant's stipulated time period (for request 5(i) this is nearly 14 years) is also excessive, unexplained and arbitrary. Further, request 5(i) subsumes 5(ii), and the reason for the separate requests is unclear.

The Claimant uses overbroad and ambiguous terms, for example, "*Bahrain's knowledge*" or "*Bahrain's understanding*", which is far from a narrow and specific category of documents.

For these reasons, the requests impose an unreasonable and disproportionate burden on the Respondent, violating Article 9.2(c) and (g) of the IBA Rules.

**(c) The requests seek documents on the basis of arguments related to NICO's ultimate shareholder and protections on the Bahrain-Iran BIT and are therefore outside of the Tribunal's jurisdiction to order.**

The requests also seek documents relating to NICO's ultimate shareholder and protections that may (or may not) be available to that shareholder under the Bahrain-Iran BIT. For the reasons explained in paragraphs 106 to 109 of the Respondent's Memorial on Preliminary Objections, this Tribunal does not have jurisdiction nor the authority to determine purported claims under the Bahrain-Iran BIT. Production of documents that relate to rights that may or may not be owed to NICO's ultimate shareholder under a separate treaty are not relevant or material to the issues to be decided in the present proceedings.

**Request 5(iii)**

As to request 5(iii), NICO submits that this is relevant to ascertain whether "*Bahrain's actions and/or omissions [...] were undertaken on the assumption that NICO was no longer a Malaysian company from December 2014 to March 2018*". The reasons behind any alleged acts and omissions are irrelevant and immaterial to the Bifurcated Issues. Moreover, for the reasons set out in paragraph 6.b.i and immediately above, i.e. the overbroad designation of custodians and the use of overbroad and ambiguous terms, request 5(iii) imposes an unreasonable and disproportionate burden on the Respondent.

However, without prejudice to this and the above arguments, the Respondent is willing to conduct reasonable searches for documents responsive to request 5(iii), provided that the request is made sufficiently narrow and specific and is not unduly burdensome. To that end, the Respondent proposes the following revised request for the Claimant's agreement and, if not, for the Tribunal's determination:

"(iii) Documents held by the Central Bank of Bahrain and sent by either of the Bahraini Banks to the Central Bank of Bahrain between 9 December 2014 and 7 March 2018 relating to NICO's nationality or domicile."

This formulation envisages reasonable searches to be conducted by the relevant entity with a direct involvement in the arbitration for documents that would not be in NICO's possession, custody or control.



<p><b>D. Response to objections to document production request (requesting Party)</b></p>	<p>Claimant repeats the reasons underlying its Document Request as set out above which show that the Requested Documents are relevant and material to the issues bifurcated via PO4 on abuse of process and within the limits defined in the same PO4, on jurisdiction <i>ratione personae</i>. Claimant thus replies to Respondent's Objections, specifically with regards to Requests 5(i) and 5 (ii) as follows:</p> <p><u><b>First</b></u>, Claimant notes that Respondent does not dispute the existence of the Requested Documents.</p> <p><u><b>Second</b></u>, Claimant reiterates that the Documents Requested are relevant and material to the issues bifurcated by the Tribunal in PO4:</p> <ol style="list-style-type: none"> <li>1. <u>For purposes of ascertaining when the dispute became foreseeable in connection with Respondent's abuse of process objection:</u> Respondent's <u>only</u> response is that the "<i>relevant test for foreseeability requires that a dispute be "foreseeable to the Claimant"</i> (emphasis in the original), and that accordingly "<i>the relevant documents should be in the Claimant's possession, reflecting the Claimant's understanding, and not the other way around.</i>"</li> </ol> <p>Yet, Claimant's case is precisely that it was not aware of Bahrain's acts and omissions in breach of the BIT that had started in 2010 until at least November 2012 (see Exhibit C-74), and this because these acts and omissions had not been transparently disclosed to Claimant but rather had been dissimulated (and in fact actively) by Respondent (see CMPO, Paragraphs 80 to 87).</p> <p>What is more, in its pleadings to date,<sup>40</sup> including in this document production phase, Bahrain has not even alleged that its actions and/or omissions starting in 2010 had been transparently disclosed to Claimant at any time prior to NICO's re-domiciliation to Malaysia on January 4, 2012, let alone produced evidence to the contrary.</p> <p>Against the above, Respondent's objection to the production of the Requested Documents that would show when Bahrain's acts and omissions as of 2010 would have been notified to Claimant prior to NICO's re-domiciliation to Malaysia on January 4, 2012, <u>is plainly irreconcilable with Bahrain's position that the dispute between NICO and Bahrain would have been foreseeable prior to such January 4,</u></p>
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<sup>40</sup> In its Objections to Claimant's Document Requests, Respondent suggests (based on Paragraph 18 of its MPO) that Claimant would have acknowledged in its NoD dated August 5, 2022 and its RfA dated December 5, 2022 that Bahrain's breaches started in 2010. Yet, it never in fact disputes Claimant's position (as set forth at Paragraphs 20 and 81 *et seq.* of its CMPO) that NICO was not aware of Bahrain's actions and omissions starting in 2010 until November 2012. Nor does Respondent ever allege, let alone submit supporting evidence, that such actions and omissions would have been notified by Bahrain to NICO in 2010 or at any time material time thereafter, prior to NICO's first reference to the 2010 CBB Directive in its November 26, 2012 correspondence (submitted as Exhibit C-74).

2012 re-domiciliation, and cannot possibly be sustained. For this reason alone, an order for the production of the Requested Documents cannot be objected to on the basis of relevance or materiality;

2. For purposes of jurisdiction *personae*: Claimant notes that Respondent does not dispute that the Requested Documents would as a matter of fact be relevant and material to “*show that Respondent’s position in this arbitration, namely that NICO was not understood by Bahrain as being a Malaysian company from December 2014 to March 2018, is a post-facto argument that is not supported, but rather contradicted by contemporaneous documents which will show that Bahrain always understood NICO to have remained a Malaysian company, and in any event Iranian-owned at all material times.*” For this reason alone, if the Tribunal were to accept that the assessment that “*NICO always remained, as a matter of Malaysian law, incorporated in Malaysia since January 2012*”, or more generally that factual inquiries and determinations (which Claimant submits are hardly dissociable in this case) as to whether Bahrain’s actions and/or omissions in relation to the First, Second, and Third Refusals were undertaken on the assumption that NICO was no longer a Malaysian company from December 2014 to March 2018, would be relevant and material at this stage, the Parties are in agreement and production of the Requested Documents should be ordered;

**Third**, as regards Respondent’s objection that the Requested Documents in paragraphs (i) and (ii) are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules, Claimant notes that Respondent refrained from engaging by proposing a narrower scope of document categories. In any event:

1. Claimant has demonstrated above that the Requested Documents fall within the defined scope of the Bifurcated Issues;
2. Claimant has narrowly defined the scope of the Requested Documents via items (i) to (iii):
  - a. The time period of 2009 and 2022 for request 5 (i) is justified as it discusses Bahrain’s knowledge of NICO’s ultimate Iranian ownership which Claimant considers was the reason why it was targeted in the first place by the CBB. Alternatively, Claimant would accept to reduce the time-period to 2009 (date of NICO’s first investment in Bahrain) until July 20, 2015 (date of the signing of the JCPOA);
  - b. Request 5(i) is separated from request 5(ii) because it is still not clear to Claimant when the directives/regulations under Requests Nos. 1 to 4 were issued;
3. Respondent in fact was unable to identify a single specific sub-request that would be overly broad and the reasons why, save to argue that

	<p>Claimant used “<i>ambiguous</i>” terms such as “<i>Bahrain’s knowledge</i>” or “<i>Bahrain’s understanding</i>,” whereas it is evident what is meant by these terms;</p> <p><b><i>Fourth</i></b>, although Claimant rejects the objections and allegations made by Respondent regarding the request 5(iii) it also takes note of Respondent’s acceptance to produce the documents requested as redefined as “(iii) <i>Documents held by the Central Bank of Bahrain and sent by either of the Bahraini Banks to the Central Bank of Bahrain between 9 December 2014 and 7 March 2018 relating to NICO’s nationality or domicile.</i>”</p>
<b>E. Decision (Tribunal)</b>	<p>The Arbitral Tribunal takes note of the Respondent’s partial voluntary production and confirms that Respondent shall produce “<i>Documents held by the Central Bank of Bahrain and sent by either of the Bahraini Banks to the Central Bank of Bahrain between 9 December 2014 and 7 March 2018 relating to NICO’s nationality or domicile</i>”. The remainder of the request is rejected as overbroad and lacking in specificity, and as <i>prima facie</i> the remaining requested documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.</p>
<b><u>Document Request No. 6</u></b>	<b>The content of all instructions/requests/inquiries from the US as to Bahrain’s treatment of ultimately owned Iranian Funds, and NICO’s Funds in particular, and Respondent’s response/reporting in connection therewith</b>
<b>A. Documents or category of documents requested (requesting Party)</b>	<p>All Documents recording:</p> <ul style="list-style-type: none"> <li>(i) All instructions, requests, and/or inquiries made by the US to Bahrain, the CBB, and/or other Bahraini State Organs, as to the treatment of Iranian or ultimately Iranian-owned interests in Bahrain, as of January 1, 2010; and</li> <li>(ii) All responses/reporting (in draft or final form) prepared by Bahrain, the CBB, and/or other Bahraini State Organs in response to the instructions/requests/inquiries in item (i) above, as of January 1, 2010.</li> </ul>
<b>B. Relevance and materiality, incl. references to submission (requesting Party)</b>	<p>Via PO4, the Tribunal decided to bifurcate these proceedings in order to address as preliminary issues:</p> <ul style="list-style-type: none"> <li>(i) Respondent’s fourth preliminary objection, which the Tribunal defined as Respondent’s allegation that NICO’s claims are inadmissible since they “<i>resulted from a 2012 corporate restructuring designed to gain access to investment protection under the Treaty after the dispute had become foreseeable</i>,” and also because “<i>NICO [would have] sought to return to Malaysia in 2018 as a “conscious choice” in order to present its “fully cooked” Treaty claims as a further act of abusive behavior</i>,” including because “<i>Claimant’s alleged efforts to reacquire Malaysian nationality ex post facto to cover the period of December 2014 to March 2018 [would have] constitute[d] a further breach of the abuse of process doctrine</i>”; (PO4, Paragraphs 68 to 69); as well as</li> </ul>



- (ii) The following two questions put by the Tribunal to the Parties as regards Respondent's second preliminary objection in respect of the Tribunal's jurisdiction *ratione temporis*, namely (a) "[t]o what extent does the Treaty apply to acts and omissions that occurred prior to its entry into force?;" and (b) "[t]o what extent must Claimant have nationality under the Treaty at the time of the alleged breach?" (PO4, Paragraph 77(a)(i)).

The Requested Documents are relevant and material to the abuse of process and *ratione temporis* issues above for the reasons explained below.

In its Memorial, Claimant demonstrated that "*pressure was exercised by the US on Bahrain [and that as] recorded in a diplomatic cable from December 9, 2007, the US Treasury Deputy Secretary Robert Kimmitt himself would have sought during a December 5, 2007 exchange to impress on the Governor of the CBB the wish of the US to see Future Bank shut down. Further, a diplomatic cable from March 4, 2008, demonstrates that the US Ambassador then took a step further and expressly threatened Bahrain to take further action if Future Bank was not shut down. During a meeting held on March 4, 2008, with Bahrain's Undersecretary of Foreign Affairs Sheikh Abdulaziz bin Mubarak Al Khalifa, the US Ambassador would have explicitly stated that the US expected "either pulling the bank's license or otherwise shutting it down," and that "if action was not taken within a week, the U.S. would most likely move to designate."*" (Memorial, Paragraph 105).

Further, Claimant established in its Memorial that the "*adverse interferences by the CBB, moreover, in a non-transparent manner and without any due process, were in violation of the BIT and even more so as they were driven by US policies and laws, inapplicable in Bahrain, against Iran and at odds with NICO's legitimate expectations*" (Memorial, Paragraph 127).

Against the above, the Requested Documents – which are strictly limited in terms of scope and time period – will be relevant and material:

- (i) For purposes of jurisdiction *ratione temporis* in connection with the Tribunal's questions in PO4 (Paragraph 77(a)(i)), to establish the full nature, extent, and timing of Bahrain's breaches under influence of the US, including the full extent of the US' interferences and pressure on Bahrain to meddle and block any Iranian Funds in Bahrain including NICO's Funds as of 2010;
- (ii) For purposes of Respondent's abuse of process objection (PO4, Paragraphs 68 to 69), to establish the date of Respondent's actions and/or omissions amounting to a breach of Bahrain's obligations under the BIT, especially considering Bahrain's lack of transparency in relation to its first interferences, the date of which has still not been disclosed (see above at Pages 4 to 10, and CMPO, Paragraphs 15 to 17, and 86 to 88); and
- (iii) For purposes again of Respondent's abuse of process objection (PO4, Paragraphs 68 to 69), to ascertain when the dispute became foreseeable, let alone to the high degree of foreseeability required under the BIT and international law (see in this respect Claimant's CMPO, Paragraphs 73 to 98).

<p><b>C. Reasoned objections to document production request (objecting Party)</b></p>	<p>The Respondent objects to these requests for the following reasons:</p> <p><b>(a) The Claimant’s requests are not relevant to the Bifurcated Issues in PO4 and are not material to the outcome of the bifurcated proceedings so should be rejected under Articles 3.3(b) and 9.2(a) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.a above, <i>mutatis mutandis</i>.</p> <p>The Claimant advances three arguments on the purported relevance of these documents. Addressing each in turn:</p> <p>(i) <b>For purposes of jurisdiction <i>ratione temporis</i>:</b> The Claimant transparently explains that its requests are “<i>to establish the full nature, extent, and timing of Bahrain’s breaches under influence of the US</i>” (emphasis added). This has no relevance to jurisdiction <i>ratione temporis</i>, nor to any of the Bifurcated Issues (the bifurcated proceedings are not intended to establish Bahrain’s breaches). Even if the document requests are relevant to the Tribunal’s temporal jurisdiction (<i>quod non</i>), the Tribunal has expressly stated in PO4 that it will not determine its <i>ratione temporis</i> jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59). The bifurcated questions posed on the <i>ratione temporis</i> objection are legal (not factual) questions. Therefore, the Claimant’s requests are clearly beyond the scope of the Bifurcated Issues and should be dismissed.</p> <p>(ii) <b>For purposes of Respondent’s abuse of process objection, to establish the date of Respondent’s actions and/or omissions amounting to a breach:</b> The Claimant fails to explain how communications from or with the US would help to establish the date of Bahrain’s alleged breaches of the Treaty. In any event, the US’s alleged requests to Bahrain and Bahrain’s response to those requests, which the Claimant cites as the justification for this request, have no bearing on the Respondent’s abuse of process objection. The requested documents are irrelevant and immaterial to the question of whether the Claimant committed an abuse of process.</p> <p>(iii) <b>For purposes of Respondent’s abuse of process objection, to ascertain when the dispute became foreseeable:</b> The relevant test for foreseeability requires that a dispute be “<i>foreseeable to the Claimant</i>” (see, e.g., Memorial, para 77; CMPO, paras 30-32, emphasis added), not to the Respondent. As such, the relevant documents should be in the Claimant’s possession, reflecting the Claimant’s understanding, and not the other way around. The requested documents are irrelevant and immaterial to the question of when the dispute became foreseeable to the Claimant and, consequently, whether the Claimant committed an abuse of process.</p> <p>Finally, contrary to its claim, the Claimant has not “<i>demonstrated that... pressure was exercised by the US on Bahrain</i>”; any assertion of US influence remains unproven. In any event, the US (e.g. the Government of the United States of America) is not a party to this dispute, and the US’s alleged conduct and communications are irrelevant to the Bifurcated Issues.</p> <p>For these reasons, the requests constitute an impermissible fishing expedition and should be rejected.</p> <p><b>(b) The requests are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules.</b></p>
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	<p>The Respondent repeats paragraph 6.b above, <i>mutatis mutandis</i>.</p> <p>The scope of the requests is excessively broad, as NICO is seeking communications and responses between US and Bahrain, the CBB and/or Bahraini State Organs, (which NICO says includes the private Bahraini Banks), even if they do not refer or relate to NICO.</p> <p>There is also significant ambiguity in the scope of the request. The Claimant does not define what constitutes “US” or “Iranian or ultimately Iranian-owned interests”. To illustrate the breadth of the request, the request as currently drafted could capture (but it is unclear if it does) any e-mail from any US person, company or organisation (originating from the United States of America or otherwise) to any of the broad categories of entities and persons caught under the Claimant’s overbroad definition of “Bahraini State Organs”, in relation to any company that is marginally owned by any Iranian person.</p> <p>Contrary to the Claimant’s position that the request is “<i>strictly limited in... time period</i>”, the request asks for “<i>All Documents... as of January 1, 2010</i>” (i.e. all documents from the beginning of time to 1 January 2010). The Claimant makes no attempt to explain why such an extended timeframe is justified; it clearly is not.</p> <p>For these reasons, the requests impose an unreasonable and disproportionate burden on the Respondent, violating Article 9.2(c) and (g) of the IBA Rules.</p> <p>To the extent that the Claimant is seeking documents held by the Bahraini Banks, the Respondent repeats paragraph 6.c above, <i>mutatis mutandis</i>.</p> <p><b>(c) The requests seek documents on the basis of arguments related to NICO’s ultimate shareholder and protections on the Bahrain-Iran BIT and are therefore outside of the Tribunal’s jurisdiction to order.</b></p> <p>The requests also seek documents relating to NICO’s ultimate shareholder and protections that may (or may not) be available to that shareholder under the Bahrain-Iran BIT. For the reasons explained in paragraphs 106 to 109 of the Respondent’s Memorial on Preliminary Objections, this Tribunal does not have jurisdiction nor the authority to determine purported claims under the Bahrain-Iran BIT. Production of documents that relate to rights that may or may not be owed to NICO’s ultimate shareholder under a separate treaty are not relevant or material to the issues to be decided in the present proceedings.</p> <p><b>(d) Documents of political or institutional sensitivity are not disclosable pursuant to Article 9.2(e) and (f) of the IBA Rules.</b></p> <p>The request seeks documents between the Governments of Bahrain and the US. Disclosure of politically sensitive inter-State communication would jeopardise the Respondent’s legitimate interests and harm its relations with the US. These documents may also be protected by the inviolability of official diplomatic correspondence under Article 27(2) of the Vienna Convention on Diplomatic Relations 1961. For these reasons, and pursuant to Article 9.2(e) and (f) of the IBA Rules, disclosure should not be ordered.</p>
<p><b>D. Response to objections to document production</b></p>	<p>Claimant repeats the reasons underlying its Document Request as set out above which show that the Requested Documents are relevant and material</p>



<p><b>request (requesting Party)</b></p>	<p>to the issues bifurcated via PO4 on abuse of process and within the limits defined in the same PO4, on jurisdiction <i>ratione temporis</i>. Claimant thus replies to Respondent’s Objections as follows:</p> <p><b><u>First</u></b>, Claimant notes that Respondent does not dispute the existence of the Requested Documents.</p> <p><b><u>Second</u></b>, Claimant reiterates that the Documents Requested are relevant and material to the issues bifurcated by the Tribunal in PO4:</p> <ol style="list-style-type: none"> <li>1. <u>For purposes of ascertaining when the dispute became foreseeable in connection with Respondent’s abuse of process objection:</u> Respondent’s <u>only</u> response is that the “<i>relevant test for foreseeability requires that a dispute be “foreseeable to <u>the Claimant</u>”</i> (emphasis in the original), and that accordingly “<i>the relevant documents should be in the Claimant’s possession, reflecting the Claimant’s understanding, and not the other way around.</i>”</li> </ol> <p>Yet, Claimant’s case is precisely that it was not aware of Bahrain’s acts and omissions in breach of the BIT that had started in 2010 until at least November 2012 (see Exhibit <b>C-74</b>), and this because these acts and omissions had not been transparently disclosed to Claimant but rather had been dissimulated (and in fact actively) by Respondent (see CMPO, Paragraphs 80 to 87).</p> <p>What is more, in its pleadings to date,<sup>41</sup> including in this document production phase, Bahrain has not even alleged that its actions and/or omissions starting in 2010 had been transparently disclosed to Claimant at any time prior to NICO’s re-domiciliation to Malaysia on January 4, 2012, let alone produced evidence to the contrary.</p> <p>Against the above, Respondent’s objection to the production of the Requested Documents that would show when Bahrain’s acts and omissions as of 2010 would have been notified to Claimant prior to NICO’s re-domiciliation to Malaysia on January 4, 2012, <u>is plainly irreconcilable with Bahrain’s position that the dispute between NICO and Bahrain would have been foreseeable prior to such January 4, 2012 re-domiciliation</u>, and cannot possibly be sustained. For this reason alone, an order for the production of the Requested Documents cannot be objected to on the basis of relevance or materiality;</p>
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<sup>41</sup> In its Objections to Claimant’s Document Requests, Respondent suggests (based on Paragraph 18 of its MPO) that Claimant would have acknowledged in its NoD dated August 5, 2022 and its RfA dated December 5, 2022 that Bahrain’s breaches started in 2010. Yet, it never in fact disputes Claimant’s position (as set forth at Paragraphs 20 and 81 *et seq.* of its CMPO) that NICO was not aware of Bahrain’s actions and omissions starting in 2010 until November 2012. Nor does Respondent ever allege, let alone submit supporting evidence, that such actions and omissions would have been notified by Bahrain to NICO in 2010 or at any time material time thereafter, prior to NICO’s first reference to the 2010 CBB Directive in its November 26, 2012 correspondence (submitted as Exhibit **C-74**).

2. For purposes of jurisdiction *ratione temporis*: Claimant notes that Respondent does not dispute that the Requested Documents would as a matter of fact be relevant and material “*to establish the full nature, extent, and timing of Bahrain’s breaches under influence of the US, including the full extent of the US’ interferences and pressure on Bahrain to meddle and block any Iranian Funds in Bahrain including NICO’s Funds as of 2010*”, nor does Respondent dispute that the Requested Documents could go to the merits of the *ratione temporis* objection. For this reason alone, if the Tribunal were to accept that factual inquiries and determinations (which Claimant submits are hardly dissociable in this case) as to when Bahrain’s breaches occurred and became known to Claimant, would be relevant and material at this stage, the Parties are in agreement and production of the Requested Documents should be ordered;
3. As regards Respondent’s allegation that the “*Tribunal has expressly stated in PO4 that it will not determine its ratione temporis jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59)*,” Claimant reminds Respondent that the Tribunal made this “*clarifi[cation]*” in the context of ordering bifurcation on the specific issues identified in PO4, and so as to not prejudge the merits of the dispute. This clarification cannot however prohibit the Tribunal from taking into consideration all relevant factors when determining whether, and to what extent, the BIT applies “*to acts and omissions that occurred prior to [the BIT’s] entry into force*,” including all factual evidence as to whether the “*acts and omissions that occurred prior to [the BIT’s] entry into force*” – which eventually constituted a breach of the BIT – had been notified to Claimant at the time, or rather had been dissimulated by Bahrain, which is precisely what the Requested Documents seek to ascertain for purposes of jurisdiction *ratione temporis* and abuse of process;
4. As to Respondent’s allegations that “*Claimant has not demonstrated that... pressure was exercised by the US on Bahrain*”; *any assertion of US influence remains unproven*” and that the US “*is not a party to this dispute*,” it cannot serve to defeat Claimant’s Document Requests and is in fact irrelevant. Claimant’s position as set out in its Memorial at paragraph 105 *et seq* is that prior to the 2010 CBB Directive pressure was exercised by the US on Bahrain. In any event, as explained above, Respondent’s acts and omissions had not been transparently disclosed to Claimant but rather dissimulated (and in fact actively) by Respondent, and the same cannot now be relied upon in support of its abuse of process nor *ratione temporis* defense. This will be shown by the Requested Documents and is directly relevant and material to Claimant’s factual

and legal defenses to ascertain when the dispute became foreseeable in connection with Respondent's abuse of process objection.

**Third**, as regards Respondent's objection that the Requested Documents are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules, Claimant notes that Respondent refrained from engaging by proposing a narrower scope of document categories. In any event:

1. Claimant has demonstrated above that the Requested Documents fall within the defined scope of the Bifurcated Issues;
2. Claimant has narrowly defined the scope of the Requested Documents via items (i) and (ii), which are limited in time. While Respondent alleges that the specified time period, namely "*as of January 1, 2010*" (*i.e. all documents from the beginning of time to 1 January 2010*)" is unjustified, that is not the case. Respondent misunderstands the use of the words "as of". The period specified would start from 2010 which is the year of issuance of the 2010 CBB Directive and as demonstrated in its Memorial at paragraphs 101 *et seq.*, Claimant suspects the US' influence over the same. The resolution of the said influence (if indeed the said influence has ended) is for now unclear to Claimant, this explains why an end date is not specified and not needed.
3. Respondent in fact was unable to identify a single specific sub-request that would be overly broad and the reasons why, save to argue that Claimant used ambiguous terms such as "*US*" or "*Iranian or ultimately Iranian-owned interests*," whereas it is evident what is meant by these terms and the same has in fact been used continuously since Claimant's Memorial dated May 9, 2024 and this was not disputed. Respondent's example as to why these terms are ambiguous is farcical. In any event, to be clear, the term "*US*" refers to the United States of America and all its State organs and representatives as defined by the ILC Articles 4, 5 and 8.

**Fourth**, as regards Respondent's objections that the Requested Documents are not disclosable pursuant to Articles 9.2(e) and (f) of the IBA Rules:

1. Claimant takes note that Respondent does not dispute that the Requested Documents exist but rather hides behind its defense that "*politically sensitive inter-State communication would jeopardise the Respondent's legitimate interests and harm its relations with the US*" as a means to avoid producing the said responsive documents. Yet, this cannot be relied upon in abstract without identifying which particular documents are concerned and what specific sensitivity would be jeopardized if the documents were produced, and if so why and how particular safeguards in terms of confidentiality/redactions could not be implemented, and this even more so that such defense



	<p>of “political sensitivity” could not be used to prevent Claimant from making its case especially when the case is one of a pretextual and political taking and dissimulation.</p> <ol style="list-style-type: none"> <li>2. Moreover, as stated clearly by the Commentary on the 2020 IBA rules, objections based on Articles 9.2(e) and (f) may be raised “<i>if there are compelling reasons to preserve confidentiality of the documents and a party has a legitimate ground to object to the disclosure of these documents.</i>” However, as stated also by the said commentary “<i>instead of excluding the entirety of the document from the production evidence, the arbitral tribunal may order appropriate measures to preserve confidentiality of the evidence under Article 9.5.</i>”<sup>42</sup> Here, however, Respondent has simply issued a blanket refusal on the grounds of “political sensitivity” which is not justified.</li> <li>3. Respondent should know better since in the <i>BMI &amp; BSI v. Bahrain</i> arbitration, Respondent (represented in fact in that case by the learned Jan Paulsson who now acts as agent of Respondent in this case) was previously ordered by the tribunal at the time to produce documents exchanged between Bahrain and foreign states “<i>subject to potential redactions with reasons, on the ground of diplomatic relations,</i>” which it in fact did. Bahrain cannot now pretend that it is entirely unable to produce any such responsive document.</li> <li>4. This position is in line with the stance other tribunals have taken. For instance, in <i>Nord stream 2 AG v. European Union</i>,<sup>43</sup> “<i>the Tribunal [...] rejected certain objections based on political or institutional sensitivity under Article 9.2(f) of the IBA Rules due to the failure to identify the precise information that is considered politically or institutionally sensitive as well as the legal basis upon which it should be so classified.</i>” In the present case, however, Bahrain has not only failed to produce any documents at all responsive to Claimant’s request, but it has also failed to explain in detail and case by case why any such responsive documents would in reality be politically sensitive and therefore improper for production. Similarly, in <i>Elliott v Korea</i>,<sup>44</sup> the tribunal ruled that “<i>it is not sufficient for the Respondent to merely assert that its agreement to produce responsive documents is subject to its determination that the documents in question are not politically or institutionally sensitive. Pursuant to Article 9(2)(f) of the IBA Rules, the determination of whether a particular responsive document is excluded from document production on grounds of special political or institutional sensitivity is to be made, in the event the Parties disagree on the issue, by the Tribunal, which must find that the grounds invoked by</i> </li></ol>
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<sup>42</sup> Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, adopted in January 2021, p. 29.

<sup>43</sup> *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 5 (Document Production), para. 10.

<sup>44</sup> *Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, Procedural Order No. 8, para. 25.

	<p><i>the party opposing production are “compelling.”</i>” In the present case, Respondent has failed to provide any compelling grounds as to why any such responsive documents should not be produced.</p> <p>Also, in <i>Global Telecom Holding S.A.E. v. Canada</i>,<sup>45</sup> although the tribunal accepted the Respondent’s defense on “political sensitivity”, the tribunal in that case considered that a blanket refusal was not a compelling argument for non-production, stating first, as matter of principle, that “ <i>the Tribunal has been given <u>no evidence of a blanket refusal by the Respondent on this ground.</u></i> ” Similarly, in response to the respondent’s objection to produce documents on grounds of national security, that same tribunal also stated that “<i>the Respondent’s assertion of national security privilege is not a case of a blanket refusal, as evidenced by its production of 235 documents responsive to [REDACTED]</i>”<sup>48</sup> which excludes bad faith. The Tribunal also notes that, of those documents, the Respondent redacted 128 and withheld a further 27 on national security grounds, asserting <u>Article 9.2(f) of the IBA Rules</u> for each instance of withheld information. The Respondent explains in great detail how it determined that the release of each withheld information “would” (not “could”) be injurious to its national security.<sup>49,46</sup> Here, however, Respondent has (1) failed to produce any responsive documents, (2) failed to provide any compelling reasons for each withheld information and (3) has in fact provided a general blanket refusal to produce any such responsive documents on grounds of “political sensitivity”. These grounds are unfounded and can only be rejected by the Tribunal.</p>
<b>E. Decision (Tribunal)</b>	The request is rejected as overly broad and lacking in specificity, and as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.
<b><u>Document Request No. 7</u></b>	<b>The content of all instructions/requests/inquiries from Saudi Arabia as to the treatment of ultimately owned Iranian assets in Bahrain, and Respondent’s response/reporting in connection therewith</b>
<b>A. Documents or category of documents requested (requesting Party)</b>	<p>All Documents recording:</p> <ul style="list-style-type: none"> <li>(i) All instructions, requests and/or inquiries made by Saudi Arabia to Bahrain, the CBB, and/or other Bahraini State Organs, as to the treatment of Iranian or ultimately Iranian-owned interests in Bahrain, as of January 1, 2014; and</li> <li>(ii) All responses/reporting prepared by Bahrain, the CBB, or other Bahraini State Organs (in draft or final form) in response to the</li> </ul>

<sup>45</sup> *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 4 (Decision on the Claimant's Objections to the Respondent's Claims of Privilege), 3 November 2018, paras. 41 and 43, emphasis added.

<sup>46</sup> *Ibid.*, para. 43, emphasis added.

	instructions/requests/inquiries in item (i) above, as of January 1, 2014.
<b>B. Relevance and materiality, incl. references to submission (requesting Party)</b>	<p>Via PO4, the Tribunal decided to bifurcate these proceedings in order to address as preliminary issues the following:</p> <ul style="list-style-type: none"> <li>(i) Respondent's fourth preliminary objection, which the Tribunal defined as Respondent's allegation that NICO's claims are inadmissible since they "<i>resulted from a 2012 corporate restructuring designed to gain access to investment protection under the Treaty after the dispute had become foreseeable,</i>" and also because "<i>NICO [would have] sought to return to Malaysia in 2018 as a "conscious choice" in order to present its "fully cooked" Treaty claims as a further act of abusive behavior,</i>" including because "<i>Claimant's alleged efforts to reacquire Malaysian nationality ex post facto to cover the period of December 2014 to March 2018 [would have] constitute[d] a further breach of the abuse of process doctrine</i>"; (PO4, Paragraphs 68 to 69); as well as</li> <li>(ii) The following two questions put by the Tribunal to the Parties as regards Respondent's second preliminary objection to the Tribunal's jurisdiction <i>ratione temporis</i>, namely (a) "[t]o what extent does the Treaty apply to acts and omissions that occurred prior to its entry into force?;" and (b) "[t]o what extent must Claimant have nationality under the Treaty at the time of the alleged breach?" (PO4, Paragraph 77(a)(i)).</li> </ul> <p>The Requested Documents are relevant and material to the abuse of process and <i>ratione temporis</i> issues above for the reasons explained below.</p> <p>In its Memorial, Claimant demonstrated Saudi Arabia's influence on Bahrain including by demonstrating that "<i>when Saudi Arabia constituted a coalition against Iran [...] because of regional rivalries and its drive to prevent Iran's return in the concert of nations following the announcement of the nuclear negotiations in 2013 and the ultimate execution of the Joint Comprehensive Plan of Action ("JCPOA") in 2015 [it was joined by Bahrain (Memorial, Paragraph 34)]. This political context cannot be ignored.</i>"</p> <p>Further, as explained at Paragraph 35 of Claimant's Memorial, the <i>BMI &amp; BSI v Bahrain</i> tribunal held that it could not "<i>ignore the wider political context that prevailed at the time when Bahrain took the impugned measures. In particular, on April 2, 2015, a few weeks before Bahrain placed Future Bank under administration, it was announced that Iran had agreed with the United States, France, Germany, the United Kingdom, Russia, and China to accept constraints on its nuclear programme in exchange for partial relief from sanctions. The JCPOA was then signed on July 14, 2015. Press reports indicated that Saudi Arabia was strongly opposed to the JCPOA and had been pressuring neighboring (and other) States to sever ties with Iran. As for Bahrain, it is reported to have strong ties with Saudi Arabia and to be economically dependent on Saudi Arabia.</i>"</p> <p>In its CMPO, Claimant argued moreover that "<i>Bahrain's independent breaches in 2015 regarding the Third Refusals were not and could not be</i></p>



	<p>“subsequent acts [that] simply confirm the same dispute” as they did not originate from the US sanctions but Bahrain’s political agenda to curry favor with <b>Saudia Arabia since at the time the JSCPOA was signed and the sanctions were lifted</b>, and thus give rise to a separate cause of action (emphasis added)” (CMPO, Paragraph 133).</p> <p>Against the above, the Requested Documents – which are strictly limited in terms of scope and time period – will be relevant and material:</p> <ul style="list-style-type: none"> <li>(i) For purposes of jurisdiction <i>ratione temporis</i> in connection with the Tribunal’s questions in PO4 (Paragraph 77(a)(i)), to establish the full nature, extent and timing of Bahrain’s interferences in breach of the BIT and international law – based <i>inter alia</i> on pressures from Saudi Arabia in the prevailing political context – regarding the treatment of Iranian Funds especially as of January 1, 2015, when Bahrain – in the wake of the July 2015 JCPOA and the West rushing to take its share of the Iranian market (see Memorial, Paragraphs 67 and 171) – took the opposite route by expropriating all Iranian interests (see Memorial, Paragraphs 189 to 198);</li> <li>(ii) For purposes again of jurisdiction <i>ratione temporis</i> in connection with the Tribunal’s questions in PO4 (Paragraph 77(a)(i)), to establish the full origin, nature and timing of Bahrain’s breaches particularly as Claimant was left in the dark about the acts and omissions of Bahraini State Organs and thus demonstrate that all of Bahrain’s breaches fall within the temporal scope of the BIT; and</li> <li>(iii) For purposes of Respondent’s abuse of process objection in connection with the Tribunal’s questions in PO4 (Paragraphs 68 to 69), to ascertain when the dispute became foreseeable, let alone to the high degree of foreseeability required under the BIT and international law (see in this respect Claimant’s CMPO, Paragraphs 73 to 98).</li> </ul> <p>The Requested Documents are all the more material that in the <i>BMI &amp; BSI v Bahrain</i> case, the tribunal, having examined the close relationship between Saudi Arabia and Bahrain, and Saudi Arabia’s adverse stance to the JCPOA, concluded that the “<i>political context and the absence of any thorough review of the reasons for putting these Iranian entities [i.e. Future Bank and the Iranian Insurance Company] into administration on the same date [i.e. May 3, 2015] constitutes strong circumstantial evidence of a motivation of <b>political retribution behind the CBB’s impugned measures</b></i>” and that Bahrain thus breached its obligations under Article 6 of the Iran-Bahrain BIT (C-20, ¶¶ 672, 673, 836(b)). The tribunal further concluded that the CBB Governor Mr. Hamad’s statement was “<i>a sovereign decision to put the Bank [i.e. Future Bank] into administration</i>” as recorded in the minutes of the meeting between the CBB and Future Bank dated May 3, 2015, constituted additional evidence that the “<i>CBB’s conduct against Future Bank was dictated by a <b>political agenda</b> as opposed to regulatory considerations</i> (C-20, ¶¶ 673, 675) (emphasis added).”</p>
<p><b>C. Reasoned objections to document production request (objecting Party)</b></p>	<p>The Respondent objects to these requests for the following reasons:</p>



**(a) The Claimant's requests are not relevant to the Bifurcated Issues in PO4 and are not material to the outcome of the bifurcated proceedings so should be rejected under Articles 3.3(b) and 9.2(a) of the IBA Rules.**

The Respondent repeats paragraph 6.a above, *mutatis mutandis*.

The Claimant advances four arguments on the purported relevance of these documents. Addressing each in turn:

- (i) **For purposes of jurisdiction *ratione temporis*:** The Claimant accepts that its requests are “*to establish the full nature, extent, and timing of Bahrain's interferences in breach of the BIT*” (emphasis added). This has no relevance to jurisdiction *ratione temporis*, nor to any of the Bifurcated Issues (the bifurcated proceedings are not intended to establish Bahrain's breaches). The Tribunal has expressly stated in PO4 that it will not determine its *ratione temporis* jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59). The bifurcated questions posed on the *ratione temporis* objection are legal (not factual) questions. Therefore, the Claimant's requests are clearly beyond the scope of the Bifurcated Issues and should be dismissed.
- (ii) **For purposes again of jurisdiction *ratione temporis*:** The Claimant likewise asserts that its requests are “*to establish the full origin, nature and timing of Bahrain's breaches*”. This is a merits issue that falls outside the scope of the bifurcated proceedings and should only be addressed at a later stage (if applicable). For the reasons set out in immediate para (i) above, this argument should be dismissed.
- (iii) **For purposes of Respondent's abuse of process objection, to ascertain when the dispute became foreseeable:** The relevant test for foreseeability requires that a dispute be “*foreseeable to the Claimant*” (see, e.g., Memorial, para 77; CMPO, paras 30-32, emphasis added), not to the Respondent. As such, the relevant documents should be in the Claimant's possession, reflecting the Claimant's understanding, and not the other way around. The requested documents are irrelevant and immaterial to the question of when the dispute became foreseeable to the Claimant and, consequently, whether the Claimant committed an abuse of process.
- (iv) **The Claimant refers the Tribunal to the decision in *BMI & BSI v Bahrain* to support its argument that Saudi Arabia and Bahrain have a “close relationship” and therefore the requested documents are “all the more material”:** This is incorrect. First, that case pertains to protections under the Bahrain-Iran BIT and involves different parties. It is also not a decision on document production. Therefore, the findings cited do not assist the Tribunal in determining whether or not it should grant NICO's document requests in these bifurcated proceedings. Secondly, the relationship between Saudi Arabia and Bahrain is not a Bifurcated Issue and has no bearing on any of the Bifurcated Issues. Bahrain's alleged conduct, as a result of alleged pressures from Saudi Arabia, are at best an issue that goes to the merits of NICO's claims, only to be addressed at a later stage (if applicable).

Finally, contrary to its claim, the Claimant has not “*demonstrated Saudi Arabia's influence on Bahrain*”; any such assertion remains unproven. In any event, Saudi Arabia (e.g. the Saudi Arabian Government) is not a party



to this dispute, and Saudi Arabia's alleged conduct and communications are irrelevant to the Bifurcated Issues.

For these reasons, the requests constitute an impermissible fishing expedition and should be rejected.

**(b) The requests are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules.**

The Respondent repeats paragraph 6.b above, *mutatis mutandis*.

The scope of the requests is excessively broad, as NICO is seeking communications and responses between Saudi Arabia and Bahrain, the CBB and/or Bahraini State Organs (which include the private Bahraini banks), even if they do not refer or relate to NICO.

There is also significant ambiguity in the scope of the request. The Claimant does not define what constitutes "Saudi Arabia" or "Iranian or ultimately Iranian-owned interests". To illustrate the breath of the request, the request as currently drafted could capture (but it is unclear if it does) any e-mail from any Saudi person, company or organisation (originating from Saudi Arabia or otherwise) to any of the broad categories of entities and persons caught under the Claimant's overbroad definition of "Bahraini State Organs", in relation to any company that is marginally owned by any Iranian person.

Contrary to the Claimant's position that the request is "*strictly limited in... time period*", the request asks for documents "*as of January 1, 2014*" (i.e. all documents from the beginning of time to 1 January 2014). The Claimant makes no attempt to explain why such an extended timeframe is justified; it clearly is not.

For these reasons, the requests impose an unreasonable and disproportionate burden on the Respondent, violating Article 9.2(c) and (g) of the IBA Rules.

**(c) The requests seek documents on the basis of arguments related to NICO's ultimate shareholder and protections on the Bahrain-Iran BIT and are therefore outside of the Tribunal's jurisdiction to order.**

The requests also seek documents relating to NICO's ultimate shareholder and protections that may (or may not) be available to that shareholder under the Bahrain-Iran BIT. For the reasons explained in paragraphs 106 to 109 of the Respondent's Memorial on Preliminary Objections, this Tribunal does not have jurisdiction nor the authority to determine purported claims under the Bahrain-Iran BIT. Production of documents that relate to rights that may or may not be owed to NICO's ultimate shareholder under a separate treaty are not relevant or material to the issues to be decided in the present proceedings.

**(e) Documents of political or institutional sensitivity are not disclosable pursuant to Article 9.2(e) and (f) of the IBA Rules.**

The request seeks documents between the Governments of Bahrain and Saudi Arabia. Disclosure of potentially politically sensitive inter-State communication would jeopardise the Respondent's legitimate interests and harm its relations with Saudi Arabia. These documents may also be protected by the inviolability of official diplomatic correspondence under



	Article 27(2) of the Vienna Convention on Diplomatic Relations 1961. For these reasons, and pursuant to Article 9.2(e) and (f) of the IBA Rules, disclosure should not be ordered.
<b>D. Response to objections to document production request (requesting Party)</b>	<p>Claimant repeats the reasons underlying its Document Request as set out above which show that the Requested Documents are relevant and material to the issues bifurcated via PO4 on abuse of process and within the limits defined in the same PO4, on jurisdiction <i>ratione temporis</i>. Claimant thus replies to Respondent's Objections as follows:</p> <p><b><u>First</u></b>, Claimant notes that Respondent does not dispute the existence of the Requested Documents.</p> <p><b><u>Second</u></b>, Claimant reiterates that the Documents Requested are relevant and material to the issues bifurcated by the Tribunal in PO4:</p> <ol style="list-style-type: none"> <li>1. <u>For purposes of ascertaining when the dispute became foreseeable in connection with Respondent's abuse of process objection:</u> Respondent's <u>only</u> response is that the "<i>relevant test for foreseeability requires that a dispute be "foreseeable to the Claimant"</i> (emphasis in the original), and that accordingly "<i>the relevant documents should be in the Claimant's possession, reflecting the Claimant's understanding, and not the other way around.</i>"</li> </ol> <p>Yet, Claimant's case is precisely that it was not aware of Bahrain's acts and omissions in breach of the BIT that had started in 2010 until at least November 2012 (see Exhibit C-74), and this because these acts and omissions had not been transparently disclosed to Claimant but rather had been dissimulated (and in fact actively) by Respondent (see CMPO, Paragraphs 80 to 87).</p> <p>What is more, in its pleadings to date,<sup>47</sup> including in this document production phase, Bahrain has not even alleged that its actions and/or omissions starting in 2010 had been transparently disclosed to Claimant at any time prior to NICO's re-domiciliation to Malaysia on January 4, 2012, let alone produced evidence to the contrary.</p> <p>Against the above, Respondent's objection to the production of the Requested Documents that would show when Bahrain's acts and omissions as of 2010 would have been notified to Claimant prior to NICO's re-domiciliation to Malaysia on January 4, 2012, <u>is plainly</u></p>

<sup>47</sup> In its Objections to Claimant's Document Requests, Respondent suggests (based on Paragraph 18 of its MPO) that Claimant would have acknowledged in its NoD dated August 5, 2022 and its RfA dated December 5, 2022 that Bahrain's breaches started in 2010. Yet, it never in fact disputes Claimant's position (as set forth at Paragraphs 20 and 81 *et seq.* of its CMPO) that NICO was not aware of Bahrain's actions and omissions starting in 2010 until November 2012. Nor does Respondent ever allege, let alone submit supporting evidence, that such actions and omissions would have been notified by Bahrain to NICO in 2010 or at any time material time thereafter, prior to NICO's first reference to the 2010 CBB Directive in its November 26, 2012 correspondence (submitted as Exhibit C-74).

irreconcilable with Bahrain’s position that the dispute between NICO and Bahrain would have been foreseeable prior to such January 4, 2012 re-domiciliation, and cannot possibly be sustained. For this reason alone, an order for the production of the Requested Documents cannot be objected to on the basis of relevance or materiality;

2. For purposes of jurisdiction *ratione temporis* Claimant notes that Respondent does not dispute that the Requested Documents would as a matter of fact be relevant and material “*to establish the full nature, extent, and timing of Bahrain’s interferences in breach of the BIT*” as well as “*to establish the full origin, nature and timing of Bahrain’s breaches*” nor does Respondent dispute that the Requested Documents could go to the merits of the *ratione temporis* objection. For this reason alone, if the Tribunal were to accept that factual inquiries and determinations (which Claimant submits are hardly dissociable in this case) as to when Bahrain’s breaches occurred and became known to Claimant, would be relevant and material at this stage, the Parties are in agreement and production of the Requested Documents should be ordered;
3. As regards Respondent’s allegation that the “*Tribunal has expressly stated in PO4 that it will not determine its ratione temporis jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59),*” Claimant reminds Respondent that the Tribunal made this “*clarifi[cation]*” in the context of ordering bifurcation on the specific issues identified in PO4, and so as to not prejudge the merits of the dispute. This clarification cannot however prohibit the Tribunal from taking into consideration all relevant factors when determining whether, and to what extent, the BIT applies “*to acts and omissions that occurred prior to [the BIT’s] entry into force,*” including all factual evidence as to whether the “*acts and omissions that occurred prior to [the BIT’s] entry into force*” – which eventually constituted a breach of the BIT – had been notified to Claimant at the time, or rather had been dissimulated by Bahrain, which is precisely what the Requested Documents seek to ascertain for purposes of jurisdiction *ratione temporis* and abuse of process;
4. As to Respondent’s allegation that “*Claimant has not “demonstrated Saudi Arabia’s influence on Bahrain”; any assertion remains unproven*” also that Saudi Arabia “*is not a party to this dispute*” as well as its objections to Claimant’s clear demonstration on the basis of the findings in the *BMI & BSI v Bahrain* arbitration, cannot serve to defeat Claimant’s Document Requests and is in fact irrelevant. Claimant’s position as set out in its Memorial at paragraph 181 *et seq.* is that the continued blockage of NICO’s Funds post-JCPOA

was “at odds with the execution of the JCPOA and the return of Iran and its companies in the concert of nations, was caused by the Bahrain’s adverse stand as part of the Saudi Arabia led alliance against Iran.” In any event, as explained above, Respondent’s acts and omissions had not been transparently disclosed to Claimant but rather dissimulated (and in fact actively) by Respondent, and the same cannot now be relied upon in support of its abuse of process nor *ratione temporis* defense. This will be shown by the Requested Documents and is directly relevant and material to Claimant’s factual and legal defenses to ascertain when the dispute became foreseeable in connection with Respondent’s abuse of process objection.

**Third**, as regards Respondent’s objection that the Requested Documents are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules, Claimant notes that Respondent refrained from engaging by proposing a narrower scope of document categories. In any event:

1. Claimant has demonstrated above that the Requested Documents fall within the defined scope of the Bifurcated Issues;
2. Claimant has narrowly defined the scope of the Requested Documents via items (i) and (ii), which are limited in time. While Respondent alleges that the specified time period, namely ““as of January 1, 2014” (i.e. all documents from the beginning of time to 1 January 2014)” is unjustified, that is not the case. Respondent misunderstands the use of the words “as of”. The period specified would start from 2014 which was the year in which important negotiations for the drafting of the JCPOA were in full swing, yet as demonstrated in its Memorial at Paras. 180 *et seq.*, “it [was] no secret that Saudi Arabia opposed the JCPOA back and embarked its allies in this opposition.” The Saudi influence on Bahrain, despite the adoption of the JCPOA in 2015, interfered with the release of NICO’s Funds. The resolution of the said influence (if indeed the said influence has ended) is for now unclear to Claimant, this explains why an end date is not specified and not needed.
3. Respondent in fact was unable to identify a single specific sub-request that would be overly broad and the reasons why, save to argue that Claimant used “ambiguous” terms such as “Saudi Arabia” or “Iranian or ultimately Iranian-owned interests” whereas it is evident what is meant by these terms and the same has in fact been used continuously since Claimant’s Memorial dated May 9, 2024 and this was not disputed. Respondent’s example as to why these terms are ambiguous is farcical. In any event, to be clear, the term “Saudi Arabia” refers to the Kingdom of Saudi Arabia and all its State organs and representatives as defined by the ILC Articles 4, 5 and 8.



**Fourth**, as regards Respondent’s objections that the Requested Documents are not disclosable pursuant to Articles 9.2(e) and (f) of the IBA Rules:

1. Claimant takes note that Respondent does not dispute that the Requested Documents exist but rather hides behind its defense that “*politically sensitive inter-State communication would jeopardise the Respondent’s legitimate interests and harm its relations with the Saudi Arabia*” as a means to avoid producing the said responsive documents. Yet, this cannot be relied upon in abstract without identifying which particular documents are concerned and what specific sensitivity would be jeopardized if the documents were produced, and if so why and how particular safeguards in terms of confidentiality/redactions could not be implemented, and this even more so that such defense of “political sensitivity” could not be used to prevent Claimant from making its case especially when the case is one of a pretextual and political taking and dissimulation.
2. Moreover, as stated clearly by the Commentary on the 2020 IBA rules, objections based on Articles 9.2(e) and (f) may be raised “*if there are compelling reasons to preserve confidentiality of the documents and a party has a legitimate ground to object to the disclosure of these documents.*” However, as stated also by the said commentary “*instead of excluding the entirety of the document from the production evidence, the arbitral tribunal may order appropriate measures to preserve confidentiality of the evidence under Article 9.5.*”<sup>48</sup> Here, however, Respondent has simply issued a blanket refusal on the grounds of “political sensitivity” which is not justified.
3. Respondent should know better since in the *BMI & BSI v. Bahrain* arbitration, Respondent (represented in fact in that case by the learned Jan Paulsson who now acts as agent of Respondent in this case) was previously ordered by the tribunal at the time to produce documents exchanged between Bahrain and foreign states “*subject to potential redactions with reasons, on the ground of diplomatic relations,*” which it in fact did. Bahrain can now pretend that it is entirely unable to produce any such responsive document.
4. This position is in line with the stance other tribunals have taken. For instance, in *Nord stream 2 AG v. European Union*,<sup>49</sup> “*the Tribunal [...] rejected certain objections based on political or institutional sensitivity under Article 9.2(f) of the IBA Rules due to the failure to identify the precise information that is considered politically or institutionally sensitive as well as the legal basis upon which it should be so classified.*” In the present case, however, Bahrain has not only failed to produce any documents at all responsive to

<sup>48</sup> Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration, adopted in January 2021, p. 29.

<sup>49</sup> *Nord Stream 2 AG v. European Union*, PCA Case No. 2020-07, Procedural Order No. 5 (Document Production), para. 10.

	<p>Claimant's request but it has also failed to explain in detail and case by case why any such responsive documents would in reality be politically sensitive and therefore improper for production.</p> <p>Similarly, in <i>Elliott v Korea</i>,<sup>50</sup> the tribunal ruled that “<i>it is not sufficient for the Respondent to merely assert that its agreement to produce responsive documents is subject to its determination that the documents in question are not politically or institutionally sensitive. Pursuant to Article 9(2)(f) of the IBA Rules, the determination of whether a particular responsive document is excluded from document production on grounds of special political or institutional sensitivity is to be made, in the event the Parties disagree on the issue, by the Tribunal, which must find that the grounds invoked by the party opposing production are “compelling.”</i>” In the present case, Respondent has failed to provide any compelling grounds as to why any such responsive documents should not be produced.</p> <p>Also, in <i>Global Telecom Holding S.A.E. v. Canada</i>,<sup>51</sup> although the tribunal accepted the Respondent's defense on “political sensitivity”, the tribunal in that case considered that a blanket refusal was not a compelling argument for non-production, stating first, as matter of principle, that “<i>the Tribunal has been given <u>no evidence of a blanket refusal by the Respondent on this ground.</u></i>” Similarly, in response to the respondent's objection to produce documents on grounds of national security, that same tribunal also stated that “<i>the Respondent's assertion of national security privilege is <u>not a case of a blanket refusal, as evidenced by its production of 235 documents responsive to [REDACTED]</u></i><sup>48</sup> which excludes bad faith. The Tribunal also notes that, of those documents, the Respondent redacted 128 and withheld a further 27 on national security grounds, asserting <u>Article 9.2(f) of the IBA Rules</u> for each instance of withheld information. The Respondent explains in great detail how it determined that the release of each withheld information “would” (not “could”) be injurious to its national security.<sup>49</sup>”<sup>52</sup> Here, however, Respondent has (1) failed to produce any responsive documents, (2) failed to provide any compelling reasons for each withheld information and (3) has in fact provided a general blanket refusal to produce any such responsive documents on grounds of “political sensitivity”. These grounds are unfounded and can only be rejected by the Tribunal.</p>
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<sup>50</sup> *Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, Procedural Order No. 8, para. 25.

<sup>51</sup> *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Procedural Order No. 4 (Decision on the Claimant's Objections to the Respondent's Claims of Privilege), 3 November 2018, paras. 41 and 43, emphasis added.

<sup>52</sup> *Ibid.*, para. 43, emphasis added.

<b>E. Decision (Tribunal)</b>	The request is rejected as overly broad and lacking in specificity, and as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.
<b><u>Document Request No. 8</u></b>	<b>Respondent's assessment of, and reaction to, letters sent by NICO to the CBB between 2011 and 2015 in relation to NICO's blocked Funds and the Bahraini Banks' refusals to release the same</b>
<b>A. Documents or category of documents requested (requesting Party)</b>	<p>All Documents recording:</p> <ul style="list-style-type: none"> <li>(i) Respondent's assessment of and reaction to NICO's March 8, 2011 letter and email to the CBB (C-10; C-71);</li> <li>(ii) Respondent's assessment of and reaction to NICO's October 6, 2011 letter to the CBB (C-70);</li> <li>(iii) Respondent's assessment of and reaction to NICO's counsel's letter of June 2015 to the CBB (R-10); and</li> <li>(iv) Respondent's assessment of and reaction to NICO's counsel's letter of September 2015 to the CBB (R-11).</li> </ul>
<b>B. Relevance and materiality, incl. references to submission (requesting Party)</b>	<p>Via PO4, the Tribunal decided to bifurcate these proceedings in order to address as preliminary issues the following:</p> <ul style="list-style-type: none"> <li>(i) Respondent's fourth preliminary objection, which the Tribunal defined as Respondent's allegation that NICO's claims are inadmissible since they "<i>resulted from a 2012 corporate restructuring designed to gain access to investment protection under the Treaty after the dispute had become foreseeable,</i>" and also because "<i>NICO [would have] sought to return to Malaysia in 2018 as a "conscious choice" in order to present its "fully cooked" Treaty claims as a further act of abusive behavior,</i>" including because "<i>Claimant's alleged efforts to reacquire Malaysian nationality ex post facto to cover the period of December 2014 to March 2018 [would have] constitute[d] a further breach of the abuse of process doctrine</i>" (PO4, Paragraphs 68 to 69);</li> <li>(ii) The following two questions put by the Tribunal to the Parties as regards Respondent's second preliminary objection to the Tribunal's jurisdiction <i>ratione temporis</i>, namely (a) "[t]o what extent does the Treaty apply to acts and omissions that occurred prior to its entry into force?;" and (b) "[t]o what extent must Claimant have nationality under the Treaty at the time of the alleged breach?" (PO4, Paragraph 77(a)(i)) ; as well as</li> <li>(iii) The following two questions put by the Tribunal to the Parties as regards Respondent's third preliminary objection to the Tribunal's jurisdiction <i>ratione personae</i>, namely (a) "[w]as NICO incorporated in Malaysia and hence did it benefit from protection under the Treaty from December 2014-March 2018?"; and (b) "[w]hat effect, if any, does the 2018 Malaysian Court Decision have on Claimant's standing and rights under the Treaty?" (PO4, Paragraph 77(a)(ii)).</li> </ul>



In its CMPO, Claimant argued that “*Bahrain’s multiples breaches of its obligations under the BIT included, from the outset and on an ongoing basis, a material and standalone breach of its transparency obligation under Article 3 (1) of the BIT, which notably included the fact that none of Bahrain’s adverse actions and/or omissions – which are now suspected to have perhaps begun in 2010 (although even in this arbitration, Bahrain still refrains from expressly setting out when its adverse measures against NICO would have begun) – had ever been notified to NICO at the time, and indeed they were not. Thus, while NICO was seemingly taking on the consequences of Respondent’s actions/omissions, it was kept in the dark by Respondent as to the exact timing, as well as the precise and full nature/extent of the actions/omissions of Bahrain’s involved organs* (emphasis added)” (CMPO, Paragraph 15).

Moreover, Claimant also claimed that “*Bahrain should thus now account for and engage on [the issue of the nature and extent of its actions and/or omissions], including by way of submissions, as well as the production of documents and relevant witnesses, [...]. In fact, there is not a single correspondence from Bahrain to NICO since its first 2009 investment, nor even any response from the CBB to Claimant’s contemporaneous correspondence in March 8, 2011 and October 6, 2011, as set out below at Paragraphs 86 to 87. In fact, Bahrain has also failed to even respond to Claimant’s BIT Notices of Dispute dated August 5, 2022 and October 11, 2022, nor has Bahrain to date submitted any defense on the merits in this case. Yet, it is precisely as the arbitration progressed in Bank Melli and Bank Saderat v. Bahrain that the truth unfolded on similar questions, which then allowed the Tribunal to assess the timing, nature and extent of the breaches, including the political and non-transparent nature of the breaches* (emphasis added)” (CMPO, Paragraph 16).

Against the above, and for the same reasons as under Requests Nos. 1 to 4, the Requested Documents will be relevant and material:

- (i) For purposes of jurisdiction *ratione temporis* in connection with the Tribunal’s questions in PO4 (Paragraph 77(a)(i)), to assess whether Bahrain’s breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia on January 4, 2012 (whereas Claimant demonstrated in its CMPO that such breaches were not known at the time due to Bahrain’s breach of its transparency obligation – see CMPO, Paragraphs 15 to 17 and 86 to 88), namely after the BIT’s entry into force on January 28, 2011, so as to fall within the BIT’s *ratione temporis* scope, as they will show that NICO received no responses to its letters under items (i) to (iv) in Section A above, and thus had no basis for assuming any breaches by Bahrain of its international law obligations, let alone any grounds to challenge the same pursuant to the due process safeguards undertaken by Respondent;
- (ii) For purposes of jurisdiction *ratione personae* in connection with the Tribunal’s questions in PO4 (Paragraph 77(a)(ii)), as the Requested Documents will show that Bahrain’s breaches occurred or in any event became known to Claimant only after it had re-domiciled to Malaysia on January 4, 2012

	<p>(for the reasons set out at CMPO, Paragraphs 127 to 128, and 130 to 136);</p> <p>(iii) For purposes of Respondent's abuse of process objection (PO4, Paragraphs 68 to 69), to ascertain whether the 2010 CBB Directive, or any other circulars/directives/regulations issued by the CBB or other Bahraini State Organs, and subsequent exchanges in relation to the implementation thereof with the Bahraini Banks, were prompted by NICO's ultimate Iranian shareholding, which in turn will contradict the very basis of Respondent's abuse of process objection, namely that NICO's January 4, 2012 re-domiciliation to Malaysia would have been prompted by more favorable treaty protections under the Malaysia-Bahrain BIT, whereas the Requested Documents would show that Bahrain was at all times aware of NICO's ultimate Iranian shareholding and thus of its obligations towards NICO under the Iran-Bahrain BIT (for the reasons set out at CMPO, Paragraphs 35 to 43); and in any event</p> <p>(iv) For purposes again of Respondent's abuse of process objection (PO4, Paragraphs 68 to 69 ), to ascertain when the dispute became foreseeable, let alone to the high degree of foreseeability required under the BIT and international law (see in this respect Claimant's CMPO, Paragraphs 73 to 98).</p>
<p><b>C. Reasoned objections to document production request (objecting Party)</b></p>	<p>The Respondent objects to these requests for the following reasons:</p> <p><b>(a) The Claimant's requests are not relevant to the Bifurcated Issues in PO4 and are not material to the outcome of the bifurcated proceedings so should be rejected under Articles 3.3(b) and 9.2(a) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.a above, <i>mutatis mutandis</i>.</p> <p>The Claimant's attempt to explain how "<i>Respondent's assessment of, and reaction to, letters sent by NICO to the CBB</i>" (emphasis added) has relevance to any of the Bifurcated Issues is flawed and fails to establish a connection between the requests and the outcome of the bifurcated proceedings.</p> <p>The Claimant advances four arguments on the purported relevance of these documents. Addressing each in turn:</p> <p>(i) <b>For purposes of jurisdiction <i>ratione temporis</i>:</b> The Tribunal has expressly stated in PO4 that it will not determine its <i>ratione temporis</i> jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59). The bifurcated questions posed by the Tribunal on the <i>ratione temporis</i> objection are legal (not factual) questions. The Claimant's purported justification ("<i>to assess whether Bahrain's breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia</i>") is not relevant to the bifurcated legal questions and ignores the Tribunal's express limitation.<sup>53</sup> Therefore, the Claimant's requests for documents that go to the</p>

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In any event, the Respondent has already demonstrated the Claimant's awareness of the allegations it raises in the arbitration prior to its re-domiciliation to Malaysia in January 2012 (Preliminary Objections, paras 27-29 citing Merits Memorial, para 142).



merits of the *ratione temporis* objection are clearly beyond the scope of the Bifurcated Issues and should be dismissed.

(ii) **For purposes of jurisdiction *ratione personae*:** The Tribunal's questions on the *ratione personae* objection focus specifically on the Claimant's nationality from 2014-2018 and its access to the Treaty, not the factual circumstances surrounding the Respondent's alleged breaches. The Claimant's purported justification ("*show that Bahrain's breaches occurred or in any event became known to Claimant only after it had re-domiciled to Malaysia*") is not relevant to the *ratione personae* questions bifurcated by the Tribunal. Moreover, documents reflecting the Claimant's awareness or knowledge would be in the Claimant's possession, not the Respondent's. The requested documents are irrelevant and immaterial to the question of whether the Tribunal has jurisdiction *ratione personae*.

(iii) **For purposes of Respondent's abuse of process objection to ascertain whether the 2010 CBB Directive or any other directives and subsequent exchanges were prompted by NICO's ultimate Iranian shareholding:** The Claimant misstates the Respondent's abuse of process objection. The Respondent's reasons for implementing the 2010 CBB Directive (and understanding of NICO's shareholding), which the Claimant cites as the justification for this request, have no bearing on the Respondent's abuse of process objection. The requested documents are irrelevant and immaterial to the question of whether the Claimant committed an abuse of process.

(iv) **For purposes of Respondent's abuse of process objection to ascertain when the dispute became foreseeable:** The relevant test for foreseeability requires that a dispute be "*foreseeable to the Claimant*" (see, e.g., Memorial, para 77; CMPO, paras 30-32, emphasis added), not to the Respondent. As such, the relevant documents should be in the Claimant's possession, reflecting the Claimant's understanding, and not the other way around. The requested documents are irrelevant and immaterial to the question of when the dispute became foreseeable to the Claimant and, consequently, whether the Claimant committed an abuse of process.

For these reasons, the requests constitute an impermissible fishing expedition and should be rejected.

**(b) The requests are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules.**

The Respondent repeats paragraph 6.b above, *mutatis mutandis*.

Far from a narrow and specific category of documents, the scope of these requests (i.e. the Respondent's assessment and reaction to NICO's letters) is overbroad and outside the defined scope of the Bifurcated Issues, as explained under (a) above. Moreover, the Claimant has not stipulated any time period at all for the requests.

For these reasons, the requests impose an unreasonable and disproportionate burden on the Respondent, violating Article 9.2(c) and (g) of the IBA Rules.



	<p><b>(c) Documents are in the Claimant’s possession, custody or control.</b></p> <p>The Claimant contends that the documents requested will “<i>show that NICO received no responses to its letters under items (i) to (iv) in Section A above</i>”. Any responses received by the Claimant would be in the Claimant’s possession, custody or control.</p>
<p><b>D. Response to objections to document production request (requesting Party)</b></p>	<p>Claimant repeats the reasons underlying its Document Request as set out above which show that the Requested Documents are relevant and material to the issues bifurcated via PO4 on abuse of process and within the limits defined in the same PO4, on jurisdiction <i>ratione temporis</i> and <i>ratione personae</i>. Claimant thus replies to Respondent’s Objections as follows:</p> <p><u><b>First</b></u>, Claimant notes that Respondent does not dispute the existence of the Requested Documents.</p> <p><u><b>Second</b></u>, Claimant reiterates that the Documents Requested are relevant and material to the issues bifurcated by the Tribunal in PO4:</p> <ol style="list-style-type: none"> <li>1. <u>For purposes of ascertaining when the dispute became foreseeable in connection with Respondent’s abuse of process objection:</u> Respondent’s <u>only</u> response is that the “<i>relevant test for foreseeability requires that a dispute be “foreseeable to the Claimant”</i> (emphasis in the original), and that accordingly “<i>the relevant documents should be in the Claimant’s possession, reflecting the Claimant’s understanding, and not the other way around.</i>”</li> </ol> <p>Yet, Claimant’s case is precisely that it was not aware of Bahrain’s acts and omissions in breach of the BIT that had started in 2010 until at least November 2012 (see Exhibit C-74), and this because these acts and omissions had not been transparently disclosed to Claimant but rather had been dissimulated (and in fact actively) by Respondent (see CMPO, Paragraphs 80 to 87).</p> <p>What is more, in its pleadings to date,<sup>54</sup> including in this document production phase, Bahrain has not even alleged that its actions and/or omissions starting in 2010 had been transparently disclosed to Claimant at any time prior to NICO’s re-domiciliation to Malaysia on January 4, 2012, let alone produced evidence to the contrary.</p> <p>Against the above, Respondent’s objection to the production of the Requested Documents that would show when Bahrain’s acts and</p>

<sup>54</sup> In its Objections to Claimant’s Document Requests, Respondent suggests (based on Paragraph 18 of its MPO) that Claimant would have acknowledged in its NoD dated August 5, 2022 and its RfA dated December 5, 2022 that Bahrain’s breaches started in 2010. Yet, it never in fact disputes Claimant’s position (as set forth at Paragraphs 20 and 81 *et seq.* of its CMPO) that NICO was not aware of Bahrain’s actions and omissions starting in 2010 until November 2012. Nor does Respondent ever allege, let alone submit supporting evidence, that such actions and omissions would have been notified by Bahrain to NICO in 2010 or at any time material time thereafter, prior to NICO’s first reference to the 2010 CBB Directive in its November 26, 2012 correspondence (submitted as Exhibit C-74).

omissions as of 2010 would have been notified to Claimant prior to NICO's re-domiciliation to Malaysia on January 4, 2012, is plainly irreconcilable with Bahrain's position that the dispute between NICO and Bahrain would have been foreseeable prior to such January 4, 2012 re-domiciliation, and cannot possibly be sustained. For this reason alone, an order for the production of the Requested Documents cannot be objected to on the basis of relevance or materiality;

2. For purposes of ascertaining whether Bahrain's actions and omissions as of 2010 were prompted by NICO's ultimate Iranian shareholding in connection with Respondent's abuse of process objection: Respondent's only response is that "*Respondent's reasons for implementing the 2010 CBB Directive (and understanding of NICO's shareholding) have no bearing on the Respondent's abuse of process objection.*" Yet, to the very contrary, if Bahrain's actions and omissions as of 2010 were prompted by NICO's ultimate Iranian shareholding (which the Requested Documents will show) that they targeted, then Bahrain knew or ought to have known that it was at all relevant times required under international law (and the 2002 Iran-Bahrain BIT more specifically) to afford NICO and its shareholders the corresponding international law protections, which in turn confirms that Bahrain knew or ought to have known that NICO did not need to re-domicile to Malaysia in 2012 to benefit from international treaty protection, and that Respondent's abuse of process objection is thus not raised in good faith. For this independent reason too, the Requested Documents are relevant and material;
3. For purposes of jurisdiction *ratione temporis* and *personae*: Claimant notes that Respondent does not dispute that the Requested Documents would as a matter of fact be relevant and material "*to assess whether Bahrain's breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia*" in January 2012, nor does Respondent dispute (to the very contrary, it admits in item (i) of its Objection above) that the Requested Documents could "*go to the merits of the *ratione temporis* objection.*" For this reason alone, if the Tribunal were to accept that the assessment of "*whether Bahrain's breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia*" in January 2012, or more generally that factual inquiries and determinations (which Claimant submits are hardly dissociable in this case) as to when Bahrain's breaches occurred and became known to Claimant, would be relevant and material at this stage, the Parties are in agreement and production of the Requested Documents should be ordered;

4. As regards Respondent's allegation that the "*Tribunal has expressly stated in PO4 that it will not determine its ratione temporis jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59),*" Claimant reminds Respondent that the Tribunal made this "*clarifi[cation]*" in the context of ordering bifurcation on the specific issues identified in PO4, and so as to not prejudice the merits of the dispute. This clarification cannot however prohibit the Tribunal from taking into consideration all relevant factors when determining whether, and to what extent, the BIT applies "*to acts and omissions that occurred prior to [the BIT's] entry into force,*" including all factual evidence as to whether the "*acts and omissions that occurred prior to [the BIT's] entry into force*" – which eventually constituted a breach of the BIT – had been notified to Claimant at the time, or rather had been dissimulated by Bahrain, which is precisely what the Requested Documents seek to ascertain for purposes of jurisdiction *ratione temporis*, *ratione personae*, and abuse of process;
5. As to Respondent's allegation that "*the relevant documents should be in the Claimant's possession, reflecting the Claimant's understanding, and not the other way around*" it cannot serve to defeat Claimant's Document Requests. Claimant's position is that it was not aware of the acts and omissions of Bahrain starting in 2010, but rather that the same had been dissimulated by Bahrain and its organs until November 2012 (see notably, Paragraphs 80 to 97 of NICO's CMPO), and thus could not have been factored in Claimant's re-domiciliation to Malaysia in 2012. In addition, the acts and omissions of Bahrain are relevant and material to comprehensively rule on Respondent's *ratione personae* objection; to ascertain the nature and time of breach for abuse of process; and to show that there was a lack of transparency which constituted another independent breach.

**Third,** as regards Respondent's objection that the Requested Documents are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules, Claimant notes that Respondent refrained from engaging by proposing a narrower scope of document categories. In any event:

1. Claimant has demonstrated above that the Requested Documents fall within the defined scope of the Bifurcated Issues;
2. Claimant has narrowly defined the scope of the Requested Documents via exhaustive items (i) to (iv), which are sufficiently defined by reference to their subject matter, and thus do not need to be limited in time;
3. Respondent in fact was unable to identify a single specific sub-request that would be overly broad and the reasons why;



	<p><b><i>Fourth</i></b>, as regards Respondent’s objection that “[a]ny responses received by the Claimant [to letters sent by NICO to the CBB between 2011 and 2015 in relation to NICO’s blocked Funds and the Bahraini Banks’ refusals to release the same] <i>would be in the Claimant’s possession, custody or control</i>,” is nonsensical, especially since the Requested Documents, namely documents recording “Respondent’s assessment of, and reaction to, letters sent by NICO to the CBB between 2011 and 2015 in relation to NICO’s blocked Funds and the Bahraini Banks’ refusals to release the same,” extend far beyond simple responses but indeed include Respondent’s assessment and reactions to Claimant’s letters which can only be in Respondent’s custody or possession, the existence of which Respondent does not dispute.</p>
<b>E. Decision (Tribunal)</b>	The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.
<b><u>Document Request No. 9</u></b>	<b>Respondent’s interference with the Bahraini Banks’ efforts to mitigate their damages and to explore avenues for the restitution of NICO’s blocked Funds</b>
<b>A. Documents or category of documents requested (requesting Party)</b>	<p>All Documents recording:</p> <ul style="list-style-type: none"> <li>(i) Respondent’s interference with the Bahraini Banks’ efforts to mitigate their damages and/or to explore avenues for the restitution of NICO’s blocked Funds notably in response to NICO’s letter of March 8, 2011 whereby Bahrain was requested to “clarify [its] position as [NICO] cannot think of any reason or cause based on which NICO’s funds could be blocked” (C-10);</li> <li>(ii) Respondent’s interference with the Bahraini Banks’ efforts to mitigate their damages and/or to explore avenues for the restitution of NICO’s blocked Funds notably in response to NICO’s letter of October 6, 2011 letter to the CBB whereby Bahrain was requested to intervene and clarify its position with regards to the blocked Funds held “without authorization or consent. Therefore, we request that you exercise your authority and instruct Ithmaar Bank to fulfil our client’s demands with immediate effect” (C-69; C-70);</li> <li>(iii) Respondent’s interference with the Bahraini Banks’ efforts to mitigate their damages and/or to explore avenues for the restitution of NICO’s blocked Funds notably in response to NICO’s proposals made to Ithmaar on December 18, 2013 (C-221; C-223) and later forwarded according to Ithmaar to the CBB in its February 10, 2014 letter to NICO (C-224; C-225);</li> <li>(iv) Respondent’s interference with the Bahraini Banks’ efforts to mitigate their damages and/or to explore avenues for the restitution of NICO’s blocked Funds notably in response to NICO’s counsel’s letter of June 2015 whereby Bahrain was requested to “require Ithmaar [to] promptly make payment to Dentons in accordance with NICO’s instruction of 12 December 2014.” (R-10);</li> <li>(v) Respondent’s interference with the Bahraini Banks’ efforts to mitigate their damages and/or to explore avenues for the restitution of NICO’s blocked Funds notably in response to NICO’s counsels’</li> </ul>

	<p>letters of September 2015 whereby Bahrain was requested to “<i>require Ithmaar [to] promptly make payment in accordance with NICO’s instructions of 12 December 2014.</i>” (R-11); and</p> <p>(vi) All means by which Respondent interfered with the Bahraini Banks’ efforts to mitigate their damages and/or to explore avenues for the restitution of NICO’s blocked Funds as of the first blockage on November 2, 2010 (CMPO, Paragraph 17.1).</p> <p><b>Time period:</b> January 1, 2011 to December 31, 2018.</p>
<p><b>B. Relevance and materiality, incl. references to submission (requesting Party)</b></p>	<p>Via PO4, the Tribunal decided to bifurcate these proceedings in order to address as preliminary issues the following:</p> <ul style="list-style-type: none"> <li>(i) Respondent’s fourth preliminary objection, which the Tribunal defined as Respondent’s allegation that NICO’s claims are inadmissible since they “<i>resulted from a 2012 corporate restructuring designed to gain access to investment protection under the Treaty after the dispute had become foreseeable,</i>” and also because “<i>NICO [would have] sought to return to Malaysia in 2018 as a “conscious choice” in order to present its “fully cooked” Treaty claims as a further act of abusive behavior,</i>” including because “<i>Claimant’s alleged efforts to reacquire Malaysian nationality ex post facto to cover the period of December 2014 to March 2018 [would have] constitute[d] a further breach of the abuse of process doctrine</i>”(PO4, Paragraphs 68 to 69);</li> <li>(ii) The following two questions put by the Tribunal to the Parties as regards Respondent’s second preliminary objection to the Tribunal’s jurisdiction <i>ratione temporis</i>, namely (a) “[t]o what extent does the Treaty apply to acts and omissions that occurred prior to its entry into force?;” and (b) “[t]o what extent must Claimant have nationality under the Treaty at the time of the alleged breach?” (PO4, Paragraph 77(a)(i)); as well as</li> <li>(iii) The following two questions put by the Tribunal to the Parties as regards Respondent’s third preliminary objection to the Tribunal’s jurisdiction <i>ratione personae</i>, namely (a) “[w]as NICO incorporated in Malaysia and hence did it benefit from protection under the Treaty from December 2014-March 2018?;” and (b) “[w]hat effect, if any, does the 2018 Malaysian Court Decision have on Claimant’s standing and rights under the Treaty?” (PO4, Paragraph 77(a)(ii)).</li> </ul> <p>The Requested Documents are relevant and material to all of the above for the reasons explained below.</p> <p>In its CMPO, Claimant demonstrated how the Bahraini Banks had failed to mitigate their damages by failing to explore different avenues for the release of NICO’s funds, while also keeping NICO in the dark regarding the full extent of the CBB/Bahrain’s actions and omissions, so that the dispute between NICO and Bahrain “<i>could not have been any foreseeable dispute, let alone to the required high degree of probability, prior to NICO’s January 2012 re-domiciliation</i>”(CMPO, Paragraph 95):</p> <p>First, in its CMPO, Claimant established the Bahraini Bank’s failed attempts to mitigate their damages on the basis of the following correspondences:</p>

	<p>(i) Claimant recalled that “On February 8, 2013, [REDACTED] (NICO’s counsel at the time) sent, on behalf of NICO, letters to Ithmaar and GFH regarding a possible “means of resolving the situation without the need to resort to litigation” by which GFH could transfer the frozen funds within the context of cash calls for the Shah Deniz Project which would enable GFH to act “in conformity with the directive of the Central Bank of Bahrain and the U.S. legislation cited therein, even if that legislation were applicable to GFH, which it is not.” NICO’s understanding is that this alternative “means of resolving the situation without the need to resort to litigation” was blocked by the CBB” (CMPO, Paragraph 94.1); and</p> <p>(ii) Claimant recalled that on “December 18, 2013, NICO wrote an email to Ithmaar Bank with an attached letter dated December 17, 2013, regarding their meeting in Lausanne and outlined “the three proposals which can facilitate the utilization of NICO’s funds” including food and medicine, the Shah Deniz project, and the Petro 21 Japanese facility. NICO requested that Ithmaar “come back to [them] with which ones [they] are keen to follow – [NICO was] certain that they [would] conform to the Central Bank of Bahrain directives.” No answer was received, presumably due to blockage from the CBB” (CMPO, Paragraph 94.2).</p> <p>Second, Claimant also demonstrated how the Bahraini Banks had failed at mitigating their damages notably by pointing the finger at the CBB as the reason why said mitigation could not go any further:</p> <p>(i) Claimant reminded that, on “February 10, 2014, Ithmaar sent a letter to NICO <b>continuing to point fingers at the CBB</b> for its failure to release NICO’s funds stating “we enquired <b>about the status of the sanctions on [NICO], with the local regulators [i.e. the CBB]</b> and discussed with the possibilities of releasing funds as proposed by you in the letter referenced above. Given the fact NICO continues to be under international sanctions, we regret that we have no alternatives but to continue the freeze on NICO’s account. We are very confident that you do appreciate our positions and the fact that our decision is bound by regulatory rules”” (emphasis added)(CMPO, Paragraph 94.3);</p> <p>(ii) Second, Claimant further reminded that on “March 6, 2014, NICO replied to Ithmaar’s February 10, 2014 letter stating” that NICO “has no intention of <b>by-passing any regulations that will bring it in conflict with regulators [i.e. the CBB]</b>. [NICO] has ensured that Ithmaar Bank would be in full compliance with the directive issued by the Central Bank of Bahrain on the 8th of September 2010,” and requested that “Ithmaar review its decision considering that its proposals do not require transfer of funds to NICO Ltd, a Malaysian corporation. Yet, on March 20, 2014, Ithmaar replied that “we are not in a position to comment on the context of the Letter (including the proposal) until we have the opportunity to examine both with our legal counsel <b>prior to liaising with our regulators [i.e. the CBB]</b> in respect of this matter”</p>
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	<p><i>therefore confirming that it was the CBB that was blocking any attempts to release the funds in breach of its obligations under the BIT.”(emphasis added) (CMPO, Paragraph 94.4).</i></p> <p>Against the above, and for the same reasons as under Requests Nos. 1 to 4, the Requested Documents will be relevant and material:</p> <ul style="list-style-type: none"> <li>(i) For purposes of jurisdiction <i>ratione temporis</i> in connection with the Tribunal’s questions in PO4 (Paragraph 77(a)(i)), to assess whether Bahrain’s breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia on January 4, 2012 (whereas Claimant demonstrated in its CMPO that such breaches were not known at the time due to Bahrain’s breach of its transparency obligation – see CMPO, Paragraphs 15 to 17 and 86 to 88), namely after the BIT’s entry into force on January 28, 2011, as they will show that – as suggested by the above evidence on record – Bahrain’s obstruction of any attempts by the Bahraini Banks to mitigate NICO’s losses, as a result of Respondent’s blockage of NICO’s Funds via proposals made by NICO already in 2011, became known to NICO only at a later stage;</li> <li>(ii) For purposes of jurisdiction <i>ratione personae</i> in connection with the Tribunal’s questions in PO4 (Paragraph 77(a)(ii)), as the Requested Documents will show that Bahrain’s breaches occurred or in any event became known to Claimant only after it had re-domiciled to Malaysia on January 4, 2012 (for the reasons set out at CMPO, Paragraphs 127 to 128, and 130 to 136), as Bahrain’s obstructions to the mitigation proposals submitted by NICO to the Bahraini Banks already as of 2011 became known only after NICO acquired Malaysian nationality on January 4, 2012;</li> <li>(iii) For purposes of Respondent’s abuse of process objection (PO4, Paragraphs 68 to 69), to ascertain whether Bahrain’s obstructions to the mitigation proposals submitted by NICO to the Bahraini Banks already as of 2011 were prompted by NICO’s ultimate Iranian shareholding, which in turn will contradict the very basis of Respondent’s abuse of process objection, namely that NICO’s January 4, 2012 re-domiciliation to Malaysia would have been prompted by more favorable treaty protections under the Malaysia-Bahrain BIT, whereas the Requested Documents would show that Bahrain was at all times aware of NICO’s ultimate Iranian shareholding and thus of its obligations towards NICO under the Iran-Bahrain BIT (for the reasons set out at CMPO, Paragraphs 35 to 43); and in any event</li> <li>(iv) For purposes again of Respondent’s abuse of process objection (PO4, Paragraphs 68 to 69), to ascertain when the dispute became foreseeable, let alone to the high degree of foreseeability required under the BIT and international law (see in this respect Claimant’s CMPO, Paragraphs 73 to 98).</li> </ul>
<b>C. Reasoned objections to document</b>	The Respondent objects to these requests for the following reasons:



<p><b>production request (objecting Party)</b></p>	<p><b>(a) The Claimant’s requests are not relevant to the Bifurcated Issues in PO4 and are not material to the outcome of the bifurcated proceedings so should be rejected under Articles 3.3(b) and 9.2(a) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.a above, <i>mutatis mutandis</i>.</p> <p>The Claimant’s attempt to explain how “<i>Respondent’s interference with the Bahraini Banks’ efforts to mitigate their damages and to explore avenues for the restitution of NICO’s blocked Funds</i>” is flawed and fails to establish a connection between the requests and the outcome of the bifurcated proceedings.</p> <p>The Claimant advances four arguments on the purported relevance of these documents. Addressing each in turn:</p> <ol style="list-style-type: none"> <li>i. <b>For purposes of jurisdiction <i>ratione temporis</i>:</b> The Tribunal has expressly stated in PO4 that it will “<i>not determine its ratione temporis jurisdiction over any specific breaches alleged by the Claimant</i>” (PO4, para 59). The bifurcated questions posed by the Tribunal on the <i>ratione temporis</i> objection are legal (not factual) questions. The Claimant’s purported justification (“<i>to assess whether Bahrain’s breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia</i>”) is not relevant to the bifurcated legal questions and ignores the Tribunal’s express limitation.<sup>55</sup> Therefore, the Claimant’s requests for documents that go to the merits of the <i>ratione temporis</i> objection are clearly beyond the scope of the Bifurcated Issues and should be dismissed.</li> <li>ii. <b>For purposes of jurisdiction <i>ratione personae</i>:</b> The Tribunal’s questions on the <i>ratione personae</i> objection focus specifically on the Claimant’s nationality from 2014-2018 and its access to the Treaty, not the factual circumstances surrounding the Respondent’s alleged breaches. The Claimant’s purported justification (“<i>to show that Bahrain’s breaches occurred or in any event became known to Claimant only after it had re-domiciled to Malaysia</i>”) is not relevant to the <i>ratione personae</i> questions bifurcated by the Tribunal. Moreover, documents reflecting the Claimant’s awareness or knowledge would be in the Claimant’s possession, not the Respondent’s. The requested documents are irrelevant and immaterial to the question of whether the Tribunal has jurisdiction <i>ratione personae</i>.</li> <li>iii. <b>For purposes of Respondent’s abuse of process objection to ascertain whether Bahrain’s alleged obstructions were prompted by NICO’s ultimate Iranian shareholding:</b> The Claimant misstates the Respondent’s abuse of process objection. The Respondent’s alleged acts or omissions and reasons behind them, which the Claimant cites as the justification for this request, have no bearing on the Respondent’s abuse of process</li> </ol>
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In any event, the Respondent has already demonstrated the Claimant’s awareness of the allegations it raises in the arbitration prior to its re-domiciliation to Malaysia in January 2012 (Preliminary Objections, paras 27-29 citing Merits Memorial, para 142).



	<p>objection. The requested documents are irrelevant and immaterial to the question of whether the Claimant committed an abuse of process.</p> <p>iv. <b>For purposes of Respondent’s abuse of process objection to ascertain when the dispute became foreseeable:</b> The relevant test for foreseeability requires that a dispute be “<i>foreseeable to the Claimant</i>” (see, e.g., Memorial, para 77; CMPO, paras 30-32, emphasis added), not to the Respondent. As such, the relevant documents should be in the Claimant’s possession, reflecting the Claimant’s understanding, and not the other way around. The requested documents are irrelevant and immaterial to the question of when the dispute became foreseeable to the Claimant and, consequently, whether the Claimant committed an abuse of process.</p> <p>For these reasons, the requests constitute an impermissible fishing expedition and should be rejected. In any event, contrary to its claim, the Claimant has not demonstrated that Bahrain interfered “<i>with the Bahraini Banks’ efforts to mitigate their damages</i>”.</p> <p><b>(b) The requests are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules.</b></p> <p>The Respondent repeats paragraph 6.b above, <i>mutatis mutandis</i>.</p> <p>The scope of these requests (i.e. the “<i>Respondent’s interference with the Bahraini Banks’ efforts to mitigate their damage</i>”) is overbroad and outside the defined scope of the Bifurcated Issues, as explained under (a) above. The Claimant’s stipulated time period of 1 January 2011 to 31 December 2018 is also excessive, unexplained and arbitrary, especially in circumstances where there is no connection between the requests and the Bifurcated Issues.</p> <p>Furthermore, the Claimant uses overbroad and ambiguous terms, for example, “<i>Respondent’s interference</i>” and “<i>the Bahraini Banks’ efforts to mitigate their damages</i>”, which is far from a narrow and specific category of documents.</p> <p>For these reasons, the requests impose an unreasonable and disproportionate burden on the Respondent, violating Article 9.2(c) and (g) of the IBA Rules.</p> <p><b>(c) Documents held by the Bahraini Banks are not within the Respondent’s possession, custody or control.</b></p> <p>To the extent that the Claimant is seeking documents held by the Bahraini Banks, the Respondent repeats paragraph 6.c above, <i>mutatis mutandis</i>.</p>
<p><b>D. Response to objections to document production request (requesting Party)</b></p>	<p>Claimant repeats the reasons underlying its Document Request as set out above which show that the Requested Documents are relevant and material to the issues bifurcated via PO4 on abuse of process and within the limits defined in the same PO4, on jurisdiction <i>ratione temporis</i> and <i>ratione personae</i>. Claimant thus replies to Respondent’s Objections as follows:</p> <p><b><u>First</u></b>, Claimant notes that Respondent does not dispute the existence of the Requested Documents.</p> <p><b><u>Second</u></b>, Claimant reiterates that the Documents Requested are relevant and material to the issues bifurcated by the Tribunal in PO4:</p>



1. For purposes of ascertaining when the dispute became foreseeable in connection with Respondent's abuse of process objection: Respondent's only response is that the "*relevant test for foreseeability requires that a dispute be "foreseeable to the Claimant"* (emphasis in the original), and that accordingly "*the relevant documents should be in the Claimant's possession, reflecting the Claimant's understanding, and not the other way around.*"

Yet, Claimant's case is precisely that it was not aware of Bahrain's acts and omissions in breach of the BIT that had started in 2010 until at least November 2012 (see Exhibit C-74), and this because these acts and omissions had not been transparently disclosed to Claimant but rather had been dissimulated (and in fact actively) by Respondent (see CMPO, Paragraphs 80 to 87).

What is more, in its pleadings to date,<sup>56</sup> including in this document production phase, Bahrain has not even alleged that its actions and/or omissions starting in 2010 had been transparently disclosed to Claimant at any time prior to NICO's re-domiciliation to Malaysia on January 4, 2012, let alone produced evidence to the contrary.

Against the above, Respondent's objection to the production of the Requested Documents that would show when Bahrain's acts and omissions as of 2010 would have been notified to Claimant prior to NICO's re-domiciliation to Malaysia on January 4, 2012, is plainly irreconcilable with Bahrain's position that the dispute between NICO and Bahrain would have been foreseeable prior to such January 4, 2012 re-domiciliation, and cannot possibly be sustained. For this reason alone, an order for the production of the Requested Documents cannot be objected to on the basis of relevance or materiality;

2. For purposes of jurisdiction *ratione temporis* and *personae*: Claimant notes that Respondent does not dispute that the Requested Documents would as a matter of fact be relevant and material "*to assess whether Bahrain's breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia*" in January 2012, nor does Respondent dispute (to the very contrary, it admits in item (i) of its Objection above) that the Requested

<sup>56</sup> In its Objections to Claimant's Document Requests, Respondent suggests (based on Paragraph 18 of its MPO) that Claimant would have acknowledged in its NoD dated August 5, 2022 and its RfA dated December 5, 2022 that Bahrain's breaches started in 2010. Yet, it never in fact disputes Claimant's position (as set forth at Paragraphs 20 and 81 *et seq.* of its CMPO) that NICO was not aware of Bahrain's actions and omissions starting in 2010 until November 2012. Nor does Respondent ever allege, let alone submit supporting evidence, that such actions and omissions would have been notified by Bahrain to NICO in 2010 or at any time material time thereafter, prior to NICO's first reference to the 2010 CBB Directive in its November 26, 2012 correspondence (submitted as Exhibit C-74).

Documents could “go to the merits of the *ratione temporis* objection.” For this reason alone, if the Tribunal were to accept that the assessment of “*whether Bahrain’s breaches occurred and in any event became known to Claimant prior to its re-domiciliation to Malaysia*” in January 2012, or more generally that factual inquiries and determinations (which Claimant submits are hardly dissociable in this case) as to when Bahrain’s breaches occurred and became known to Claimant, would be relevant and material at this stage, the Parties are in agreement and production of the Requested Documents should be ordered;

3. As regards Respondent’s allegation that the “*Tribunal has expressly stated in PO4 that it will not determine its ratione temporis jurisdiction over any specific breaches alleged by the Claimant (PO4, para 59),*” Claimant reminds Respondent that the Tribunal made this “*clarifi[cation]*” in the context of ordering bifurcation on the specific issues identified in PO4, and so as to not prejudice the merits of the dispute. This clarification cannot however prohibit the Tribunal from taking into consideration all relevant factors when determining whether, and to what extent, the BIT applies “*to acts and omissions that occurred prior to [the BIT’s] entry into force,*” including all factual evidence as to whether the “*acts and omissions that occurred prior to [the BIT’s] entry into force*” – which eventually constituted a breach of the BIT – had been notified to Claimant at the time, or rather had been dissimulated by Bahrain, which is precisely what the Requested Documents seek to ascertain for purposes of jurisdiction *ratione temporis*, *ratione personae*, and abuse of process;
4. As to Respondent’s allegation that “*documents reflecting the Claimant’s awareness or knowledge would be in the Claimant’s possession, not the Respondent’s,*” it cannot serve to defeat Claimant’s Document Requests. Claimant’s position is that it was not aware of the acts and omissions of Bahrain starting in 2010, but rather that the same had been dissimulated by Bahrain and its organs until November 2012 (see notably, Paragraphs 80 to 97 of NICO’s CMPO), and thus could not have been factored in Claimant’s re-domiciliation to Malaysia in 2012. In addition, the acts and omissions of Bahrain are relevant and material to comprehensively rule on Respondent’s *ratione personae* objection; to ascertain the nature and time of breach for abuse of process; and to show that there was a lack of transparency which constituted another independent breach.

**Third,** as regards Respondent’s objection that the Requested Documents are too broad and do not identify a narrow and specific category of documents, as required by Article 3.3(a)(ii) of the IBA Rules, Claimant notes that

	<p>Respondent refrained from engaging by proposing a narrower scope of document categories. In any event:</p> <ol style="list-style-type: none"> <li>1. Claimant has demonstrated above that the Requested Documents fall within the defined scope of the Bifurcated Issues;</li> <li>2. Claimant has narrowly defined the scope of the Requested Documents via exhaustive items (i) to (vi), which are sufficiently defined by reference to their subject matter, and target specific events mentioned in the letters referenced and produced on the record. In addition, only Respondent is aware of when it interfered with the Bahraini Banks' efforts to mitigate their damage and thus what time periods are relevant to its search for the purposes of document production;</li> <li>3. Respondent in fact was unable to identify a single specific sub-request that would be overly broad and the reasons why, save to argue that Claimant used "<i>ambiguous</i>" terms such as "<i>Respondent's interference</i>" and "<i>the Bahraini Banks' efforts to mitigate their damages</i>" whereas it is evident what is meant by these terms;</li> </ol>
<b>E. Decision (Tribunal)</b>	<p>The request is rejected as overly broad and lacking in specificity, and as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.</p>



## Annex B

**IN THE MATTER OF AN ARBITRATION UNDER THE 1965 CONVENTION FOR THE  
SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF  
OTHER STATES**

**AND THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE  
GOVERNMENT OF THE STATE OF BAHRAIN FOR THE PROMOTION AND  
PROTECTION OF INVESTMENTS**

**ICSID CASE NO. ARB/22/34**

**BETWEEN:**

**NAFTIRAN INTERTRADE COMPANY LIMITED**

**Claimant**

**V**

**KINGDOM OF BAHRAIN**

**Respondent**

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**RESPONDENT'S REQUESTS TO PRODUCE DOCUMENTS**

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**23 December 2024**

**A&O SHEARMAN**  
One Bishops Square  
London, E1 6AD  
United Kingdom

**RESPONDENT'S REPLY TO CLAIMANT'S OBJECTIONS AND RESPONSES TO  
RESPONDENT'S DOCUMENT PRODUCTION REQUESTS**

**27 January 2025**

1. In accordance with Procedural Order No. 1 dated 7 May 2024 (**PO1**), the Respondent, the Kingdom of Bahrain (**Bahrain**), submits its requests for the production of documents (**Requests**). As contemplated by paragraph 15.3 of PO1, Bahrain sets out its requests in the form of a Stern Schedule in Annex 1 below.
2. The Claimant, Naftiran Intertrade Company Limited (**NICO**), is asked to provide copies of the following documents, which are in its possession, custody or control, including those held by any third party on its behalf.
3. Unless stated otherwise, all abbreviations and defined terms have the same meaning as those adopted in Bahrain's Memorial on Preliminary Objections dated 7 October 2024 (**Preliminary Objections**).
4. In these Requests:
  - (a) **advisers** means any internal or external adviser (including financial, strategic and legal) to NICO and its affiliates, and includes [REDACTED], [REDACTED], [REDACTED], and Portcullis TrustNet (Labuan) Limited;
  - (b) **and** as well as **or** shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests documents which might otherwise be construed to be outside its scope;
  - (c) **all** means any and all, and **any** means any and all;
  - (d) **document** means a writing of any kind, whether recorded on paper, by electronic means, audio or visual recordings or any other mechanical or electronic means of storing or recording information, including but not limited to all communications (including reports, memoranda, presentations, letters, e-mails and facsimile, internal messages, board communications), notes, meeting minutes, transcripts, talking points, proposals and statements;
  - (e) **evidencing** or **relating to** (including any variant of them) includes referring to, alluding to, responding to, recording, regarding, preparing for, concerning, connected with, commenting on or in respect of, analysing, touching upon, constituting and being;
  - (f) **including** means including but not limited to;
  - (g) **prepared** or **produced** (including any variant of them) includes created, made, prepared, formulated, produced and drafted; and
  - (h) where a date range is given, the request includes documents generated on the first and last dates of the range.
5. Bahrain's Requests are set out in Annex 1 below, along with an explanation of their relevance and materiality. In relation to all documents and categories of documents requested:



- (a) Bahrain reasonably believes that such documents exist or, to the extent such documents do not exist, requires NICO's confirmation;
  - (b) Bahrain believes that such documents are within NICO's possession, custody or control; and
  - (c) to the best of Bahrain's knowledge, the requested documents are not in the possession, custody or control of Bahrain. To the extent that any of the requested documents may have formerly been in the possession, custody or control of Bahrain, Bahrain confirms that, to the best of its knowledge, such documents are no longer in its possession, custody or control, and it has been unable to locate them with a reasonable search to date.
- 6. Given that NICO has selectively exhibited and relied on certain advice it received from counsel in its Memorial and its Counter-Memorial on Preliminary Objections (**Counter-Memorial**), if NICO seeks to assert privilege over documents requested by Bahrain, Bahrain reserves the right to address that assertion in response.
- 7. Bahrain requests that in respect of responsive documents to its Requests:
  - (a) NICO specifies which documents are responsive to which requests;
  - (b) such documents are produced in their entirety and, where relevant, with any attachments or enclosures; and
  - (c) such documents are produced in electronic format, in the document's original format, without removing or altering the documents' metadata.
- 8. Bahrain reserves its rights to supplement its Requests to the extent that it becomes apparent, in the course of reviewing documents produced, or further submissions made by NICO, that further disclosure from NICO is required.
- 9. Bahrain's Requests are continuing in nature, such that if NICO obtains possession, custody or control of additional responsive documents at any time before or during the hearing of these matters and up until the closure of the proceedings, NICO is required to produce such additional documents.

**NICO'S INTRODUCTORY REMARKS AND ITS JANUARY 13, 2025 OBJECTIONS TO  
BAHRAIN'S PRODUCTION REQUEST OF DECEMBER 23, 2024**

10. First, the number of Document Requests submitted by Bahrain – namely 23 in total – is on its face at odds with what would be expected in the course of bifurcated proceedings on the few issues identified by the Tribunal in its Procedural Order No. 4.
11. Second, Claimant not only reminds that it is Respondent that bears the burden of proof in relation to its jurisdictional objections but also takes issue with Respondent's unsubstantiated and false allegation of abuse of process and its attempt to substantiate the same via the document production phase. Making false factual and legal allegations and then using the same to support its document production requests is inappropriate, and this even more so in light of the third point below.
12. Third and even more importantly, Bahrain's 23 Document Requests fail to take into account the extensive contemporaneous evidence to the facts and issues in dispute submitted with Claimant's Memorial and CMPO, which often times (see Requests Nos. 1 to 8, and 10 to 14) defeat the advanced purpose for Bahrain's Document Requests, without explaining why further documents, even if they existed, would still be relevant and material to the issues that the contemporaneous documents submitted by Claimant in its Memorial and CMPO already clearly and satisfactorily address.
13. Bahrain's Document Requests indeed turn a blind eye to the fact that before the document production phase, NICO had voluntarily produced extensive contemporaneous evidence already fully responsive to, and dispositive of the five main categories of documents now purportedly requested by Bahrain, namely (i) the background and reason for NICO's 2012 re-domiciliation from Jersey to Malaysia; (ii) NICO's purported re-domiciliation from Malaysia to Gambia from 2014 to 2016; (iii) NICO's purported re-domiciliation from Gambia to Nevis in August 2016; (iv) NICO's corporate registration thereafter; and (v) NICO's March 2018 reinstatement in Malaysia.
14. As set out at Paragraphs 11 to 12 of the CMPO and openly anticipated from the outset,<sup>1</sup> Claimant did not await the document production phase to disclose contemporaneous documents which scientifically, consistently, and undisputably demonstrate that it was never NICO's intention to secure treaty

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<sup>1</sup> CMPO, Paragraph 11: "Tellingly, NICO did not await the forthcoming document production phase to produce extensive contemporaneous documents relating to the issues purportedly in these dispute. These documents were already, and in any event are now, produced by Claimant, and scientifically, consistently, and undisputably demonstrate that it was never NICO's intention to secure treaty protection via its 2012 re-domiciliation to Malaysia or the 2018 Decision." CMPO, Paragraph 12: "These documents include (i) the multiple contemporaneous correspondence received from the Jersey regulator<sup>1</sup> in 2011 (and even earlier<sup>1</sup>), [...] (ii) the internal and external assessments leading to Malaysia being selected as the most adequate jurisdiction to re-locate to for regulatory and tax purposes;<sup>1</sup> (iii) concerns and requests received in October 2016 from at least one strategic partner, which were based on its own independent legal advice that had identified the issue with NICO's attempted transfer from Malaysia to Gambia in December 2014, and which requested that NICO confirm its continuing incorporation in Malaysia before proceeding further with ongoing business dealings;<sup>1</sup> and (iv) the independent legal opinions thereafter obtained by NICO from Gambia and Nevis legal counsel, on the basis of which NICO sought and obtained the judiciary confirmation via the 2018 Decision that its attempted transfer to Gambia in December 2014 had been invalid and that NICO had always remained a Malaysian company since January 2012."<sup>1</sup>

protection via its 2012 re-domiciliation to Malaysia or the 2018 Decision, and that the allegations and corresponding objections of Respondent are totally unfounded.

15. This includes (i) the multiple contemporaneous correspondence received from the Jersey regulator<sup>2</sup> in 2011 (and even earlier<sup>3</sup>), namely in the context of increasing US pressure and investigations into dealings with Iranian interests (with fines ordered against major banks such as HSBC and Standard Chartered in the amount of USD 1.9 billion and USD 674 million respectively),<sup>4</sup> which show that what prompted the 2012 re-domiciliation to Malaysia of not only NICO, but also other Iranian companies previously incorporated in Jersey that had no other interests in Bahrain (such as [REDACTED], [REDACTED]), was the increasingly adverse regulatory context in Jersey;<sup>6</sup> (ii) the internal and external assessments leading to Malaysia being selected as the most adequate jurisdiction to re-locate to for regulatory and tax purposes;<sup>7</sup> (iii) concerns and requests received in October 2016 from at least one strategic partner, which were based on its own independent legal advice that had identified the issue with NICO's attempted transfer from Malaysia to Gambia in December 2014, and which requested that NICO confirm its continuing incorporation in Malaysia before proceeding further with ongoing business dealings;<sup>8</sup> and (iv) the independent legal opinions thereafter obtained by NICO from Gambia and Nevis legal counsel, on the basis of which NICO sought and obtained the judiciary confirmation via the March 2018 Decision that its attempted transfer to Gambia in December 2014 had been invalid and that NICO had always remained a Malaysian company since January 2012.<sup>9</sup>
16. All of these documents already voluntarily submitted by Claimant suffice to satisfy the stated purpose for the bulk of Respondent's Document Requests (and in particular Requests Nos. 1 to 8), and thus defeat any relevance and materiality of such Requests.
17. And it is inappropriate for Respondent, which has made false allegations to start with, that have been proven to be false by the extensive materials produced by Claimant, to not only maintain its allegations and corresponding objections but to also come back to ask for even more. In other words, it is

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<sup>2</sup> Exhibit C-280, Letter from Jersey Financial Services Commission to [REDACTED] (agent in Jersey) dated January 25, 2011. Exhibit C-281, Letter from Jersey Financial Services Commission to NICO dated February 08, 2011.

<sup>3</sup> Exhibit C-282, Letter from Jersey Financial Services Commission to Basel Trust Corporation dated November 30, 2010. Exhibit C-283, Letter from Jersey Financial Services Commission to NICO dated December 07, 2010.

<sup>4</sup> Exhibit C-284, OFAC Press Release, "HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement" dated December 11, 2012. Exhibit C-285, The Guardian, "Standard Chartered bank accused of scheming with Iran to hide transactions" dated August 07, 2012.

<sup>5</sup> Exhibit C-286, Email Exchange between [REDACTED] and NICO with attachment dated May 04, 2024.

<sup>6</sup> Exhibit C-287, [REDACTED] Certificate of Registration in Labuan issued by Labuan Financial Services Authority dated May 19, 2011. Exhibit C-280, Letter from Jersey Financial Services Commission to [REDACTED] (agent in Jersey) dated January 25, 2011.

Exhibit C-288, Letter from [REDACTED] (Agent in Jersey) to Jersey Financial Services Commission dated February 16, 2011. Exhibit C-289, Letter from [REDACTED] to [REDACTED] dated February 17, 2011.

<sup>7</sup> Exhibit C-290, Email from [REDACTED] to NICO dated February 16, 2011; Exhibit C-291, Email from [REDACTED] to NICO (with attachment) dated January 11, 2011.

<sup>8</sup> Exhibit C-292, Exchange of emails between [REDACTED] and NICO dated August 25, 2016 to October 4, 2016.

<sup>9</sup> Exhibit C-47, Legal Opinion from [REDACTED] dated December 09, 2016. Exhibit C-293, Legal Opinion from [REDACTED] to [REDACTED] (NICO's Counsels) dated December 12, 2016. Exhibit C-294, Exchange of emails between [REDACTED] and NICO regarding Legal opinion on Nevis Domiciliation dated from September 13, 2016 to February 23, 2017. Exhibit C-294, Exchange of emails between [REDACTED] and NICO regarding Legal opinion on Nevis Domiciliation dated from September 13, 2016 to February 23, 2017.



Respondent which is committing the abuse by persisting to allege abuse and by misusing the document production phase in this manner.

18. Without prejudice to the above, however, where NICO can produce further material documentation, it partially accedes below to Bahrain's Document Requests further to its continued good faith approach to the arbitration process. Any such acceptance shall not be construed as any form of admission as to the relevance and materiality of the Requested Documents.
19. Claimant adds that some of the Requested Documents date back to over 10 to 14 years ago and thus may no longer be in Claimant's possession, and the fact that already many documents have been located, does not imply that all are available especially when the relevant employees have since left NICO's employ.
20. Finally, the fact that NICO may have and/or may produce documents covered by confidentiality or legal privilege, including exchanges with any of its legal counsels at the time, shall not be construed as a broad waiver as regards any applicable confidentiality or legal privilege applicable.

## BAHRAIN'S REPLY TO NICO'S OBJECTIONS

22. NICO's introductory remarks and objections to Bahrain's Requests misunderstand the purpose and applicable test for document production. NICO's repeated objection to Bahrain's Requests is that the requested documents are not relevant and material as they allegedly "*fail to take into account the extensive contemporaneous evidence to the facts and issues in dispute submitted [by NICO]*" (para 12 above). NICO claims to have "*voluntarily produced extensive contemporaneous evidence already fully responsive to, and dispositive of the five main categories of documents now purportedly requested by Bahrain*" and which – it asserts – "*demonstrate that it was never NICO's intention to secure treaty protection*" (paras 13-14, 16 above). NICO is wrong.
23. Bahrain is entitled to request and be provided with documents that are relevant to the bifurcated issues, material to the outcome of the bifurcated proceedings and not within Bahrain's possession, custody or control. That entitlement exists irrespective of what documents NICO has or has not yet chosen to exhibit or provide outside the disclosure process. Contrary to NICO's submission, Bahrain has taken NICO's current evidence into account when drafting its Requests.<sup>10</sup> As explained in each Request below, NICO has selectively produced evidence to support its assertions, which fail to paint a complete picture of its re-domiciliations and nationalities. Bahrain's requests arise from – and seek to fill – the gaps in the evidence relied on by NICO thus far. The documents are relevant and material, and NICO possesses them and should be ordered to search for and disclose them.
24. In addition, NICO purports to oppose a disclosure order on the basis that it has "*already produced all relevant and material documents in its possession*" (emphasis added) (see e.g., Request Nos. 4-8, 10, 16 and 21-23), i.e., documents that NICO subjectively considers relevant and material. It is for the Tribunal to determine the issue of relevance and materiality if disputed between the parties, as Article 9 of the IBA Rules recognises. It is not for NICO to unilaterally decide what documents are relevant and material to the bifurcated proceedings and then seek to preclude the production of other documents. Moreover, NICO's search for and production of documents with its prior submissions would pre-date Bahrain's Requests. As such, NICO could not have searched for the requested documents in the terms of those Requests. Further, NICO's qualification that it has produced "*relevant and material*" documents suggests that other responsive documents exist but NICO has simply chosen not to produce them. To the extent NICO is ordered to, or willingly, produces documents, it must produce all responsive documents and cannot cherry pick only those that it considers relevant and material.
25. Bahrain responds to NICO's remaining introductory comments as well as other recurring points in NICO's Responses below.
26. First, NICO repeatedly argues that the requested documents "*do not exist and/or are not accessible*" or that "*no further responsive documents ... could be located to date*" or that the documents "*no longer are in custody or control of NICO despite its best, and still ongoing, efforts to locate the same*" (see e.g., Request Nos. 1 and 4-6).<sup>11</sup> If NICO's position is that a document does not exist or is inaccessible then this implies that NICO accepts Bahrain's Request, has conducted a reasonable search for documents within the scope of that Request and despite such a search was unable to find any responsive documents. However, from NICO's objections it is unclear which Request (or part of the Request) NICO accepts, whether it conducted a search for documents responsive to that Request and, if so, the scope of the search. For example, NICO objects to Request No. 1<sup>12</sup> on the ground of lack of

<sup>10</sup> For example, pursuant to Request 1, Bahrain sought (among others) the attachment to **Exhibit C-290** that NICO failed to provide. Similarly, pursuant to Request 17, Bahrain sought the final and complete version of **Exhibit C-048** as the version provided by NICO was incomplete. Moreover, several of Bahrain's requests are rooted in and arise from the documents exhibited by NICO, such as Requests 2, 7, 8, 9, 14, 15 and 20.

<sup>11</sup> NICO applies its objections to Request No. 1 *mutatis mutandis* to Request Nos. 2 and 3, and its objections to Request No. 4 to Request Nos. 5, 7, 8 and 10-12. Where NICO has applied its objections to a request *mutatis mutandis* to another request without setting out all of its specific objections, Bahrain has not sought to ascertain which objections are being transposed to the later request and then respond to it. Bahrain has applied its reply to the first objection *mutatis mutandis* to the later request.

<sup>12</sup> Except to the request for the attachments to **Exhibits C-289** and **C-290**.

relevance and materiality but asserts that the requested documents do not exist, implying that it was unable to find the documents despite conducting a search for them, which contradicts its objection to relevance. To add to the confusion, NICO asserts that the documents do not exist “*assuming not covered by confidentiality and legal privilege*”, rendering it unclear which documents do not exist and which responsive documents exist but NICO is withholding on grounds of purported confidentiality and privilege.<sup>13</sup> By incoherently coalescing its objections, NICO has made the document production process more burdensome and inefficient. Bahrain has had to ascertain, and then seek to respond to, NICO’s position from its various contradictory submissions. Moreover, in circumstances where the scope of as well as the basis for the objection to a Request is unclear, the Request should be allowed in full.<sup>14</sup>

27. Second, NICO broadly asserts that some of the requested documents are “*covered by confidentiality and legal privilege*” (see e.g., Request Nos. 1, 4, 6, 15 and 16), without attempting to explain which documents (or classes of documents) it objects to on the grounds of confidentiality and/or privilege (and which kind of confidentiality or privilege). If NICO were seriously objecting to the production of any document on grounds of confidentiality or privilege, NICO should have explained the specific ground for doing so and the classes of documents that it claims protection over, with reference to the IBA Rules. This would have enabled the Tribunal to decide which documents should be excluded from production due to legal privilege or commercial confidentiality that the Tribunal determines to be compelling.<sup>15</sup> NICO, however, has failed to do so.
28. Moreover, NICO’s assertion that its production of “*documents covered by confidentiality or legal privilege, including exchanges with any of its legal counsels at the time, shall not be construed as a broad waiver*” (see para 20 above) is unconvincing. NICO offers no basis for asserting privilege from non-lawyers (such as its accountancy advisers, [REDACTED]). Nor has it made out any compelling case for commercial confidentiality (such as a trade secret). Moreover, even if NICO had established any such privilege or confidentiality, it would have waived the right to refuse disclosure by having chosen to selectively rely on some of its correspondence with those same advisers on the same issue.<sup>16</sup> Any other outcome would be contrary to the need to maintain fairness and equality between the parties.<sup>17</sup> In the alternative, should the Tribunal consider adopting alternative confidentiality and privilege protections that are commonly used in international arbitrations, Bahrain reserves the right to make submissions on the same.
29. Third, NICO’s assertion that Bahrain “*bears the burden of proof in relation to its jurisdictional objections*” and that NICO “*takes issue with Respondent’s unsubstantiated and false allegations of abuse of process*” (para 11 above) is unavailing. The purpose of the document production phase is for the parties to request documents relevant to their allegations (as they relate to the bifurcated issues) and material to the outcome of the bifurcated proceedings, including in this case whether NICO’s claim is inadmissible due to an abuse of process. The Tribunal noted in PO4 (para 74) that “*to analyze whether an abuse of process took place would involve a detailed review of Claimant’s contemporaneous motives, which involves very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s).*” As noted in Bahrain’s Preliminary Objections, “[m]uch of the evidence relevant to such issues as whether or not a dispute was foreseen or foreseeable at a given time..., the motive for a transfer of assets and the nature of the corporate structure are possessed by the claimant” (emphasis added).<sup>18</sup> NICO, thus, bears the burden of explaining its actions and cannot avoid this by asserting that Bahrain’s allegations are false or that the document requests are “*unduly burdensome*” (see for e.g., Request Nos. 3, 4 and 16). Yet, this is

<sup>13</sup> Similarly, NICO objects to Request No. 6 on grounds of relevance and materiality but then asserts that it has produced all relevant requested documents, which is then followed by a purported inability to produce documents on grounds of confidentiality and legal privilege. The same approach can be found in most requests that NICO objects to.

<sup>14</sup> See IBA Rules, Article 3.5, which require a party objecting to a document request to state the reasons for its objections.

<sup>15</sup> See IBA Rules, Article 9.2(b) and (c).

<sup>16</sup> See IBA Rules, Article 9.4(d).

<sup>17</sup> See IBA Rules, Article 9.4(e).

<sup>18</sup> Preliminary Objections, para 77(e) citing **Authority RL-0001**, *Alverley Investments// Limited and Germen Properties Ltd. v. Romania*, ICSID Case No. ARB/18/30, Award (Excerpts), dated 16 March 2022, para 364.



precisely what NICO does, by refusing to produce relevant documents, particularly those exchanged internally or with its advisers (see e.g., Request Nos. 1, 3, 6 and 16(b)), which are relevant to whether NICO had foreseen a dispute with Bahrain and NICO's motives behind its re-domiciliations. Bahrain will address the consequences of NICO's refusal to provide such documents, if maintained, in Bahrain's Reply to NICO's Counter-Memorial.<sup>19</sup>

30. Fourth, NICO asserts that it is unable to produce certain documents because they are in the possession of employees who have left NICO, and therefore no longer in NICO's custody or control (e.g., Request Nos. 1, 4-8 and 16). NICO's employees corresponded through work email IDs (@naftiran.ch), and NICO would presumably retain access to these inboxes even after an employee has left. Moreover, the consolidated index accompanying NICO's Counter-Memorial demonstrates that NICO has been able to locate and adduce as evidence in support of its own case several documents from the time period for which it now expresses difficulty (i.e., between 2011 and 2018).<sup>20</sup> In addition, there are individuals who were involved in the disputed issues during that time period who are still working at NICO, including those whom NICO has put forward as witnesses (e.g. Mr [REDACTED]). In any event, NICO is responsible for the timing of its BIT claim and any delay in bringing it – not Bahrain.
31. Fifth, NICO's criticism that Bahrain's 23 requests are "*at odds with what would be expected in... bifurcated proceedings*" (para 10 above) is unavailing. The number of requests is irrelevant to whether they should be allowed – there is no limit on the number of requests under the IBA Rules or in the Tribunal's procedural orders. If anything, the number of relevant and material requests demonstrates the gaps in NICO's evidence. In any event, this criticism is undermined by NICO's own 57 sub-requests, in circumstances where the factual focus of the bifurcated issues plainly concerns NICO's nationality.
32. Finally, while in its Responses, NICO has repeated its submissions from its Merits Memorial and Counter-Memorial, Bahrain only addresses these in this Reply to the extent necessary for determining the relevance and materiality of the requested documents. For the avoidance of doubt, the absence of a response by Bahrain in this Reply to any submission or allegation in NICO's response should not be regarded as acceptance.
33. Bahrain sets out its reply to NICO's objections in the Stern Schedule below. The Respondent seeks the Tribunal's determination on Request Nos. 1, 2, 3, 4, 5, 6, 8, 10, 12, 13, 14, 15, 16, 21, 22 and 23.

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<sup>19</sup> Bahrain also reserves the right to make submissions on costs at the appropriate time in light of NICO's unreasonable conduct in relation to document production described in these introductory comments and Bahrain's introductory comments to NICO's document requests.

<sup>20</sup> For e.g., Exhibits C-22 to C-53, C-54 to C-98, C-173 to C-187, C-193 to C-229, C-243 to C-254, C-280 to C-283, C-288 to C-294, C-298 to C-301.

## **ANNEX 1: RESPONDENT’S REQUESTS TO PRODUCE DOCUMENTS**

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1. NICO'S RE-DOMICILIATION FROM JERSEY TO LABUAN IN JANUARY 2012

Request No.	1.
Description of requested document or category of documents	<p>Documents sent or received by NICO's "<i>especially assigned working group</i>" (identified in NICO's 9 June 2011 board meeting (C-0022)) or NICO's Board of Directors, and documents exchanged between NICO and its advisers, relating to NICO's decision to transfer its domicile to Labuan (including any discussion on investment treaties), between 8 September 2010 (the date of the CBB Directive, C-0008) and 4 January 2012 (when NICO first transferred its domicile to Labuan).</p> <p>This includes the attachments that NICO has removed from its exhibits: (i) [REDACTED] letter to [REDACTED] dated 17 February 2011 (C-0289); and (ii) the email from [REDACTED] to NICO dated 16 February 2011 (C-0290), as well as NICO's response and any follow-on correspondence relating to C-0290.</p>
(a) Reasons for the request	<p>Bahrain asserts that NICO's dispute with Bahrain had already arisen before NICO's purported domiciliation to Labuan on 4 January 2012 (Preliminary Objections, Section II.1). NICO's Board of Directors decided to transfer its domicile to Labuan on 9 June 2011, a few months after the Treaty came into effect in January 2011, based on, <i>inter alia</i>, "<i>the views of the Company's legal and financial advisers as well as the views of the especially assigned working group</i>" (C-0022). However, there is nothing on the record to reflect the content of the working group, and no contemporaneous evidence explaining why NICO chose Labuan specifically (Preliminary Objections, para 46). Bahrain's position is that NICO's move to Labuan, at a time when its dispute with Bahrain was foreseeable (and on foot), is an abuse of process (Preliminary Objections, paras 80 and 83).</p> <p>In NICO's Counter-Memorial, NICO argues that it chose Labuan "<i>for regulatory and tax purposes</i>", referring only to select pieces of external advice it received (Counter-Memorial, paras 12 and 48-51). NICO did not provide any further information on the views of the working group or any internal documents on the views and considerations of this group or of NICO's directors regarding the external advice received, aside from brief references to the advice in C-0022 and C-0300.</p> <p>In general, NICO has not provided any correspondence between its directors and its financial and legal advisers before and after receiving external advice regarding the proposed re-domiciliation, which would reflect NICO's understanding and consideration of the advice at the time. NICO has also not provided any follow-up queries subsequent to receiving the advice.</p> <p>In addition, in the Counter-Memorial, NICO put on record selected correspondence sent to or from [REDACTED], an accountancy firm (C-0289, C-0290 and C-0291), omitting certain attachments, to suggest that it chose to re-domicile to Labuan for regulatory and tax purposes only (Counter-Memorial, paras 12 and 48-50). However, those documents merely show that Labuan was one of several shortlisted jurisdictions (see C-0290), without indicating how and why Labuan was selected at the time. The documents also reveal that NICO obtained other advice and, as</p>



	<p>seen in <b>C-0300</b>, p 1, NICO undertook “<i>investigations</i>”, which it has chosen not to put on record.</p> <p>NICO further asserts in the Counter-Memorial that its dispute with Bahrain was not foreseeable at the time of its January 2012 re-domiciliation to Labuan because it only became aware of the CBB Directive in November 2012 (Counter-Memorial, para 85). This is contrary to NICO’s assertions in its Memorial on Merits (<b>Merits Memorial</b>), which establish that NICO was aware by May 2011 of the CBB’s alleged involvement in the non-return of NICO’s funds (Preliminary Objections, para 28; Merits Memorial, para 142) and had even received correspondence from Ithmaar in April and May 2011 referring to the CBB Directive (<b>C-0012</b> and <b>C-0072</b>). Even if NICO did not have a copy of the CBB Directive by April/May 2011, it plainly knew of its existence and of its dispute with Bahrain.</p> <p>The requested documents are relevant to the issue of whether a reason for the shift in domicile to Labuan (among the other options available) was to bring NICO within the scope of the Bahrain-Malaysia BIT when a dispute was foreseeable (or had arisen). Such proof would be a relevant factor, although not necessary to prevail on the abuse of process objection, see Bahrain’s Preliminary Objections, paras 75-77). As the Tribunal noted in Procedural Order No. 4, para 74, to determine NICO’s contemporaneous motives, there needs to be “<i>very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s)</i>”. The documents are therefore relevant to whether there was an abuse of process, which may determine whether NICO’s claim is admissible, and are material to the outcome of the dispute.</p>
<b>(b) Response to the request</b>	<p><b><u>Partial Objection</u></b></p> <p>Claimant will use its best efforts to further search and produce the specific requested attachments to Exhibits <b>C-0289</b> and <b>C-0290</b> without prejudice to its objections below – in this respect Claimant can already confirm that no attachment was included with <b>Exhibit C-289</b>, which is hereby produced in native format, nor were – to Claimant’s knowledge – any purported attachments thereto ever received thereafter.</p> <p>Otherwise, given the extensive voluntary disclosures made by Claimant, the Requested Documents cannot for the reasons set out below be at this stage relevant, let alone material, to the bifurcated issues in these proceedings.</p> <p>Moreover, and in any event, the Requested Documents for the reasons set out below do not exist and/or are not accessible assuming not covered by confidentiality and legal privilege.</p> <p>The stated justification for the Requested Documents is that “<i>NICO’s move to Labuan, at a time when its dispute with Bahrain was foreseeable (and on foot), is an abuse of process (Preliminary Objections, paras 80 and 83).</i>”</p> <p>As reminded in NICO’s Introductory Remarks, Claimant has already submitted extensive contemporaneous documents evidencing that NICO’s decision in 2011 to re-domiciliate out of Jersey was prompted by reasons that had nothing to do with any treaty shopping concerns. Respondent does not acknowledge let alone draw consequences from the same. Nor does it at least explain why its Requests could possibly meet the relevance</p>

and materiality test considering Claimant's already extensive production. Rather than to withdraw its objections which are not only unsubstantiated but also manifestly rebutted by the corresponding contemporaneous documents disclosed by NICO, Bahrain requests more documents in an attempt to substantiate its false factual allegation of abuse.

By way of reminder, the documents submitted by NICO with its CMPO include the multiple contemporaneous correspondence received from the Jersey regulator, namely Exhibits C-280, C-281 and C-282, in 2011 (and even earlier),<sup>21</sup> in the context of increasing US pressure and investigations into dealings with Iranian interests (with fines ordered against major banks such as HSBC and Standard Chartered in the amount of USD 1.9 billion and USD 674 million respectively),<sup>22</sup> which show that what prompted the 2012 re-domiciliation to Malaysia of not only NICO, but also other Iranian companies previously incorporated in Jersey that had no other interests in Bahrain (such as [REDACTED]<sup>23</sup>), was the increasingly adverse regulatory context in Jersey<sup>24</sup>

The foregoing should alone suffice to show that NICO's 2011 decision to redomicile out of Jersey was not prompted by any treaty protection concerns, and thus that the Requested Documents cannot be relevant, let alone material to any bifurcated issues.

As to Respondent's allegation that *"there is nothing on the record to reflect the content of the working group, and no contemporaneous evidence explaining why NICO chose Labuan specifically,"* it is untrue as there is ample contemporaneous evidence already on record recording why NICO eventually opted for Malaysia as the jurisdiction to re-domicile to from Jersey, and in any event that treaty protections were not considered when deciding to re-domicile to Malaysia (see for instance C-280, C-281, C-289, C-290, C-291, C-298, C-299, C-300).

What is more, the very exhibit Bahrain relies upon, namely the June 9, 2011 minutes of NICO's Board of Directors meeting, expressly record that *"it was proposed to seek the Company's continuance as a body corporate incorporated in Labuan,"* and that *"the reason behind the proposal to move jurisdictions stemmed from the ever increasing compliance costs and difficulties of doing business for a company registered in Jersey"* (see Exhibit C-22, Paragraph 3) which again alone suffices to defeat the alleged purpose of the Requested Documents, namely, to show *"that NICO's move to Labuan, at a time when its dispute*

<sup>21</sup> Exhibit C-282, Letter from Jersey Financial Services Commission to Basel Trust Corporation dated November 30, 2010: *"On the basis of the information available to it, the Commission is of the view that the activities of the Jersey Companies [including NICO] fall within the remit of European Council Regulation 961/2010 ("EC Regulation 961/2010") imposing restrictive measures on Iran. Those measures have been in place in the European Union since 25th October 2010. As you will be aware, legislation is in train to implement EC Regulation 961/2010 fully as a matter of Jersey Law. Once in force, it is understood the companies listed will be subject to the prohibitions contained in EC Regulation 961/2010."*; Exhibit C-280, Letter from Jersey Financial Services Commission to [REDACTED] (agent in Jersey) dated January 25, 2011: *"At the meeting on 18 January 2011 the Jersey representatives set out the reputational risk concerns held in respect of the companies. Those present on behalf of the companies kindly offered in response to do all that they could to assist in alleviating the concerns expressed. Whilst the concerns about reputational risk remain at this time, the Commission intends to conduct a further information gathering exercise in an effort to establish whether those concerns can be alleviated."*; and Exhibit C-281, Letter from Jersey Financial Services Commission to NICO dated February 08, 2011: *"Please be advised that the Registry is not in a position to issue a certificate of goodstanding for the Company named above. The Company has no authorised registered office in Jersey as required pursuant to Article 67 of the Companies (Jersey) Law 1991, as amended (the "Law")."*

<sup>22</sup> Exhibit C-284, OFAC Press Release, "HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement" dated December 11, 2012. Exhibit C-285, The Guardian, "Standard Chartered bank accused of scheming with Iran to hide transactions" dated August 07, 2012.

<sup>23</sup> Exhibit C-286, Email Exchange between [REDACTED] and NICO with attachment dated May 04, 2024.

<sup>24</sup> Exhibit C-287, Certificate of Registration in Labuan issued by Labuan Financial Services Authority dated May 19, 2011. Exhibit C-280, Letter from Jersey Financial Services Commission to [REDACTED] (agent in Jersey) dated January 25, 2011. Exhibit C-288, Letter from [REDACTED] (Agent in Jersey) to Jersey Financial Services Commission dated February 16, 2011. Exhibit C-289, Letter from [REDACTED] to [REDACTED] dated February 17, 2011.

	<p><i>with Bahrain was foreseeable (and on foot), is an abuse of process (Preliminary Objections, paras 80 and 83)."</i></p> <p>Further, and in any event, the Requested Documents cannot be relevant, let alone material, to the resolution of the dispute. The reasons why Malaysia was ultimately selected as the jurisdiction where NICO would re-domicile are immaterial in circumstances where Claimant has already submitted extensive contemporaneous evidence (see above) showing that the decision to re-domicile out of Jersey had been prompted by reasons entirely unrelated to any treaty protections. This not to mention that NICO at all material times benefited via its Iranian shareholders from the Iran-Bahrain BIT treaty (see Paragraph 10 of the CMPO).</p> <p><u>Existence and access to the Requested Documents:</u> Claimant has in any event already searched and produced of its own motion, and in its own interest, all relevant and material documents in its possession pertaining to NICO's decision to re-domicile from Jersey to Malaysia.</p> <p>And no additional such documents (other than those already offered for production) could be located to date.</p> <p>This is in part because the Requested Documents pertain to documents that were prepared in 2011, namely more than 14 years ago, and thus – if they existed – would have been in the possession of employees who have since left the employ of NICO, and accordingly no longer in the custody or control of NICO despite its best, and still ongoing, efforts to locate the same.</p> <p>What is more, Bahrain fails to mention that the <i>"especially assigned working group"</i> referred to in the minutes of NICO's Board of Directors meeting held on June 9, 2011 (see Exhibit <b>C-22</b>) was not a separate formal body, but rather <i>"consist[ed] of NIOC's legal affairs representatives and NICO' [sic] consultants,"</i> and there is no evidence that, nor reasons why the views of this informal <i>"working group,"</i> would have been put in writing as opposed to orally at the meeting of NICO's Board of Directors on June 9, 2011, and indeed Claimant's searches to date have not yielded any evidence of the same.</p> <p>Moreover and in any event, as explained above, the June 9, 2011 minutes of NICO's Board of Directors meeting, expressly record that <i>"it was proposed to seek the Company's continuance as a body corporate incorporated in Labuan,"</i> and that <i>"the reason behind the proposal to move jurisdictions stemmed from the ever increasing compliance costs and difficulties of doing business for a company registered in Jersey,"</i> which alone suffices to show that no documents could exist supporting Bahrain's position that NICO's 2011 re-domiciliation from Jersey to Malaysia would have been prompted by any treaty protection concerns, and indeed it was not.</p> <p>For all of the above reasons, Claimant partially objects to Bahrain's Production Request No. 1.</p>
<b>(c) Reply to the responses</b>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this Request, save for Exhibit <b>C-289</b> (for which NICO has confirmed no attachments accompanied) and the attachments to</p>



	<p>Exhibit <b>C-290</b> (which NICO has produced), but including NICO's response and any follow-on correspondence relating to <b>C-0290</b>.</p> <p>Each of NICO's objections is ill-founded and addressed below.</p> <p><u>Relevance and materiality:</u></p> <p>For the reasons set out in paragraphs 22 to 24 above, the fact that NICO has exhibited some documents with its prior submissions to support its own case does not negate Bahrain's right to seek disclosure of all relevant and material documents. If anything, NICO's claimed overlap between the documents it has exhibited and the documents that Bahrain now requests demonstrates that the requested category of documents are relevant and material, and that it would not be unduly burdensome for NICO to produce any remaining documents that fall within the category requested.</p> <p>In particular, NICO's assertion that the requested documents are not relevant and material to the bifurcated issues as it has demonstrated that its <i>"2011 decision to redomicile out of Jersey was not prompted by any treaty protection concerns"</i> comes to nothing. Most of NICO's objection to this request is based on the fact that it has exhibited documents justifying its decision to leave Jersey. Bahrain's request targets documents explaining why NICO chose Labuan specifically, because Bahrain's abuse of process objection concerns NICO's decision to move to Labuan (a jurisdiction with which Bahrain had an investment treaty), not NICO's decision to leave Jersey. The documents produced by NICO fail to explain why NICO chose Labuan and do not address the issue that Bahrain's request targets. For example, NICO refers to exhibits <b>C-280, C-281, C-282, C-289, C-290, C-291, C-298, C-299, C-300</b> in its objection. However, exhibits <b>C-280, C-281, C-282, C-289, C-298</b> comprise correspondence with or related to the Jersey Financial Services Commission (and its concerns). The limited documents that do refer to Labuan are either correspondence from [REDACTED], NICO's chartered accounts (<b>C-290, C-291</b>), or notifications (<b>C-299, C-300, C-022</b>) of the decision to move to Labuan, neither of which discuss NICO's reasons for choosing Labuan, including potential discussions on treaty protection. NICO cannot rely on its own self-selected production of documents with its pleadings to avoid disclosure of other relevant and material documents to Bahrain.</p> <p><u>Existence and access:</u></p> <p>NICO acknowledges that it has <i>"already searched and produced of its own motion, and in its own interest"</i> all relevant documents (emphasis added). NICO therefore accepts that NICO's searches were for documents in furtherance of its own position. Moreover, as set out in paragraph 24 and 26 above, as these documents were produced with NICO's previous submissions, those searches pre-date Bahrain's requests, meaning that NICO would not have specifically searched for documents responsive to this request at the time of its submissions. That NICO has not produced all responsive documents is made clear by a letter dated 3 July 2011 from NIOC to NICO regarding the relocation of NICO's</p>
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	<p>headquarters (Exhibit <b>R-0017</b>),<sup>25</sup> which refers to note no. 119049 dated 29 June 2011, which has not been produced in the arbitration.</p> <p>In relation to NICO's purported difficulty in accessing these documents, as noted in paragraph 30 above, NICO should be able to access inboxes of former employees and produce documents for the requested time period (as it has already done for documents that support its position).</p> <p>In relation to the "<i>especially assigned working group</i>", NICO submits that this consisted of "<i>NIOC's legal affairs representatives and NICO's [sic] consultants</i>" but "<i>there is no evidence that, nor reasons why the views of this informal 'working group' would have been put in writing as opposed to orally</i>". Bahrain reasonably expects written records to exist (including of oral meetings) for a working group that was specifically assigned the significant task of advising on NICO's domicile and comprised legal representatives and consultants. NICO's suggestion to the contrary, that the working group did not prepare any written reports or recommendations or send any emails or letters to each other or to NICO's board or maintain meeting minutes, is unrealistic.</p> <p>For the reasons set out above, Bahrain reasonably believes that NICO has access to these documents and requests that NICO be ordered to undertake a search for them and disclose those that exist.</p> <p><u>Confidentiality and legal privilege:</u></p> <p>Pursuant to this request Bahrain seeks documents relating to NICO's decision to transfer its domicile to Labuan. NICO has not explained how these documents could be protected by confidentiality or legal privilege, especially in circumstances where NICO asserts that its domicile change was not motivated by treaty protection and that no dispute was foreseeable at the time of the domicile change (Counter-Memorial, paras 31, 95) (see paragraphs 26 to 28 above).</p>
<b>(d) Tribunal's decision</b>	<p>The request is granted, save for Exhibit <b>C-289</b> (for which NICO has confirmed no attachments accompanied) and the attachments to Exhibit <b>C-290</b> (which NICO has produced).</p>

<b>Request No.</b>	2.
<b>Description of requested document or category of documents</b>	<p>The following documents referred to in <b>C-0023</b> (the approval of NICO's Board of Directors to transfer NICO from Jersey to Labuan) and/or <b>C-0299</b> (the approval of NIOC's Board of Directors):</p> <p>(a) Minutes of the 1758<sup>th</sup> meeting of NIOC's Board of Directors held on 10 July 2011;</p> <p>(b) Letter No. 123434/H dated 3 July 2011;</p> <p>(c) Letter No. 182530 dated 11 August 2011; and</p> <p>(d) Letter No. 184530/HM dated 21 August 2011.</p>
<b>(a) Reasons for the request</b>	<p>Bahrain repeats its reasons for Request 1 above, <i>mutatis mutandis</i>.</p> <p>In addition, on 10 July 2011, NICO's Board of Directors approved the transfer of NICO from Jersey to Labuan (<b>C-0023</b>). The requested documents are referred to in <b>C-0023</b> and relate to NICO's transfer of its domicile to Labuan, but NICO has not provided these to Bahrain. In the Counter-Memorial, NICO put on record <b>C-0299</b>, a letter from NICO to NIOC dated 12 September 2011, which like <b>C-0023</b> also refers to the requested documents.</p>
<b>(b) Response to the request</b>	<p>Claimant's Objections to Request No. 1 apply <i>mutatis mutandis</i> to Request No. 2 in all aspects. Yet, Claimant accepts without prejudice to the same, including as to the relevance and materiality, and more specifically in terms of access given that the Requested Documents date back to 14 years ago, to use its best efforts to try to locate and produce the Requested Documents as specifically identified.</p>
<b>(c) Reply to the responses</b>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this Request for letter No. 182530 dated 11 August 2011.</p> <p>Bahrain repeats its reply to NICO's objections to Request No. 1 above <i>mutatis mutandis</i>.</p> <p>Although NICO accepts this request, it has not produced letter No. 182530 dated 11 August 2011.</p>
<b>(d) Tribunal's decision</b>	<p>No decision necessary, in light of Respondent's withdrawal of the present request in its communication of 7 February 2025.</p>



<b>Request No.</b>	3.
<b>Description of requested document or category of documents</b>	Documents sent or received by NICO's Board of Directors and documents exchanged between NICO and its advisers between 8 September 2010 (C-0008) and 26 November 2012 (C-0075; Counter-Memorial, para 81), relating to Bahrain's (including the CBB's) alleged involvement in non-return of its funds.
<b>(a) Reasons for the request</b>	<p>In its Counter-Memorial, NICO asserts that it was not aware of Bahrain's alleged involvement in the non-return of its funds (as alleged and particularised in the Merits Memorial) at the time of its re-domiciliation to Labuan in January 2012. Instead, NICO asserts that it "<i>became aware of the probable nature and extent of CBB's role as the cause for the blockage and source of the illegality in relation to the blockage of the funds</i>" in November 2012 (Counter-Memorial, para 93).</p> <p>This is contrary to NICO's assertions in its Merits Memorial, which establish that NICO was aware by May 2011 of the CBB's alleged involvement in the non-return of NICO's funds (Preliminary Objections, para 28; Merits Memorial, para 142) and had even received correspondence from Ithmaar in April and May 2011 referring to the CBB Directive (C-0012 and C-0072).</p> <p>Bahrain's position is that NICO's move to Labuan in January 2012 is an abuse of process as NICO's dispute with Bahrain was foreseeable (and on foot) (Preliminary Objections, paras 80 and 83).</p> <p>The requested documents are relevant to the issue of whether NICO's shift in domicile to Labuan was at time when a dispute with Bahrain was foreseeable (or had arisen). As the Tribunal noted in Procedural Order No. 4, para 74, to determine NICO's contemporaneous motives, there needs to be "<i>very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s)</i>". The documents are therefore relevant to whether there was an abuse of process, which may determine whether NICO's claim is admissible, and are material to the outcome of the dispute.</p>
<b>(b) Response to the request</b>	<p><b><u>Objection</u></b></p> <p>Claimant's Objections to Request No. 1 apply <i>mutatis mutandis</i> to Request No. 3 in all aspects as supplemented below.</p> <p>The stated justification for the Requested Documents is that "<i>NICO's move to Labuan in January 2012 is an abuse of process as NICO's dispute with Bahrain was foreseeable (and on foot)</i> (Preliminary Objections, paras 80 and 83)."</p> <p>NICO has already produced extensive contemporaneous documents which prove that it "<i>became aware of the probable nature and extent of CBB's role as the cause for the blockage and source of the illegality in relation to the blockage of the funds</i>" in November 2012 as set out in its CMPO at Paras. 93 and 94 with the supporting documents provided (see C-74, C-75, C-218, C-219, C-221, C-224, C-226, C-227). No further documents are thus required to address Bahrain's stated justification for the Requested Documents.</p>

	<p><u>Overly broad and unduly burdensome:</u> The Request is vague and overly broad and is contrary to the IBA Rules (para. 3.3(a) which require that a request for production describes in “<i>sufficient detail of a narrow and specific requested category of document</i>” as it fails to substantiate and particularize what it means by documents “<i>relating to Bahrain’s (including the CBB’s) alleged involvement in non-return of its funds.</i>” It would also be unduly burdensome for NICO to locate and produce the Requested Documents. Given also the overly broad wording of the Request, it is clear that what Bahrain in reality seeks is to fish for documents in the hope of somehow finding a document to support its defence against NICO’s claims on the merits, which is inadmissible and abusive.</p> <p>For all of the above reasons, Claimant objects to Bahrain’s Production Request No. 3.</p>
<b>(c) Reply to the responses</b>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this Request in full.</p> <p>Each of NICO’s objections is ill-founded and addressed below.</p> <p>Given NICO’s repetition of its objections to Request 1, Bahrain repeats its reply to NICO’s objections to Request No. 1 above <i>mutatis mutandis</i>.</p> <p><u>Relevance and materiality:</u></p> <p>For the reasons set out in paragraphs 22 to 24 above, the fact that NICO has exhibited some documents with its prior submissions to support its own case does not negate Bahrain’s right to seek disclosure of all relevant and material documents. If anything, NICO’s claimed overlap between the documents it has exhibited and the documents that Bahrain now requests demonstrates that the requested category of documents are relevant and material, and that it would not be unduly burdensome for NICO to produce any remaining documents that fall within the category requested.</p> <p>Further, NICO incorrectly asserts that it has demonstrated that it only became aware of the CBB’s alleged involvement in November 2012. In fact, as noted in Bahrain’s reasons for this request, NICO’s own submissions demonstrate its awareness of the allegations it raises in the arbitration prior to its re-domiciliation to Malaysia in January 2012, in correspondence it cites from April-May 2011 (see Preliminary Objections, paras 27-29 citing Merits Memorial, para 142 and exhibits <b>C-210</b> and <b>C-72</b>). NICO ignores this. It instead cites documents dated 26 November 2012 onwards (<b>C-74, C-75, C-218, C-219, C-221, C-224, C-226, C-227</b>), which cannot and do not demonstrate the absence of awareness of a potential dispute prior to 26 November 2012.</p> <p><u>Broad and unduly burdensome:</u></p> <p>This request specifies a precise time frame (two years and two months) that is targeted and identified on the basis of specific documents, the custodian (NICO’s former Board of Directors) and the subject matter</p>

	<p>(Bahrain / the CBB and the non-return of NICO's funds). It is self-evident that this targets documents showing discussions within NICO of Bahrain's alleged involvement in the non-return of its funds and NICO's assertion that Bahrain "<i>fails to substantiate and particularize what it means</i>" is contradicted by the reasons Bahrain provided above to support its request.</p> <p>As explained in paragraph 29 above, the Tribunal has confirmed the relevance of the information available to NICO at the time of its restructuring(s), which is only in NICO's possession. As such, this request is proportionate to the issues in disputes and is not "<i>unduly burdensome</i>" or an attempt to "<i>fish for documents</i>" as NICO asserts.</p>
<b>(d) Tribunal's decision</b>	<p>The request, as drafted, is overly broad. The request is however granted with respect to any documents sent or received by NICO's Board of Directors between 8 September 2010 and 26 November 2012 in relation to Bahrain or the CBB's alleged involvement in non-return of its funds.</p>



2. THE VALIDITY OF NICO'S REGISTRATION IN THE GAMBIA BETWEEN 2014 AND 2016

Request No.	4.
Description of requested document or category of documents	<p>Documents exchanged between:</p> <p>(a) NICO and any (actual or purported) Gambian authority; and/or</p> <p>(b) NICO and any Gambian counsel,</p> <p>between 9 December 2014 (the date of NICO's supposed certificate of incorporation in Gambia, <b>R-0002</b>) and 19 August 2016 (the date of NICO's certificate of incorporation in Nevis, <b>C-0045</b>).</p>
(a) Reasons for the request	<p>In order to benefit from the Bahrain-Malaysia BIT in the Absence Period, NICO argues that it should be regarded as a Labuan company <i>ex post facto</i> with continued existence in Labuan from January 2012 to date (Bifurcation Observations, paras 75-77 and 79; Counter-Memorial, para 70 and Section III; <b>Yunus-Devarajoo Opinion</b>, para 72). This is despite the fact that NICO purportedly transferred its domicile to The Gambia in December 2014 and redomiciled to Nevis in August 2016 (Merits Memorial, para 207).</p> <p>NICO's witness, [REDACTED], claims that [REDACTED] introduced the iCommerce Registry to NICO ([REDACTED] para 28), and that NICO only became aware on 6 February 2015 that the "icommerceregistry", with which it had registered in The Gambia, was not recognised by the Gambian government and apparently did not exist ([REDACTED] paras 30-31). [REDACTED] claims that, as a result, NICO "immediately sought to secure the continuation of NICO in Nevis" in June 2016 (this was in reality 16 months later) ([REDACTED] para 34, Counter-Memorial, paras 111.2-111.3). He further claims that pursuant to a Gambian law opinion received in December 2016, NICO had to re-domicile back to Labuan ([REDACTED] paras 35-36). There are unexplained gaps in NICO's purported moves from The Gambia to Nevis and then to Labuan (Preliminary Objections, paras 56, 65).</p> <p>The requested documents are relevant to:</p> <ul style="list-style-type: none"> <li>• when NICO became aware (or could have reasonably become aware) of the issues with its Gambian registration and the actions it took thereafter;</li> <li>• whether NICO obtained, or considered obtaining, Gambian law advice prior to its move to Nevis; and</li> <li>• whether NICO considered the impact of the issues with its Gambian registration on its Nevis registration at the time of its re-domiciliation to Nevis.</li> </ul> <p>These matters are, in turn, relevant to the issues of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO's standing and rights under the Treaty from December 2014 – March 2018.</p>

	Both of these are issues the Tribunal is expressly seeking to address in these proceedings (Procedural Order No. 4, para 77(a)). The documents are therefore necessary to ascertain whether the Tribunal has jurisdiction during the Absence Period and are material to the outcome of the dispute.
<b>(b) Response to the request</b>	<p><b><u>Objection</u></b></p> <p><u>Relevance and materiality:</u> the Requested Documents cannot at this stage be relevant, let alone material, to the bifurcated issues in these proceedings.</p> <p>The stated justification for the Requested Documents is that such Documents would be “<i>relevant to the issues of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO’s standing and rights under the Treaty from December 2014 – March 2018.</i>”</p> <p>As reminded in NICO’s Introductory Remarks, Claimant has already submitted extensive contemporaneous documents evidencing that the March 2018 Decision was prompted by reasons that had nothing to do with any treaty shopping concerns, including <b>Exhibits C-47, C-293, and C-294</b>. As explained above, the process leading up to the March 2018 Decision was triggered by concerns and requests received first in February 2015 and then in October 2016 from at least one strategic partner, which were based on its own independent legal advice that had identified the issue with NICO’s attempted transfer from Malaysia to Gambia in December 2014, and which requested that NICO confirm its continuing incorporation in Malaysia before proceeding further with ongoing business dealings. Moreover, the independent legal opinions thereafter obtained by NICO from Gambia and Nevis legal counsels (see <b>Exhibits C-47, C-293 and C-294</b>), were the basis upon which NICO sought and obtained the judiciary confirmation via the 2018 Decision that its attempted transfer to Gambia in December 2014 had been invalid and that NICO had always remained a Malaysian company since January 2012.</p> <p>Therefore, the Requested Documents could not be relevant, let alone material, to the stated justification put forward, as the documents concerning NICO’s motivations to redomicile to Labuan after its invalid domiciliation in Gambia have already been provided and are detailed with supporting documents in the CMPO at Paras. 60 to 66 (see exhibits <b>C-40, C-32, C-292</b>).</p> <p>As to Respondent’s allegation that “[t]here are unexplained gaps in NICO’s purported moves from The Gambia to Nevis and then to Labuan (<i>Preliminary Objections, paras 56, 65</i>)” citing notably [REDACTED] is unfounded as Claimant has filled any possible gaps in Mr. [REDACTED] chronology with the necessary contemporaneous evidence as set out at CMPO Paras. 60 to 69 (see exhibits <b>C-40, C-41, C-42, C-43, C-32, C-292, C-48 to C-53, C-293 and C-294</b>).</p> <p>Moreover, and any event, Bahrain’s Request, seeking to cover a period of close to two years, is overly broad, unparticularized and burdensome.</p> <p>Furthermore, it is not material to the outcome of the case as it is not Bahrain’s burden to prove that NICO could benefit from the Bahrain-</p>

	<p>Malaysia BIT between 2014 and 2018. In fact, it is not material as Claimant has already provided the relevant contemporaneous documents along with the legal argumentation demonstrating that NICO was legally a Labuan company between 2014 and 2018 at Paras. 99 <i>et seq.</i> of its CMPO on this issue.</p> <p><u>Existence and access to the Requested Documents:</u> Claimant has in any event already searched and produced all relevant and material documents in its possession pertaining to NICO’s decision to re-domicile from Jersey to Malaysia, and no further responsive documents (other than those already offered for production) could be located to date, first and foremost because NICO’s position is that it never knew of Bahrain’s involvement in the blockage of its funds from September 2010 and prior to November 2012. And no additional such documents (other than those already offered for production) could be located to date. This is in part because the Requested Documents pertain to documents that were prepared in 2011, namely more than 14 years ago, and thus – if they existed – would have been in the possession of employees who have since left the employ of NICO, and accordingly are no longer in the custody or control of NICO despite its best, and still ongoing, efforts to locate the same.</p> <p><u>Overly broad and unduly burdensome:</u> This Request is vague and overly broad and is contrary to the IBA Rules (para. 3.3(a) which require that a request for production describes in “<i>sufficient detail of a narrow and specific requested category of document</i>” as it seeks the production of documents exchanged between “<i>NICO and <u>any</u> (actual or purported) Gambian authority</i>” and “<i>NICO and <u>any</u> Gambian counsel.</i>” It would thus be unduly burdensome for NICO to locate and produce the Requested Documents. Given also the overly broad wording of the Request, it is clear that what Bahrain in reality seeks is to fish for documents in the hope of somehow finding a document to support its defence against NICO’s claims, which is inadmissible and abusive.</p> <p><u>Confidentiality and legal privilege:</u> further and in any event, as already set out in Claimant’s introductory remarks, NICO would not be able to produce any documents covered by confidentiality or legal privilege, whereas any documents exchanged between “NICO and any Gambian counsel” would necessarily be covered by legal privilege.</p> <p>For all of the above reasons, Claimant objects to Bahrain’s Production Request No. 4.</p>
<p><b>(c) Reply to the responses</b></p>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this request.</p> <p>Each of NICO’s objections is ill-founded and addressed below.</p> <p><u>Relevance and materiality:</u></p> <p>For the reasons set out in paragraphs 22 to 24 above, the fact that NICO has exhibited some documents with its prior submissions to support its own case does not negate Bahrain’s right to seek disclosure of all relevant and material documents. If anything, NICO’s claimed overlap between the documents it has exhibited and the documents that Bahrain now requests demonstrates that the requested category of documents are relevant and material, and that it would not be unduly burdensome for</p>



	<p>NICO to produce any remaining documents that fall within the category requested.</p> <p>In particular, NICO’s assertions that the requested documents are not relevant and material to the bifurcated issues as it has already provided documents “<i>evidencing that the March 2018 Decision was prompted by reasons that had nothing to do with any treaty shopping concerns</i>” and “<i>concerning NICO’s motivations to redomicile to Labuan after its invalid domiciliation in Gambia</i>” come to nothing. As explained in the reasons for this request, Bahrain has not put forth this request in furtherance of its abuse of process objection, but for the issues in PO4, para 77(a)(ii).</p> <p>NICO has failed to engage with the reasons for this request, except to assert that there are no gaps in its evidence, followed by a list of certain documents it has exhibited with its submissions (which Bahrain considered when formulating its request). The listed documents do not assist NICO or fill the gaps. C-40 to C-43 demonstrate that NICO became aware between February to April 2015 of the potential invalidity of its Gambian registration, C-32 is a October 2014 report by [REDACTED], C-292 is correspondence in August 2016 with [REDACTED], C-293 and C-294 pertain to Nevis law advice and C-48 to C-53 comprise correspondence with the LFSA in 2017-18 and the 2018 Malaysian Decision. Self-evidently, these documents do not address the issues raised by Bahrain, i.e., the actions NICO took after becoming aware of the issues with its Gambian registration (the unexplained gap between April 2015 and June 2016 remains); whether NICO obtained Gambian law advice before its move to Nevis; and whether NICO considered the impact of the issues with its Gambian registration on its Nevis registration at the time of its move to Nevis.</p> <p>Lastly, NICO’s assertion that “<i>it is not Bahrain’s burden to prove that NICO could benefit from the Bahrain-Malaysia BIT between 2014 and 2018</i>” is unavailing when this is the very question bifurcated by the Tribunal (PO4, para 77(a)(ii)). Further, while NICO bears the burden to prove that the Tribunal has jurisdiction, this does not preclude Bahrain from requesting documents that are relevant and material.<sup>26</sup></p> <p><u>Existence and access to the Requested Documents:</u></p> <p>NICO’s objection under this heading has no connection to this request. NICO refers to its decision to re-domicile from Jersey to Malaysia in January 2012, however, this request pertains to correspondence with Gambian counsel and the Gambian authorities post December 2014.</p> <p>NICO’s assertion that it has “<i>already searched and produced all relevant and material documents ... and no further responsive documents ... could be located to date</i>” is, as set out in paragraphs 24 and 26 above, unavailing. The documents exhibited by NICO with its prior submissions pre-date Bahrain’s Requests, meaning that NICO would not have specifically searched for documents responsive to this request at the time of its submissions. Further, NICO cannot unilaterally decide what</p>
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See **Authority RL-44**, Born, International Commercial Arbitration (3rd ed., 2020), p. 2539, “*the fact that a party does not bear the burden of proof on an issue does not suggest that it will be able to prevail on that issue absent relevant and material documents; its counterparty may, if material (and adverse) documents are not disclosed, be able to prevail by selectively presenting other documents or evidence. It is both illogical and unfair to deny a party disclosure of documents otherwise subject to disclosure, merely because it does not bear the burden of proof with respect to the underlying issues to which the document is relevant*”.

	<p>documents are relevant and material to the bifurcated issues and NICO's response indicates the existence of other responsive documents that in NICO's subjective opinion are irrelevant and immaterial.</p> <p>Lastly, as set out in paragraph 30 above, NICO's assertion that the requested documents are no longer in NICO's control as they date back several years is undermined by NICO's production of several documents from the same time period.</p> <p><u>Overly broad and unduly burdensome:</u></p> <p>NICO's emphasis on the use of "any" Gambian authority and "any" Gambian counsel to assert that this request is vague and overly broad is wrong. In reality, the request is limited as, NICO would know which Gambian counsel it had engaged and the Gambian authorities it had interacted with in that time period and so the search will be relatively narrow. NICO could also use appropriate search terms such as ".gm" to search for correspondence from Gambian entities.</p> <p>In any event, given the relevance of the requested documents (as explained above), the request is proportionate to the issues in dispute and is not unduly burdensome.</p> <p>Further, this request specifies a precise time frame (20 months) that is targeted and identified on the basis of specific documents) and the sending and receiving parties (NICO and Gambian authorities or counsel) and so is not "vague".</p> <p><u>Confidentiality and legal privilege:</u></p> <p>NICO makes a blanket assertion that any correspondence between it and any Gambian counsel would be privileged. This is unconvincing for the reasons set out in paragraphs 26 to 28 above, and in particular because NICO has already selectively produced a legal opinion from Gambian counsel (Exhibit C-47) and fails to explain why this does not waive privilege (if any) over other correspondence with Gambian counsel.</p>
<b>(d) Tribunal's decision</b>	<p>The request is rejected as overly broad and lacking in specificity, and <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.</p>

<b>Request No.</b>	5.
<b>Description of requested document or category of documents</b>	Documents exchanged between NICO and the LFSA in and around February 2015 evidencing that NICO communicated the invalidity of its Gambian registration to the LFSA at the time it first became aware of such invalidity.
<b>(a) Reasons for the request</b>	<p>Bahrain repeats its first and second paragraphs for Request 4 above, <i>mutatis mutandis</i>.</p> <p>In addition, Bahrain notes that NICO claims that it did not cease to be a Labuan company in December 2014 when it re-domiciled to The Gambia as the instrument by which it transferred to The Gambia was false and the requirements of Section 133(4) of the Labuan Companies Act were not satisfied. In this respect, the <b>Yunus-Devarajoo Opinion</b> asserts that (para 54):</p> <p><i>“With all due respect, the Authority’s invocation of the statutory presumption under section 133(4) was erroneous, albeit innocently and through no fault of its own. It is our view that once the Authority became aware that the basis or primary facts required to invoke section 133(4) of the LCA were, in fact, false and non-existent, it ought to have exercised its statutory power and rectify this erroneous invocation by reinstating NICO to the register as if it had never been removed.”</i></p> <p>Bahrain’s position is that NICO would have been struck off the register of Labuan Companies had it not left Labuan in December 2014 (Preliminary Objections, paras 48-52, 150-151). Contrary to NICO’s position, had NICO notified the Labuan authorities of the invalidity of its Gambian registration in February 2015 (i.e., when it first learned of the same) (██████ paras 30-31, C-0040), NICO would (and could) not have been reinstated in Labuan.</p> <p>The requested documents are relevant and material to ascertaining whether NICO communicated to the LFSA that its Gambian registration was invalid and sought to be reinstated in Labuan and whether the LFSA considered reinstatement a viable option. This is, in turn, relevant to the issues of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO’s standing and rights under the Treaty from December 2014 – March 2018. Both of these are issues the Tribunal is expressly seeking to address in these proceedings (Procedural Order No. 4, para 77(a)(ii)).</p>
<b>(b) Response to the request</b>	<p><b><u>Objection</u></b></p> <p>Claimant’s Objections to Request No. 4 apply <i>mutatis mutandis</i> to Request No. 5 in all aspects as supplemented below.</p> <p>The stated justification for the Requested Documents is that they would be <i>“relevant to the issues of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO’s standing and rights under the Treaty from December 2014 – March 2018.”</i></p> <p>Yet, Bahrain does not explain nor demonstrate how the Requested documents allegedly <i>“relevant and material to ascertaining whether</i></p>



	<p><i>NICO communicated to the LFSA that its Gambian registration was invalid and sought to be reinstated in Labuan and whether the LFSA considered reinstatement a viable option” would be material to the issues bifurcated by the Tribunal.</i></p> <p>Moreover, as to Bahrain’s unfounded allegations that “<i>had NICO notified the Labuan authorities of the invalidity of its Gambian registration in February 2015 (i.e., when it first learned of the same)</i> (██████ paras 30-31, <b>C-0040</b>), <i>NICO would (and could) not have been reinstated in Labuan,</i>” this is not only misconstrued but also cannot stand as NICO would first have verified the allegations of its business partner ██████ and then sought to resolve the issue, which does not necessarily involve seeking out first the LFSA’s advice. In any event, as already demonstrated in the CMPO, NICO upon the correspondence received from ██████ in October 2016 requested its reinstatement in Labuan and contacted the LFSA on January 11, 2017 (see CMPO Para. 111.6, see C-48), following which it secured the March 2018 Decision from Malaysian Courts, all of which is recorded in evidence already on the record (see <b>Exhibits C-48, C-47, C-293 and C-294</b>).</p> <p><u>Existence and access to the Requested Documents:</u> Claimant has in any event already produced all relevant and material documents in its possession pertaining to NICO’s decision to re-domicile from Jersey to Malaysia, and no further responsive documents (other than those already offered for production) could be located to date.</p> <p>This is in part because the Requested Documents pertain to documents that were prepared in 2015, namely close to ten years ago, and thus – if they existed – would have been in the possession of employees who have since left the employ of NICO, and accordingly no longer are in the custody or control of NICO despite its best, and still ongoing, efforts to locate the same.</p> <p>For all of the above reasons, Claimant objects to Bahrain’s Production Request No. 5.</p>
<p><b>(c) Reply to the responses</b></p>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this Request.</p> <p>Each of NICO’s objections is ill-founded and addressed below.</p> <p>Given NICO’s repetition of its objections to Request 4, Bahrain repeats its Reply to the responses to Request No. 4 above <i>mutatis mutandis</i>.</p> <p><u>Relevance and materiality:</u></p> <p>NICO’s assertion that Bahrain has not demonstrated the materiality of the requested documents to the bifurcated issues above is wrong. As explained above, the documents are material to understanding whether NICO could have benefitted from the Bahrain-Malaysia BIT during the Absence Period.</p> <p>NICO’s response to this request seeks to obfuscate the chronology of events. NICO asserts that “<i>NICO upon the correspondence received from ██████ in October 2016 requested its reinstatement in Labuan and contacted the LFSA on January 11, 2017</i>”. However, the record</p>

	<p>irrefutably demonstrates that NICO first discovered the invalidity of its Gambian registration in February 2015 (C-40). It chose to take no corrective action (including seeking reinstatement in Labuan) and remained in The Gambia. In August 2016, it decided to move to Nevis, with the knowledge of the issues with its Gambian registration (C-45). NICO now relies on the invalidity of its Gambian registration to assert that it never left Labuan (or should be deemed as such), never became a Nevis company and the LFSA should have reinstated NICO once NICO informed it of the invalidity of its Gambian registration (see Counter-Memorial, paras 60, 112 and 125; Yunus-Deverajoo Opinion, paras 29, 66, 71 and 99).</p> <p>In these circumstances, the relevance and materiality of the requested documents, which will demonstrate whether reinstatement or deemed continuance of NICO in Labuan was possible in 2015 (and in turn whether NICO can benefit from the Bahrain-Malaysia BIT during the Absence Period), is indisputable.</p> <p><u>Existence and access to the Requested Documents:</u></p> <p>NICO's assertion that it has "<i>already produced all relevant and material documents... and no further responsive documents ... could be located to date</i>" is, as set out in paragraphs 24 and 26 above, unavailing. The documents exhibited by NICO with its prior submissions pre-date Bahrain's Requests, meaning that NICO would not have specifically searched for documents responsive to this request at the time of its submissions. Further, NICO cannot unilaterally decide what documents are relevant and material to the bifurcated issues and NICO's response indicates the existence of other responsive documents that in NICO's subjective opinion are irrelevant and immaterial.</p> <p>Lastly, as set out in paragraph 30 above, NICO's assertion that the requested documents are no longer in NICO's control as they date back several years is undermined by NICO's production of several documents from the same time period.</p>
<b>(d) Tribunal's decision</b>	<p>The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.</p>

<b>Request No.</b>	6.
<b>Description of requested document or category of documents</b>	<p>Documents sent or received by NICO's Board of Directors and documents exchanged between NICO and its advisers (including [REDACTED] (but excluding correspondence provided as C-0041, C-0042, C-0043)), relating to:</p> <p>(a) the validity of NICO's Gambian registration; and/or</p> <p>(b) NICO's transfer of domicile to Nevis,</p> <p>between 1 February 2015 (the date when [REDACTED] requested an explanatory letter from NICO on its change of address, C-0040) and 19 August 2016 (the date of NICO's certificate of incorporation in Nevis, C-0045).</p>
<b>(a) Reasons for the request</b>	<p>Bahrain repeats its reasons for Request 4 above, <i>mutatis mutandis</i>.</p> <p>As noted in Request 5, there are unexplained gaps in NICO's purported moves from The Gambia to Nevis and then to Labuan (Preliminary Objections, paras 56, 65). NICO's Counter-Memorial does not satisfactorily address these gaps. For example, NICO asserts (without evidence) that it had to await "<i>clarifications from NICO's advisors (namely [REDACTED]) on this issue, and secur[e] necessary instructions from NICO's management bodies</i>" in order to move to Nevis (Counter-Memorial, para 62). This is an inadequate explanation for a 16-month delay.</p> <p>In addition, Bahrain notes that while NICO has referred to correspondence from [REDACTED] raising concerns regarding NICO's Gambian registration (Counter-Memorial, para 111; [REDACTED] para 30), there is a noticeable lack of correspondence within NICO and with its advisors as to what to do with this information from [REDACTED], which we would expect to exist.</p>
<b>(b) Response to the request</b>	<p><b><u>Objection</u></b></p> <p><u>Relevance and materiality</u>: the Requested Documents cannot be relevant, let alone material, to the bifurcated issues in these proceedings, and indeed Bahrain does not even attempt to set out, let alone particularize and substantiate, why and how the Requested Documents would be material to the resolution of any issues bifurcated by the Tribunal, nor in any event which one(s).</p> <p>The stated justification for the Requested Documents is that they would be "<i>relevant to the issues of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO's standing and rights under the Treaty from December 2014 – March 2018.</i>"</p> <p>As this justification is the same as the one advanced under Bahrain's Request No. 5, Claimant reiterates <i>mutatis mutandis</i> its Objections thereunder.</p> <p>What is more, whereas Bahrain alleges that "<i>there is a noticeable lack of correspondence within NICO and with its advisors as to what to do with this information from [REDACTED] – which Claimant disputes – Respondent fails to advance, let alone particularize and substantiate, how the</i></p>



	<p>Requested Documents could be relevant, let alone material, to the resolution of any of the bifurcated issues, and if so which one of such issues. What is more, it is even less material to the outcome of the case as Bahrain does not carry the burden to fill the alleged “lacking” in NICO’s documentary evidence.</p> <p>And indeed, the Requested Documents could not as Claimant has already voluntarily produced contemporaneous records of ██████ inquires to NICO first in February 2015 (see <b>Exhibit C-52</b>) and then in October 2016 (see <b>Exhibit C-292</b>), as well as of the inquiries and legal opinions thereafter obtained by NICO from Gambian and Nevis legal counsels (see <b>Exhibits C-47</b>, Legal Opinion from ██████ dated December 09, 2016, and <b>Exhibit C-293</b>, Legal Opinion from ██████ to ██████ (NICO’s Counsels) dated December 12, 2016), which alone suffice to show that the process leading up to the March 2018 Decision had nothing to do with any treaty protection concerns.</p> <p>What is more, NICO has already described and substantiated at Paras. 60 <i>et seq</i> of its CMPO its interactions with its advisor at the time, namely ██████, together with supporting evidence (see <b>Exhibits C-41, C-42, and C-43</b>). The Requested documents can thus not be relevant, let alone material, to the resolution of the bifurcated issues, nor does Bahrain argue, let alone particularize and substantiate, otherwise. The Request is therefore in reality nothing but a thinly veiled attempt at fishing for documents, which has no place in international arbitration.</p> <p><u>Existence and access to the Requested Documents:</u> Claimant has in any event already produced all relevant and material documents in its possession pertaining to NICO’s decision to re-domicile from Gambia to Nevis and then to Labuan by way of the March 2018 Decision, and no further responsive documents (other than those already offered for production) could be located to date.</p> <p>This is in part because the Requested Documents pertain to documents that were prepared between 2015 and 2016, namely close to 10 years ago, and thus – if they existed – would have been in the possession of employees who have since left the employ of NICO, and accordingly no longer are in the custody or control of NICO despite its best, and still ongoing, efforts to locate the same.</p> <p><u>Confidentiality and legal privilege:</u> further and in any event, as already set out in Claimant’s Introductory Remarks, NICO would not be able to produce any documents exchanged between “NICO and its advisers (including ██████)” as the same would necessarily be covered by confidentiality and/or legal privilege.</p> <p>For all of the above reasons, Claimant partially objects to Bahrain’s Production Request No. 6.</p>
(c) Reply to the responses	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this Request.<sup>27</sup></p> <p>Each of NICO’s objections is ill-founded and addressed below.</p>

<sup>27</sup>

Although the end of NICO’s Responses says that it “*partially objects*” to this request, its Responses suggest that it objects in full. As NICO has produced no responsive documents and it is unclear what searches, if any, NICO conducted, Bahrain maintains this request in full.

	<p><u>Relevance and materiality:</u></p> <p>Despite NICO’s claims to the contrary, there is a lack of documents on record relating to NICO’s reaction to discovering that its Gambian registration was invalid in February 2015 and its move to Nevis in August 2016 (see Request No. 4 above). Indeed, all of the “<i>voluntarily produced contemporaneous records</i>” referred to by NICO, i.e., Exhibits <b>C-52, C-292, C-47, C-293</b>, fall outside the time period specified for this request and so are irrelevant and unresponsive. Bahrain specifically excluded the other documents NICO refers to, Exhibits <b>C-41, C-42, C-43</b>, from this request, and, in any event, these only concern NICO’s response to discovering the invalidity of its Gambian registration until April 2015 (excluding the remaining 14 months that this request targets), and only in relation to correspondence with one external adviser. Moreover, in its objection to Request No. 5, NICO itself asserts that “<i>NICO would first have verified the allegations of its business partner [REDACTED] and then sought to resolve the issue</i>”. Yet, NICO has not provided documents relating to such verification.</p> <p>The requested documents are necessary to understand NICO’s reaction to discovering that its Gambian registration may be invalid and its choice (as explained in the Reply to the responses to Request No. 5 above) to remain in The Gambia and then re-domicile to Nevis, as opposed to seeking reinstatement / continuation in Labuan. These issues are in turn relevant and material to whether NICO can benefit from the Bahrain-Malaysia BIT during the Absence Period.</p> <p>Lastly, NICO’s assertion that “<i>Bahrain does not carry the burden to fill the alleged ‘lacking’ in NICO’s documentary evidence</i>” is nonsensical – NICO’s nationality during the Absence Period is a bifurcated issue and Bahrain is entitled to request documents relevant to this issue (PO4, para 77(a)(ii)). Further, while NICO bears the burden to prove that the Tribunal has jurisdiction, this does not preclude Bahrain from requesting documents that are relevant and material.<sup>28</sup></p> <p><u>Existence and access to the Requested Documents:</u></p> <p>NICO’s assertion that it has “<i>already searched and produced all relevant and material documents ... and no further responsive documents ... could be located to date</i>” is, as set out in paragraphs 24 and 26 above, unavailing. The documents exhibited by NICO with its prior submissions pre-date Bahrain’s Requests, meaning that NICO would not have specifically searched for documents responsive to this request at the time of its submissions. Further, NICO cannot unilaterally decide what documents are relevant and material to the bifurcated issues and NICO’s response indicates the existence of other responsive documents that in NICO’s subjective opinion are irrelevant and immaterial. For example, in response to Request No. 9, NICO produced minutes of the meeting of its shareholders held on 10 April 2016. These minutes in turn refer to “<i>letter No. CEO/94-25394 dated Feb.17, 2016 of the NICO company, concerning request for power delegation to board of directors for moving registration</i></p>
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	<p><i>location of the company</i>”.<sup>29</sup> This letter would be responsive to this request, however, has not been produced.</p> <p>Lastly, as set out in paragraph 30 above, NICO’s assertion that the requested documents are no longer in NICO’s control as they date back several years is undermined by NICO’s production of several documents from the same time period.</p> <p><u>Confidentiality and legal privilege:</u></p> <p>NICO makes a blanket assertion that any correspondence between itself and its advisers would be confidential or privileged. This is unconvincing for the reasons set out in paragraphs 26 to 28 above, and in particular because NICO has already selectively produced correspondence between itself and its advisers and fails to explain why this does not waive privilege (if any) over other correspondence with its advisers (see for e.g., the documents cited by NICO in its response to this request, Exhibits <b>C-41, C-42, C-43, C-47, C-293</b>).</p>
<b>(d) Tribunal’s decision</b>	<p>The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.</p>

<sup>29</sup>

Exhibit R-0018, NICO’s shareholder meeting minutes dated 10 April 2016.



<b>Request No.</b>	7.
<b>Description of requested document or category of documents</b>	Documents exchanged between NICO and the “commercial counterpart” referred to in NICO’s Malaysian counsel’s application to the Labuan Financial Services Authority dated 11 January 2017 (C-0048, para 12) between 1 January 2016 and 30 April 2016 relating to the validity of NICO’s Gambian registration.
<b>(a) Reasons for the request</b>	<p>Bahrain repeats its reasons for Request 4 above, <i>mutatis mutandis</i>.</p> <p>NICO’s Malaysian counsel’s application to the Labuan Financial Services Authority dated 11 January 2017 (C-0048) states that: “<i>In April 2016, following communications with a commercial counterpart in the early part of 2016, it was brought to NICO’s attention that it was likely that the purported re-domiciliation into the Gambia was likely to be void</i>” (para 12) (emphasis added). As such, NICO subsequently re-domiciled from The Gambia to Nevis (C-0048, para 13).</p> <p>NICO has provided correspondence with [REDACTED] on the problems with NICO’s Gambian registration (C-0040, email dated 6 February 2015 and C-0292, emails exchanged between 25 August and 4 October 2016). However, given their dates, they are not the communications referred to in C-0048.</p>
<b>(b) Response to the request</b>	<p><b><u>Objection</u></b></p> <p>Claimant repeats <i>mutatis mutandis</i> its objections to Bahrain’s Requests Nos. 4 to 6 above.</p> <p>What is more, as regards Bahrain’s purported justification for the Request, namely that “NICO’s Malaysian counsel’s application to the Labuan Financial Services Authority dated 11 January 2017 (C-0048) states that: “<i>In April 2016, following communications with a commercial counterpart in the early part of 2016,</i>” it is defeated by the multiple contemporaneous and responsive documents/reports already produced with NICO’s Memorial and CMPO, namely <b>Exhibits C-52, C-292, C-41, C-42, and C-43</b>, which show that the process leading up to the March 2018 Decision had been prompted by concerns raised by [REDACTED], namely one of NICO’s main business partners.</p> <p>Indeed, whereas NICO’s Malaysian counsel mistakenly referred in their application to the LFSA dated 11 January 2017 (C-48) to correspondence received in April 2016, as opposed to October 2016, from its major commercial partner [REDACTED], there can be no doubt that this correspondence from [REDACTED] was in fact received by NICO in October 2016, as recorded at Paragraph 66 of the CMPO. The reference in Exhibit C-48 to “a commercial counterpart in the early part of 2016” could thus only refer to <b>Exhibit C-292</b> dated October 4, 2016 which is already on record.</p> <p><b><u>Existence and access to the Requested Documents:</u></b> Claimant has in any event already produced all relevant and material documents in its possession pertaining to NICO’s decision to re-domicile from Gambia to Nevis and then to Labuan by way of the March 2018 Decision, and no further responsive documents (other than those already offered for production) could be located to date.</p>

	<p>This is in part because the Requested Documents pertain to documents that were prepared in 2016, namely close to 9 years ago, and thus – if they existed – would have been in the possession of employees who have since left the employ of NICO, and accordingly no longer are in the custody or control of NICO despite its best, and still ongoing, efforts to locate the same.</p> <p>For all of the above reasons, Claimant objects to Bahrain’s Production Request No. 7.</p>
<b>(c) Reply to the responses</b>	<p><b>No decision required:</b></p> <p>NICO’s explanation that “<i>NICO’s Malaysian counsel mistakenly referred in their application to the LFSA dated 11 January 2017 (C-48) to correspondence received in April 2016, as opposed to October 2016, from its major commercial partner [REDACTED], there can be no doubt that this correspondence from [REDACTED] was in fact received by NICO in October 2016</i>” cannot be right, because the correspondence pre-dates August 2016. Exhibit C-48 states:</p> <p><i>“12. In April 2016, following communications with a commercial counterpart in the early part of 2016, it was brought to NICO’s attention that it was likely that the purported re-domiciliation into the Gambia was likely to be void.</i></p> <p><i>13. NICO subsequently attempted to be re-domiciled in Nevis on 19 August 2016...”.</i></p> <p>Therefore, the correspondence referred to in para 12 of C-48 occurred before NICO’s move to Nevis in August 2016.</p> <p>However, on the basis that NICO’s position is that C-48 mistakenly refers to correspondence received in April 2016, Bahrain assumes that the reference to “<i>April 2016</i>” and “<i>early part of 2016</i>” is actually to 2015 and thus to the correspondence received from [REDACTED] in Exhibit C-40. On this assumption, Bahrain is not pursuing this request further. Bahrain asks that NICO inform Bahrain if this assumption is incorrect within five days of receiving this Reply.</p>
<b>(d) Tribunal’s decision</b>	<p>No decision necessary, in light of Respondent’s withdrawal of the present request in its communication of 7 February 2025.</p>



<b>Request No.</b>	8.
<b>Description of requested document or category of documents</b>	Documents exchanged between NICO (and/or its representatives or advisers) and “ <i>the relevant Labuan authorities</i> ” regarding a potential reinstatement, return or continuation of NICO in Labuan between 9 December 2014 and 19 August 2016.
<b>(a) Reasons for the request</b>	<p>With its Counter-Memorial, NICO provided correspondence with [REDACTED] on the problems with NICO’s Gambian registration (C-0292, email dated 4 October 2016). This correspondence indicates (p 2) that NICO had discussed reinstating itself in Labuan prior to August 2016, however, understood that this was not practically possible.</p> <p>Bahrain’s position is that NICO was due to be struck off from the Labuan Companies Register and could not have existed in Malaysia during the Absence Period. Bahrain submits that the 2018 Malaysian Court Decision cannot retroactively reinstate NICO to give it additional or greater standing than what it would have had if it did not leave Malaysia (Preliminary Objections, paras 150-151, 161).</p> <p>The requested documents are relevant to ascertain the Labuan authorities’ position on whether NICO could have existed as a Labuan company during a part of the Absence Period. This is, in turn, relevant to the issues of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO’s standing and rights under the Treaty from December 2014 – March 2018. Both of these are issues the Tribunal is expressly seeking to address in these proceedings (Procedural Order No. 4, para 77(a)).</p>
<b>(b) Response to the request</b>	<p><b><u>Objection</u></b></p> <p>Claimant repeats <i>mutatis mutandis</i> its objections to Bahrain’s Requests Nos. 4 to 7 above.</p> <p>What is more, as regards Bahrain’s purported justification for the Request, namely that the Requested Documents “<i>are relevant to ascertain the Labuan authorities’ position on whether NICO could have existed as a Labuan company during a part of the Absence Period [which] in turn [would be] relevant to the issues of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO’s standing and rights under the Treaty from December 2014 – March 2018,</i>” none of the Requested Documents could ever serve to substantiate “<i>the Labuan authorities’ position on whether NICO could have existed as a Labuan company during a part of the Absence Period,</i>” as the same could only have been recorded in internal documents of the Labuan Authorities.</p> <p>Further, the Requested Documents would in any event be irrelevant and immaterial to the determination of whether NICO, by virtue of the March 2018 Decision of Malaysian court, is to be deemed as a matter of Malaysian law, and/or international public law, as having remained a Malaysian company ever since its January 2012 re-domiciliation from Jersey to Malaysia.</p>



	<p><u>Existence and access to the Requested Documents:</u> Claimant has in any event already produced all relevant and material documents in its possession pertaining to the process leading up to the March 2018 Decision, and no further responsive documents (other than those already offered for production) could be located to date.</p> <p>This is in part because the Requested Documents pertain to documents that were prepared between 2014 and 2016, namely close to 9 years ago, and thus – if they existed – would have been in the possession of employees who have since left the employ of NICO, and accordingly no longer are in the custody or control of NICO despite its best, and still ongoing, efforts to locate the same.</p> <p>For all of the above reasons, Claimant objects to Bahrain’s Production Request No. 8.</p>
<b>(c) Reply to the responses</b>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this Request.</p> <p>Each of NICO’s objections is ill-founded and addressed below.</p> <p>Bahrain repeats its replies to Request Nos. 4 to 6 above <i>mutatis mutandis</i>.</p> <p><u>Relevance and materiality:</u></p> <p>Despite NICO’s efforts to argue to the contrary, the requested documents would clearly demonstrate the Labuan authorities’ position on whether NICO could have existed in Labuan during the Absence Period. NICO’s argument that the Labuan authorities’ position would only be recorded in internal documents of the Labuan Authorities is contradicted by the letters that NICO has previously produced from the LFSA indicating the LFSA’s position on NICO’s requests (see for e.g., <b>DSMHYDPN-1, C-49, C-50</b>).</p> <p>NICO’s argument that correspondence from the Labuan authorities regarding NICO’s potential reinstatement during the period in dispute is “<i>irrelevant and immaterial to the determination of whether NICO, by virtue of the March 2018 Decision of Malaysian court, is to be deemed as a matter of Malaysian law, and/or international public law</i>” should be rejected. NICO itself relies on correspondence from the LFSA in support of its position on the issues the Tribunal bifurcated at Procedural Order No. 4, para 77(a) (see Counter-Memorial paras 69, 111, 123, Merits Memorial, para 207).</p> <p>These documents are relevant and material as set out in the reasons for this request (see also the Reply to the responses to Request No. 5 above).</p> <p><u>Existence and access to the Requested Documents:</u></p> <p>NICO’s assertion that it has “<i>already searched and produced all relevant and material documents ... and no further responsive documents ... could be located to date</i>” is, as set out in paragraphs 24 and 26 above, unavailing. The documents exhibited by NICO with its prior submissions pre-date Bahrain’s Requests, meaning that NICO would not have specifically searched for documents responsive to this request at the time of its submissions. Further, NICO cannot unilaterally decide what documents are relevant and material to the bifurcated issues and NICO’s</p>

	<p>response indicates the existence of other responsive documents that in NICO's subjective opinion are irrelevant and immaterial.</p> <p>Lastly, as set out in paragraph 30 above, NICO's assertion that the requested documents are no longer in NICO's control as they date back several years is undermined by NICO's production of several documents from the same time period.</p>
<b>(d) Tribunal's decision</b>	<p>The request is granted to the extent that there are further responsive Documents not within Respondent's possession, custody or control. Claimant is therefore directed to produce all responsive documents that are identified further to good faith searches.</p>

3. NICO'S RE-DOMICILIATION FROM THE GAMBIA TO NEVIS IN AUGUST 2016

<b>Request No.</b>	9.
<b>Description of requested document or category of documents</b>	Minutes of the shareholders' meeting held on 10 April 2016, referred to in NICO's application for the transfer of its domicile to Nevis (C-0044, para 2).
<b>(a) Reasons for the request</b>	Bahrain repeats its reasons for Request 4 above, <i>mutatis mutandis</i> .
<b>(b) Response to the request</b>	Claimant accepts without prejudice to the reservations set out above in relation to Requests Nos. 5 to 8, including as to the relevance and materiality, and more specifically in terms of access, given that the Requested Document dates back to 9 years ago, to use its best efforts to locate and produce the Requested Document as specifically identified.
<b>(c) Reply to the responses</b>	<b>No decision required:</b> As this document has been produced, Bahrain no longer pursues this request.
<b>(d) Tribunal's decision</b>	No decision required.



<b>Request No.</b>	10.
<b>Description of requested document or category of documents</b>	Any Nevis law advice obtained by NICO or its directors between 14 April 2015 (after the last email on the record from [REDACTED] on the iCommerce Registry, C-0043) and 19 August 2016 (the date of NICO's certificate of incorporation in Nevis, C-0045), relating to the validity of NICO's transfer of domicile to Nevis.
<b>(a) Reasons for the request</b>	<p>Bahrain repeats its first and second paragraphs for Request 4 above, <i>mutatis mutandis</i>.</p> <p>On NICO's case, it sought to seek its continuation in Labuan in January 2017 after it received confirmation that its Gambian registration was invalid [REDACTED] paras 35 and 36, Counter-Memorial, para 111.5-111.6).</p> <p>Bahrain's position is that NICO moved to Nevis knowing that its Gambian registration was invalid. As such, invalidity of the Gambian registration cannot be its reason for asserting that its Nevis registration is invalid and seeking to return to Labuan (Preliminary Objections, paras 55, 88-93).</p> <p>The requested documents are relevant to ascertain NICO's reasons for transferring its domicile to Nevis and its understanding of the validity of this transfer at the time it registered in Nevis. In turn, they are relevant to:</p> <ul style="list-style-type: none"> <li>ascertain NICO's intentions behind its purported re-domiciliation from Nevis to Labuan. Proof of the investor's intent to commit an abuse would be a relevant factor, although not necessary to prevail on the abuse of process objection, see Bahrain's Preliminary Objections, paras 75-77). As the Tribunal noted in Procedural Order No. 4, para 74, to determine NICO's contemporaneous motives, there needs to be "<i>very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s)</i>". The documents are therefore relevant to whether there was an abuse of process, which may determine whether NICO's claim is admissible, and are material to the outcome of the dispute.</li> <li>to the issue of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO's standing and rights under the Treaty during this period, issue which the Tribunal is expressly seeking to address in these proceedings (Procedural Order No. 4, para 77(a)). The documents are therefore necessary to ascertain whether the Tribunal has jurisdiction during the Absence Period and are material to the outcome of the dispute.</li> </ul> <p>Given that NICO, according to Mr [REDACTED] "<i>immediately sought</i>" to re-domicile to Nevis after receiving the 13 April 2015 email from [REDACTED] [REDACTED] it would likely have obtained Nevis law advice in relation to the validity (or invalidity) of any potential re-domiciliation to Nevis.</p> <p>With its Counter-Memorial, NICO exhibits a Nevis legal opinion from [REDACTED] dated 12 December 2016 (C-0293), as well as "<i>preliminary</i>" Nevis law advice dated February 2017 (C-0294). These were both procured after NICO had already registered in Nevis (in August</p>

	<p>2016). NICO has not exhibited any Nevis law advice it obtained before purporting to register in Nevis.</p>
<p><b>(b) Response to the request</b></p>	<p><b><u>Objection</u></b></p> <p>Claimant’s Objections to Requests Nos. 4 to 8 apply <i>mutatis mutandis</i> to Request No. 10 in all aspects as supplemented below.</p> <p>As regards Bahrain’s purported justification for the Request, namely that “<i>NICO moved to Nevis knowing that its Gambian registration was invalid</i> [and that purportedly the] <i>invalidity of the Gambian registration cannot be its reason for asserting that its Nevis registration is invalid and seeking to return to Labuan,</i>” this could not suffice to substantiate the relevance and materiality of the Requested Documents for purposes of determining the bifurcated issues in these proceedings.</p> <p>This is all the more so that Claimant has already voluntarily produced contemporaneous evidence showing that the process leading up to NICO’s decision to re-domicile to Nevis had been triggered by [REDACTED] inquires to NICO in February 2015 (see <b>Exhibit C-52</b>).</p> <p>Further, and in any event, even assuming that “<i>NICO moved to Nevis knowing that its Gambian registration was invalid,</i>” this could not possibly be relevant, let alone material, to the bifurcated issues in these proceedings, and Respondent has certainly failed to suggest, let alone particularize and substantiate otherwise. And indeed, the Requested Documents could not possibly be relevant and material to the assessment of whether the process leading up to the March 2018 Decision had been prompted by any treaty protection concerns, which in any event is contradicted by the extensive contemporaneous evidence already put on record by Claimants (namely <b>Exhibits C-52, C-292, C-293, C-294, C-41, C-42, and C-43</b>).</p> <p>What is more, the Requested Documents are even less material to the outcome of the case as Bahrain does not carry the burden to prove NICO’s intentions before its transfer to Nevis because, as explained above, all relevant contemporaneous evidence has already been produced.</p> <p><u>Existence and access to the Requested Documents:</u> Claimant has in any event already produced all relevant and material documents in its possession pertaining to NICO’s decision to re-domicile from Gambia to Nevis and then to Labuan by way of the March 2018 Decision, and no further responsive documents (other than those already offered for production) could be located to date, especially as more than 8 years have lapsed since then.</p> <p>What is more, Respondent has failed to set forth any reasons why the Requested Documents could reasonably be believed to exist, and indeed there are none, and Claimants’ searches to date have not yielded any potentially responsive documents.</p> <p>For all of the above reasons, Claimant objects to Bahrain’s Production Request No. 10.</p>
<p><b>(c) Reply to the responses</b></p>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this Request.</p>

	<p>Each of NICO's objections is ill-founded and addressed below.</p> <p>Bahrain repeats its Reply to the responses to Request No. 4 above <i>mutatis mutandis</i>.</p> <p><u>Relevance and materiality:</u></p> <p>The relevance and materiality of the requested documents is explained above and is not repeated here. NICO's objections do not address the fundamental point arising from this request – NICO's position is that it moved to Nevis because of the invalidity of its Gambian registration, yet it relies on this very invalidity to invalidate its Nevis registration and assert that it always remained in Labuan (see also Reply to the response to Request 5 above). In these circumstances, Nevis law advice on the validity of NICO's transfer of domicile to Nevis, obtained at the time of such transfer, is key to understanding all the information available to NICO at the time of its various restructurings (as the Tribunal has acknowledged is necessary to determine the abuse objection) as well as to whether NICO was (or could have been) a Nevis company and consequently if it can benefit from the Bahrain-Malaysia BIT during the Absence Period.</p> <p>Further, for the reasons set out in paragraphs 22 to 24 above, NICO's assertion that "<i>Bahrain does not carry the burden to prove NICO's intentions before its transfer to Nevis because ... all relevant contemporaneous evidence has already been produced</i>" is unavailing. The fact that NICO has exhibited some documents with its prior submissions to support its own case does not negate Bahrain's right to seek disclosure of all relevant and material documents. If anything, NICO's claimed overlap between the documents it has exhibited and the documents that Bahrain now requests demonstrates that the requested category of documents are relevant and material, and that it would not be unduly burdensome for NICO to produce any remaining documents that fall within the category requested.</p> <p>Moreover, the documents NICO refers to (Exhibits <b>C-52, C-292, C-293, C-294, C-41, C-42, and C-43</b>) all fall outside the time period of this request and are irrelevant and/or unresponsive.</p> <p>Lastly, while NICO bears the burden to prove that the Tribunal has jurisdiction, this does not preclude Bahrain from requesting documents that are relevant and material.<sup>30</sup></p> <p><u>Existence and access to the Requested Documents:</u></p> <p>NICO's assertion that it has "<i>already searched and produced all relevant and material documents ... and no further responsive documents ... could be located to date</i>" is, as set out in paragraphs 24 and 26 above, unavailing. The documents exhibited by NICO with its prior submissions pre-date Bahrain's Requests, meaning that NICO would not have specifically searched for documents responsive to this request at the time of its submissions. Further, NICO cannot unilaterally decide what documents are relevant and material to the bifurcated issues and NICO's</p>
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See **Authority RL-44**, Born, International Commercial Arbitration (3rd ed., 2020), p. 2539 (extract reproduced in footnote 25 above).



	<p>response indicates the existence of other responsive documents that in NICO's subjective opinion are irrelevant and immaterial.</p> <p>As set out in paragraph 30 above, NICO's assertion that the requested documents are no longer in NICO's control as they date back several years is undermined by NICO's production of several documents from the same time period.</p> <p>As to NICO's point that Bahrain has not set out reasons why these documents could reasonably be expected to exist, it is reasonable to assume that NICO would have obtained legal advice before changing its domicile, particularly in circumstances where it had learnt that its prior domicile change was invalid.</p>
<b>(d) Tribunal's decision</b>	<p>The request is granted the extent that there are further responsive Documents not within Respondent's possession, custody or control. Claimant is therefore directed to produce all responsive documents that are identified further to good faith searches. The Arbitral Tribunal notes that any responsive Documents that were prepared by and/or exchanged with legal counsel for the purposes of obtaining legal advice are not expected to be produced.</p>

4. **THE VALIDITY OF NICO’S GAMBIAN AND NEVIS REGISTRATIONS AFTER ITS RE-DOMICILIATION TO NEVIS**

<b>Request No.</b>	11.
<b>Description of requested document or category of documents</b>	Legal opinions obtained by NICO’s creditor from independent legal counsel in Nevis and Gambia around October 2016, referred to in NICO’s Malaysian counsel’s application to the Labuan Financial Services Authority (LFSA) dated 11 January 2017 (C-0048, para 14) and [REDACTED] email to NICO dated 4 October 2016 (C-0292).
<b>(a) Reasons for the request</b>	<p>On NICO’s case, it started attempts to return to Labuan from Malaysian in January 2017 (C-0048) after receiving a legal opinion that it had never been validly re-domiciled in Gambia [REDACTED] paras 35-36). This legal opinion appears to have been obtained after NICO received an email from [REDACTED] dated 4 October 2016, C-0292, which stated that [REDACTED] “have obtained legal advice from independent legal counsel in Nevis and Gambia, who have both indicated the existence of legal issues in the re-domiciliation process undertaken in each of their respective jurisdictions” (Counter-Memorial, paras 111.5-111.6).</p> <p>In this regard, NICO’s Malaysian counsel’s application to the LFSA dated 11 January 2017 (C-0048, para 14) states: “<i>following a legal opinion received by a creditor of NICO in October 2016, it was brought to NICO’s attention that where NICO’s existence is questionable, the subsequent attempt to re-domicile from the Republic of The Gambia into Nevis would also be questionable</i>” (emphasis added). No reason is given for this conclusion and NICO has not provided the legal opinions.</p> <p>Bahrain’s position is that NICO moved to Nevis knowing that its Gambian registration was invalid. As such, invalidity of the Gambian registration cannot be its reason for asserting that its Nevis registration is invalid and seeking to return to Labuan. Moreover, Bahrain considers that NICO could have taken steps to remain in Nevis, however, it chose not to (Preliminary Objections, paras 55, 88-93).</p> <p>The requested documents are necessary to ascertain NICO’s intentions behind its purported re-domiciliation from Nevis to Labuan. Proof of the investor’s intent to commit an abuse is a relevant factor (although not necessary, see Bahrain’s Preliminary Objections, paras 75-77). As the Tribunal noted in Procedural Order No. 4, para 74, to determine NICO’s contemporaneous motives, there needs to be “<i>very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s)</i>”. The documents are therefore relevant to whether there was an abuse of process, which may determine whether NICO’s claim is admissible, and are material to the outcome of the dispute.</p>
<b>(b) Response to the request</b>	<p><b><u>Objection</u></b></p> <p><b><u>Relevance and materiality:</u></b> the Requested Documents cannot be relevant, let alone material, to the bifurcated issues in these proceedings, and Claimant thus reiterates <i>mutatis mutandis</i> its Objections to Requests Nos. 4 to 10 above.</p> <p>This is all the more so that the relevance of the legal opinions obtained by [REDACTED] is superseded by the independent Gambia and Nevis legal opinions</p>

	<p>obtained by NICO and which have already been put on the record (see CMPO Para. 67, and see exhibits <b>C-293</b>, <b>C-294</b>).</p> <p><u>Existence and access to the Requested Documents</u>: in any event, the legal opinions obtained by [REDACTED] and referenced in <b>C-292</b> and <b>C-48</b> were never transmitted to NICO, and thus are not in Claimant's possession, custody or control.</p> <p>For all of the above reasons, Claimant objects to Bahrain's Production Request No. 11.</p>
<b>(c) Reply to the responses</b>	<p><b>No decision required:</b></p> <p>Bahrain maintains that the documents are relevant and material to the bifurcated issues for the reasons explained above. However, Bahrain notes that NICO has confirmed that the requested documents are not in its possession, custody or control. For this reason, Bahrain does not pursue this request.</p>
<b>(d) Tribunal's decision</b>	No decision required.



<b>Request No.</b>	12.
<b>Description of requested document or category of documents</b>	<p>Instructions from NICO to [REDACTED] (Malaysian counsel) relating to:</p> <p>(a) a potential re-domiciliation or reinstatement of NICO to Labuan; and/or</p> <p>(b) the engagement of Gambian counsel for a legal opinion on the validity of NICO's Gambian registration,</p> <p>sent on or before 9 December 2016 (the date of the legal opinion from [REDACTED], C-0047).</p>
<b>(a) Reasons for the request</b>	<p>Bahrain repeats the first and second paragraphs of its reasons for Request 4 above, <i>mutatis mutandis</i>.</p> <p>On NICO's case, it obtained a legal opinion from [REDACTED] (Gambian counsel) on 9 December 2016 that confirmed that its Gambian registration was invalid, and on this basis, it instructed its Malaysian counsel [REDACTED] to apply to the LFSA in January 2017 to confirm that NICO remained domiciled in Labuan ([REDACTED] paras 35-36; Counter-Memorial, para 111.6).</p> <p>Bahrain's position is that NICO moved to Nevis in August 2016 knowing that its Gambian registration was invalid (which it learned in February 2015). As such, invalidity of the Gambian registration cannot be its reason for asserting that its Nevis registration is invalid and seeking to return to Labuan in 2017. Moreover, Bahrain considers that NICO could have taken steps to remain in Nevis; however, it chose not to (Preliminary Objections, paras 55, 88-93).</p> <p>The documents are relevant to ascertain NICO's understanding of the validity of its Nevis re-domiciliation and its intentions behind its purported re-domiciliation to Labuan. Proof of the investor's intent to commit an abuse is a relevant factor (although not necessary, see Bahrain's Preliminary Objections, paras 75-77). As the Tribunal noted in Procedural Order No. 4, para 74, to determine NICO's contemporaneous motives, there needs to be "<i>very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s)</i>". The documents are therefore relevant to whether there was an abuse of process, which may determine whether NICO's claim is admissible, and are material to the outcome of the dispute.</p>
<b>(b) Response to the request</b>	<p><b><u>Objection</u></b></p> <p><u>Relevance and materiality:</u> the Requested Documents cannot be relevant, let alone material, to the bifurcated issues in these proceedings, and Respondent has certainly failed to suggest, let alone particularize and substantiate otherwise.</p> <p>Claimant's Objections to Requests No. 4 to 11 thus apply <i>mutatis mutandis</i> to Request No. 12.</p> <p>This is all the more so that the Requested Documents, namely any instructions from NICO to [REDACTED] (Malaysian counsel) relating to a potential re-domiciliation or reinstatement of NICO</p>



	<p>to Labuan; and/or the engagement of Gambian counsel for a legal opinion on the validity of NICO's Gambian registration, sent on or before 9 December 2016, could not possibly serve to show Claimant's intention in seeking the March 2018 Decision (which are in any event already extensively recorded via the contemporaneous evidence put on record by Claimant – see for e.g. <b>Exhibits C-47, C-292, C-293 and C-294</b>), and such instructions would and are in any event recorded in the legal opinion produced upon such instructions (see <b>Exhibits C-47</b>, Legal Opinion from [REDACTED] dated December 09, 2016, and <b>Exhibit C-293</b>, Legal Opinion from [REDACTED] to [REDACTED] (NICO's Counsels) dated December 12, 2016).</p> <p>For all of the above reasons, Claimant partially objects to Bahrain's Production Request No. 12.</p>
<b>(c) Reply to the responses</b>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this request.<sup>31</sup></p> <p>Each of NICO's objections is ill-founded and addressed below.</p> <p><u>Relevance and materiality:</u></p> <p>For the reasons set out in paragraphs 22 to 24 above, the fact that NICO has exhibited some documents with its prior submissions to support its own case does not negate Bahrain's right to seek disclosure of all relevant and material documents. If anything, NICO's claimed overlap between the documents it has exhibited and the documents that Bahrain now requests demonstrates that the requested category of documents are relevant and material, and that it would not be unduly burdensome for NICO to produce any remaining documents that fall within the category requested.</p> <p>In particular, NICO asserts, without explanation, that the requested documents are not relevant and material as its instructions to its Malaysian counsel relating to (i) a potential re-domiciliation or reinstatement to Labuan and (ii) the engagement of Gambian counsel for a legal opinion on the validity of NICO's Gambian registration "<i>could not possibly serve to show Claimant's intention in seeking the March 2018 Decision</i>".</p> <p>However, these instructions should indicate precisely NICO's concerns and motives at the time leading up to its re-domiciliation to Labuan. For instance, NICO's instructions to its Malaysian counsel could include any concern NICO had regarding its dispute with Bahrain or potential treaty protection. This would explain why NICO chose to seek re-domiciliation or reinstatement in Labuan, as opposed to taking steps to remain in Nevis (a decision that as yet remains unexplained in any document on record).</p> <p>Furthermore, NICO claims that its instructions to Malaysian counsel "<i>are in any event recorded in the legal opinion produced upon such instructions</i>", referring to <b>Exhibits C-47 and C-293</b> (the Gambian and Nevis legal opinions). This is incorrect. Those exhibits refer only to the fact that NICO's Malaysian counsel provided some instructions to its</p>

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Although the end of NICO's Responses says that it "*partially objects*" to this request, its Responses suggest that it objects in full. As NICO has produced no responsive documents and it is unclear what searches, if any, NICO conducted, Bahrain maintains this request in full.

	<p>Gambian and Nevis counsel, and provide no information on NICO's motives and concerns that led to the requests for legal opinions:</p> <ul style="list-style-type: none"> <li>• <b>Exhibit C-47</b> states that: "<i>We have been instructed by [REDACTED], of [REDACTED] on behalf of an entity known as Naftiran Intertrade Co (NICO) Ltd ('NICO') to provide a Gambian law opinion as to the position of Gambian law in connection to several matters. In particular, validity of the Certificate of Incorporation issued to Naftiran Intertrade Co (Nico) Ltd by the iCommerce Registry; the authority of iCommerce Registry to incorporate companies under Gambian law; and the person authorized to incorporate companies in The Gambia.</i>"</li> <li>• <b>Exhibit C-293</b> states that: "<i>We refer to instructions given by [REDACTED], Senior Associate of [REDACTED], Advocates &amp; Solicitors, contained in email dated 4th November 2016 requiring a general opinion regarding the migration of a foreign corporation into the Island of Nevis.</i>"</li> </ul> <p>There is nothing on record reflecting NICO's own instructions to [REDACTED] as described in the request, which are required to determine NICO's "<i>contemporaneous motives</i>" (recognised as important by the Tribunal in PO4, para 74, as noted in the reasons for this request above). It is indisputable that documents containing these instructions exist.</p>
<b>(d) Tribunal's decision</b>	<p>The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.</p>



<b>Request No.</b>	13.
<b>Description of requested document or category of documents</b>	Instructions from [REDACTED] (Malaysian counsel) to [REDACTED] (Gambian counsel) for a legal opinion on the validity of NICO's Gambian registration (as referred to in the legal opinion from [REDACTED] dated 9 December 2016, C-0047).
<b>(a) Reasons for the request</b>	Bahrain repeats its reasons for Request 12 above, <i>mutatis mutandis</i> .
<b>(b) Response to the request</b>	<b><u>Objection</u></b> Claimant reiterates <i>mutatis mutandis</i> its objection under Request No. 12 above.
<b>(c) Reply to the responses</b>	<b>Tribunal decision required:</b> Bahrain maintains this request and repeats its reply to request 12 above, <i>mutatis mutandis</i> . Furthermore, <b>Exhibit C-47</b> does not include the full instructions from [REDACTED] to Gambian counsel and provides no information on NICO's motives and concerns that led to the request for the Gambian legal opinion. It is indisputable that documents containing these instructions exist.
<b>(d) Tribunal's decision</b>	The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.

<b>Request No.</b>	14.
<b>Description of requested document or category of documents</b>	The final legal opinion following the “ <i>preliminary views</i> ” expressed by ██████████ in C-0294 (Nevis counsel’s email dated 22 February 2017), and any documents exchanged between ██████████ and NICO or NICO’s advisers relating to the “ <i>follow on queries</i> ” referred to in C-0294, including documents on the call or meeting held on 23 February 2017.
<b>(a) Reasons for the request</b>	<p>Bahrain repeats its reasons in paragraph 1 of Request 4 above, <i>mutatis mutandis</i>.</p> <p>On NICO’s case, it transferred its domicile to Labuan after receiving legal opinions from Gambian and Nevis counsel (Counter-Memorial, para 111.6).</p> <p>In the Counter-Memorial, NICO exhibited correspondence between ██████████ and NICO’s Nevis counsel, ██████████ (C-0294). The correspondence states ██████████ “<i>preliminary views</i>” on the validity of Nevis’s re-domiciliation (email from ██████████ dated 22 February 2017), on the understanding that ██████████ will be producing a legal opinion and responses to follow-on queries (email from ██████████ dated 17 February 2017). That legal opinion and any follow-on queries have not been provided. The correspondence also notes that there was a call or meeting on the morning of 23 February 2017. No information on the content of this call or meeting has been produced.</p> <p>The requested documents are necessary to ascertain NICO’s full understanding of the position under Nevis law at the time and why NICO considered its Nevis registration to be invalid, and whether those reasons are valid. The documents are, thus, relevant to ascertaining NICO’s intentions behind its purported re-domiciliation to Labuan. Proof of the investor’s intent to commit an abuse is a relevant factor (although not necessary, see Bahrain’s Preliminary Objections, paras 75-77). As the Tribunal noted in Procedural Order No. 4, para 74, to determine NICO’s contemporaneous motives, there needs to be “<i>very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s)</i>”. The documents are therefore relevant to whether there was an abuse of process, which may determine whether NICO’s claim is admissible, and are material to the outcome of the dispute.</p>
<b>(b) Response to the request</b>	<p><b><u>Partial Objection</u></b></p> <p>Claimant accepts without prejudice to the reservations set out in previous Objections regarding the relevance and materiality of the Requested Documents and in Claimant’s Introductory Remarks, and more specifically in terms of access given that the Requested Documents date back to eight years ago and are also covered by legal privilege, and without any admission as to the relevance and materiality of the Requested Documents, to use its best efforts to try to locate and produce the “<i>final legal opinion</i>” requested by Bahrain with or without redactions depending on any of its privileged and confidential content. Yet, upon investigations, Claimant hereby confirms that no “<i>final legal opinion</i>” was ever produced and received.</p> <p>Otherwise Claimant objects to the Request as the Requested Documents cannot be relevant and material to the resolution of the bifurcated issues</p>

	<p>in these proceedings, nor even the stated purpose for Requested Documents, namely that the “<i>requested documents are necessary to ascertain NICO’s full understanding of the position under Nevis law at the time and why NICO considered its Nevis registration to be invalid, and whether those reasons are valid.</i>” Indeed, Claimant’s “<i>understanding of the position under Nevis law at the time and why NICO considered its Nevis registration to be invalid, and whether those reasons are valid</i>” is already recorded and fully evidenced via the Nevis legal opinion, dated December 12, 2016, obtained by NICO at the time and already put on record by Claimant under <b>Exhibit C-293</b> and further views obtained by its Counsels under <b>Exhibit C-294</b>.</p> <p>For all of the above reasons, Claimant partially objects to Bahrain’s Production Request No. 14.</p>
<b>(c) Reply to the responses</b>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains its request only in relation to “<i>any documents exchanged between [REDACTED] and NICO or NICO’s advisers relating to the ‘follow on queries’ referred to in C-0294, including documents on the call or meeting held on 23 February 2017</i>”.</p> <p>As NICO has confirmed that “<i>no ‘final legal opinion’ was ever produced and received</i>”, Bahrain no longer seeks this legal opinion.</p> <p><u>Relevance and materiality:</u></p> <p>NICO asserts that the requested documents are not relevant and material because NICO’s understanding of Nevis law is “<i>already recorded and fully evidenced</i>” in <b>Exhibits C-293</b> and <b>C-294</b>.</p> <p>For the reasons set out in paragraphs 22 to 24 above, the fact that NICO has exhibited some documents with its prior submissions to support its own case does not negate Bahrain’s right to seek disclosure of all relevant and material documents. If anything, NICO’s claimed overlap between the documents it has exhibited and the documents that Bahrain now requests demonstrates that the requested category of documents are relevant and material, and that it would not be unduly burdensome for NICO to produce any remaining documents that fall within the category requested.</p> <p>In particular, NICO cannot unilaterally determine that only <b>Exhibits C-293</b> and <b>C-294</b> are relevant Nevis law advice, especially when <b>Exhibit C-294</b> states that it comprises only “<i>preliminary responses ... for review and discussion purposes only</i>” (emphasis added).</p> <p>The “<i>documents exchanged between [REDACTED] and NICO or NICO’s advisers... including documents on the call or meeting held on 23 February 2017</i>” are even more relevant to ascertain NICO’s full understanding of the position under Nevis law and material to the outcome of the bifurcated proceedings in the present circumstances where, as NICO states, [REDACTED] did not produce a final legal opinion.</p>
<b>(d) Tribunal’s decision</b>	<p>The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.</p>



<b>Request No.</b>	15.
<b>Description of requested document or category of documents</b>	<p>Documents relating to NICO's application to the High Court of Justice, St. Christopher and Nevis (<b>Nevis High Court</b>) for its removal from the Registrar of Corporations (Claim No. NEVHCV2018/0104), between 4 October 2016 (<b>C-0292</b>) and 2 November 2018 (<b>C-0304</b>), specifically:</p> <ul style="list-style-type: none"> <li>(a) documents sent or received by NICO's Board of Directors and documents exchanged between NICO and its advisers relating to NICO's decision to apply to the Nevis High Court;</li> <li>(b) documents exchanged between NICO and Nevis authorities (including judicial authorities) regarding the validity of NICO's registration in Nevis and NICO's status as a Nevis company; and</li> <li>(c) documents submitted to the Nevis High Court, including the petition dated 21 September 2018 and the affidavit of Aliakbar Pourebrahimabadi referred to in <b>C-0304</b>, p 1.</li> </ul>
<b>(a) Reasons for the request</b>	<p>On NICO's case, it sought to be reinstated in Labuan as its Nevis registration was invalid (Counter-Memorial, paras 63, 64, 67). Bahrain's position is that NICO could have continued in Nevis and NICO's reinstatement to Labuan was prompted by considerations of treaty protection (Preliminary Objections, paras 89-93).</p> <p>The requested documents are necessary to understand whether NICO's representations to the Nevis authorities and whether it properly sought confirmation from the Nevis authorities that its Nevis registration is invalid and/or took (or could have taken) measures to ensure that it continued as a Nevis company.</p> <p>The documents are thus relevant to ascertain NICO's intentions behind its purported re-domiciliation from Nevis to Labuan, and therefore to proving an abuse of process. Proof of the investor's intent to commit an abuse is a relevant factor (although not necessary, see Bahrain's Preliminary Objections, paras 75-77). As the Tribunal noted in Procedural Order No. 4, para 74, to determine NICO's contemporaneous motives, there needs to be "<i>very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s)</i>". The documents are therefore relevant to whether there was an abuse of process, which may determine whether NICO's claim is admissible, and are material to the outcome of the dispute.</p>
<b>(b) Response to the request</b>	<p>Claimant accepts without prejudice to the reservations set out in previous Objections regarding the relevance and materiality of the Requested Documents and in Claimant's Introductory Remarks, and more specifically in terms of access, given that the Requested Documents date back to eight years ago, and subject to withholding any documents covered by confidentiality or legal privilege, to use its best efforts to try to search for and produce the Requested Documents (insofar as within NICO's possession as opposed to third-parties) as specifically identified with or without redactions depending on any of its privileged and confidential content, and insofar as they exist.</p>

<p><b>(c) Reply to the responses</b></p>	<p><b>Tribunal decision required:</b></p> <p>Bahrain acknowledges that the Claimant will “<i>use its best efforts to try to search for and produce the Requested Documents</i>”.</p> <p>A decision is still required as Bahrain seeks confirmation from the Tribunal that the following documents should be disclosed as part of this request. These specific documents have been identified based on the Claimant’s voluntary disclosure of documents on 13 January 2025 and fall within the scope of Request No. 15 as drafted:</p> <ul style="list-style-type: none"> <li>• in relation to Request No. 15(a), the Claimant disclosed a letter from NICO to [REDACTED] dated 29 March 2018. The letter notes that “<i>As a direct result of [the March 2018 Decision], NICO has engaged a lawyer in Nevis to evaluate NICO’s position and to provide an opinion on how best to proceed with due consideration to the company’s status in Nevis</i>”. To the extent that they fall within the scope of request 15(a), Bahrain seeks the documents exchanged between NICO and its “<i>lawyer in Nevis</i>”, including the legal opinion referred to in the letter, which was issued after 29 March 2018, for the same reasons described in this request above.</li> <li>• in relation to Request No. 15(c), the Claimant disclosed the described petition and affidavit. However, the bundle of exhibits accompanying that affidavit was withheld without explanation. The bundle includes documents that are not currently on record and have not been otherwise disclosed by NICO, including for example, a letter from the Regulator of the Nevis Financial Services Department dated in or around June 2018 responding to a letter from [REDACTED] (see paragraph 31 of the affidavit). Bahrain requests that the full bundle of exhibits is disclosed as it is responsive to Request No. 15(c) for the same reasons described in this Request above.</li> </ul> <p><u>Confidentiality and legal privilege:</u></p> <p>NICO makes a blanket assertion that it can “<i>withhold... any documents covered by confidentiality or legal privilege</i>” and produce documents “<i>with or without redactions depending on any of its privileged and confidential content</i>”. This is unconvincing for the reasons set out in paragraphs 26 to 28 above, and in particular because NICO has already selectively produced documents responsive to Request Nos. 15(a) and (c) and fails to explain why this does not waive privilege (if any) over the other requested documents.</p>
<p><b>(d) Tribunal’s decision</b></p>	<p>The Arbitral Tribunal takes note of the Claimant’s voluntary production, and directs that the Claimant shall also produce the bundle of exhibits that accompanied the affidavit submitted to the Nevis High Court. The Arbitral Tribunal does not order the production of the “<i>documents exchanged between NICO and its “lawyer in Nevis”, including the legal opinion referred to in the letter</i>”, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.</p>



5. **NICO’S PURPORTED RE-DOMICILIATION (OR REINSTATEMENT) FROM NEVIS TO LABUAN IN 2018**

Request No.	16.
<b>Description of requested document or category of documents</b>	<p>Documents sent or received by NICO’s Board of Directors and documents exchanged between NICO and its advisers, relating to:</p> <p>(a) NICO’s re-domiciliation or reinstatement to Labuan; and</p> <p>(b) investment treaties, including the Bahrain-Malaysia BIT, between 6 February 2015 (when the █████ informed NICO of its concerns regarding NICO’s Gambian registration, C-0040) and 12 February 2018 (when NICO applied to the High Court of Sabah and Sarawak to be reinstated into the Labuan registry).</p>
<b>(a) Reasons for the request</b>	<p>As explained in the Preliminary Objections, NICO cannot rely on the Bahrain-Malaysia BIT through an <i>ex post facto</i> change in its domicile to Labuan (Preliminary Objections, Section III.2.3). Bahrain’s position is that NICO’s decision to re-domicile to Labuan from Nevis is an abuse of process, as this dispute remained foreseeable when NICO applied to transfer its domicile from Nevis to Labuan (Preliminary Objections, paras 84-85; C-0048).</p> <p>In the Counter-Memorial, NICO argues that it never intended to secure treaty protection through the re-domiciliation, referring only to selected pieces of external advice it procured (Counter-Memorial, paras 11-12, 48). NICO has not provided evidence as to NICO’s views on where to redomicile and discussion of the external advice received.</p> <p>The requested documents are relevant to the issue of whether a reason to re-domicile to Labuan again was to bring NICO within the scope of the Bahrain-Malaysia BIT when a dispute was foreseeable (or had arisen) and therefore an abuse of process. Proof of the investor’s intent to commit an abuse is a relevant factor (although not necessary, see Bahrain’s Preliminary Objections, paras 75-77). As the Tribunal noted in Procedural Order No. 4, para 74, to determine NICO’s contemporaneous motives, there needs to be “<i>very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s)</i>”. These documents are necessary to ascertain NICO’s intentions in choosing to move to Labuan. This issue is relevant to whether there was an abuse of process and may determine whether NICO’s claim is admissible, and therefore material to the outcome of the dispute.</p>
<b>(b) Response to the request</b>	<p><b><u>Objection</u></b></p> <p>Without prejudice to the reservations set out in previous Objections regarding the relevance and materiality of the Requested Documents and in Claimant’s Introductory Remarks, and more specifically in terms of access thereto given that the Requested Documents date back to more than 7 years prior, Claimant objects to Bahrain’s sub-request (b) on the ground that no responsive documents exist, and indeed Respondent has failed to identify any reasons why such documents could reasonably be believed to exist – nor are there any reasons to believe that responsive documents would exist as Claimant has already voluntarily produced extensive</p>



	<p>contemporaneous evidence showing that NICO’s different corporate re-domiciliations had been prompted by factors that had nothing to do with treaty protections (see for e.g. <b>Exhibits C-52, C-292, C-293, C-294, C-41, C-42, C-43, C-280, C-281, C-289, C-290, C-291, C-298, C-299, and C-300</b>).</p> <p>Claimant also objects to Bahrain’s sub-request (a) on the following grounds.</p> <p><i>First</i>, the Requested Documents under Bahrain’s sub-request (a) could not possibly be relevant, let alone material, to the resolution of the bifurcated issues in the proceedings, and Respondent has certainly failed to suggest, let alone particularize and substantiate, otherwise.</p> <p>This is all the more so that “<i>Documents sent or received by NICO’s Board of Directors and documents exchanged between NICO and its advisers, relating to [...] NICO’s re-domiciliation or reinstatement to Labuan</i>” between “6 February 2015 (when the █████ informed NICO of its concerns regarding NICO’s Gambian registration, <b>C-0040</b>) and 12 February 2018” could not be relevant, let alone material, for purposes of establishing any treaty protection agenda on Claimant’s part in the process leading up to the March 2018 Decision.</p> <p><i>Second</i>, Bahrain’s sub-request (a) is overly broad and burdensome as it seeks to cover all “<i>Documents sent or received by NICO’s Board of Directors and documents exchanged between NICO and its advisers, relating to [...] NICO’s re-domiciliation or reinstatement to Labuan</i>” over a three-year period, namely from February 6, 2015 to February 12, 2018.</p> <p><i>Third</i>, Claimant further objects to Bahrain’s sub-request (a) on the ground of non-existence and lack of access as Claimant has in any event already produced all relevant and material documents in its possession pertaining to NICO’s decision to re-domicile from Gambia to Nevis and then to Labuan by way of the March 2018 Decision, and no further responsive documents (other than those already offered for production) could be located to date.</p> <p>This is in part because the Requested Documents pertain to documents that were prepared between 2015 and 2018, namely close to 10 or 7 years ago, and thus – if they existed – would have been in the possession of employees who have since left the employ of NICO, and accordingly no longer are in the custody or control of NICO despite its best, and still ongoing, efforts to locate the same.</p> <p><u>Confidentiality and legal privilege</u>: further and in any event, as already set out in Claimant’s Introductory Remarks, NICO would not be able to produce any documents covered by confidentiality or legal privilege.</p> <p>For all of the above reasons, Claimant partially objects to Bahrain’s Production Request No. 16.</p>
<p><b>(c) Reply to the responses</b></p>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this request in full.</p> <p><b>On request 16(a):</b></p> <p><u>Relevance and materiality:</u></p>

NICO asserts that the requested documents “*could not be relevant, let alone material, for purposes of establishing any treaty protection agenda on Claimant’s part in the process leading up to the March 2018 Decision*”. This is not understood. Documents sent or received by NICO’s Board of Directors and documents exchanged between NICO and its advisers, relating specifically to “*NICO’s re-domiciliation or reinstatement to Labuan*”, and leading up to the date when NICO applied to the Labuan court, are precisely the type of documents that would reveal NICO’s concerns and motives at the time. For instance, on Bahrain’s case, these internal documents could include any concern NICO had regarding its dispute with Bahrain or potential treaty protection. This would explain why NICO chose to seek re-domiciliation or reinstatement in Labuan, as opposed to taking steps to remain in Nevis (a decision that as yet remains unexplained in any document on record).

Broad and unduly burdensome:

This request specifies a precise time frame (three years) that is targeted and identified on the basis of specific documents), the custodians (NICO’s Board of Directors and its employees that correspond with its advisers) and the subject matter (NICO’s re-domiciliation or reinstatement to Labuan). Moreover, as explained in paragraph 29 above, the Tribunal has confirmed the relevance of the information available to NICO at the time of its restructuring(s), which is only in NICO’s possession. As such, this request is proportionate to the issues in disputes and not “*overly broad and burdensome*”.

Existence and access:

NICO’s assertion that it has “*already produced all relevant and material documents... and no further responsive documents... could be located to date*” is, as set out in paragraphs 22 to 24 and 26 above, unavailing. The documents exhibited by NICO with its prior submissions pre-date Bahrain’s Requests, meaning that NICO would not have specifically searched for documents responsive to this request at the time of its submissions. Further, NICO cannot unilaterally decide what documents are relevant and material to the bifurcated issues and NICO’s response indicates the existence of other responsive documents that in NICO’s subjective opinion are irrelevant and immaterial.

As set out in paragraph 30 above, NICO’s assertion that the requested documents are no longer in NICO’s control as they date back several years is undermined by NICO’s production of several documents from the same time period.

Confidentiality and legal privilege:

NICO makes a blanket assertion that it can withhold “*any documents covered by confidentiality or legal privilege*”. This is unconvincing for the reasons set out in paragraphs 26 to 28 above.

**On request 16(b):**

	<p><u>Existence:</u></p> <p>NICO asserts that “<i>no responsive documents exist</i>”, claiming that there are no “<i>reasons to believe that responsive documents would exist</i>”. However, it is unclear whether NICO did conduct searches for the requested documents specifically following receipt of Bahrain’s Request. Bahrain maintains that NICO should be ordered to conduct the searches for the requested documents.</p> <p>NICO claims that it has “<i>produced extensive contemporaneous evidence showing that NICO’s different corporate re-domiciliations had been prompted by factors that had nothing to do with treaty protections</i>”. For the reasons set out in paragraphs 22 to 24 above, the fact that NICO has exhibited some documents with its prior submissions to support its own case does not negate Bahrain’s right to seek disclosure of all relevant and material documents. If anything, NICO’s claimed overlap between the documents it has exhibited and the documents that Bahrain now requests demonstrates that the requested category of documents are relevant and material, and that it would not be unduly burdensome for NICO to produce any remaining documents that fall within the category requested.</p> <p>Furthermore, none of the documents on record explain why NICO chose to seek re-domiciliation to Labuan (as opposed to, for instance, seeking to maintain its Nevis domiciliation). The documents that NICO has referred to in its objection to Request No. 15(b) are irrelevant to the question of whether or not there exists internal NICO documents referring to investment treaties such as the Bahrain-Malaysia BIT.</p>
<b>(d) Tribunal’s decision</b>	<p>The request is granted, however the Arbitral Tribunal notes that any responsive Documents that were prepared by and/or exchanged with legal counsel for the purposes of obtaining legal advice are not expected to be produced.</p>



<b>Request No.</b>	17.
<b>Description of requested document or category of documents</b>	The final and complete version of [REDACTED] letter dated 11 January 2017 (C-0048), including paragraphs 17 and 18 of that letter.
<b>(a) Reasons for the request</b>	<p>On NICO's case, it obtained a legal opinion from [REDACTED] (Gambian counsel) on 9 December 2016 that confirmed that its Gambian registration was invalid (C-0047), and on this basis, NICO instructed its Malaysian counsel [REDACTED] to apply to the LFSA in January 2017 to confirm that NICO remained domiciled in Labuan ([REDACTED] paras 35-36).</p> <p>[REDACTED] Malaysian law submission to the LFSA is C-0048, in which NICO's Malaysian counsel argued that NICO remains domiciled in Labuan notwithstanding its de-registration from the Labuan registry. However, the version of the submission that NICO has provided in this arbitration is incomplete, as it is missing two paragraphs (17 and 18).</p> <p>The complete document is relevant to the issue of whether a reason to re-domicile to Labuan again was to bring NICO within the scope of the Bahrain-Malaysia BIT when a dispute was foreseeable (or had arisen) and therefore an abuse of process. As explained above, while proof of intent is not necessary, careful consideration of NICO's contemporaneous motives is needed as the Tribunal has recognised, and NICO's intention is relevant and material to determining whether there has been an abuse of process and whether NICO's claim is admissible.</p>
<b>(b) Response to the request</b>	Without prejudice to the reservations set out under the above Objections and in its Introductory Remarks, including as to the relevance and materiality of the Requested Documents, and more specifically in terms of access given that the Requested Documents date back to eight years ago, and subject to withholding any documents covered by confidentiality or legal privilege, Claimant accepts to produce the Requested Document.
<b>(c) Reply to the responses</b>	<p><b>No decision required:</b></p> <p>As this document has been produced, Bahrain no longer pursues this request.</p>
<b>(d) Tribunal's decision</b>	No decision required.



<b>Request No.</b>	18.
<b>Description of requested document or category of documents</b>	Filings and accompanying documents submitted by or on behalf of NICO before the Sabah and Sarawak High Court, including copies of the court minutes and/or notes of proceedings of any hearings, between 18 January and 7 March 2018 which led to the order dated 7 March 2018 (to the extent not already on the record).
<b>(a) Reasons for the request</b>	<p>NICO relies on the 2018 Malaysian Court decision (<b>C-0052</b>) to contend that it is a Malaysian company and has been one continuously since 4 January 2012 (Merits Memorial, para 207).</p> <p>Bahrain's position is that the 2018 Malaysian Court decision does not give NICO Malaysian nationality during the Absence Period as the decision does not reinstate NICO retrospectively and it did not address or render NICO's 2016 Nevis registration as having no legal effect (Preliminary Objections, paras 147-150, 156; <b>Abraham Opinion</b>, paras 77, 84-86). In particular, as explained by Mr Abraham, no application was made by NICO to the Malaysian Court for its decision to apply retrospectively and the Malaysian decision makes no reference to the Nevis registration despite being aware of it (<b>TSDCA-0026</b>, p 25) and NICO has not indicated that it submitted any evidence on the Nevis registration's validity for the High Court to consider (<b>Abraham Opinion</b>, paras 81, 84-86).</p> <p>NICO's position is that the 2018 Malaysian Court decision reinstated NICO in Labuan as though it never left and that "<i>NICO's status in Nevis is not relevant to the issue at hand</i>", without addressing it comprehensively (<b>Yunus-Devarajoo Opinion</b>, Section E, para 125).</p> <p>The requested documents reflect what the Sabah and Sarawak High Court considered in coming to its judgment, including submissions or authorities relating to: (i) whether the 2018 Malaysian Court decision could or should apply retrospectively; and (ii) the relevance and status of NICO's Nevis registration.</p> <p>The documents are necessary to ascertain the effect of the High Court's decision on NICO's nationality and, in turn, whether NICO has standing to bring its claim under the Bahrain-Malaysia BIT, which are issues that the Tribunal is expressly seeking to address in these proceedings (Procedural Order No. 4, para 77(a)(ii)). They are therefore relevant and material to the Tribunal's determination of its jurisdiction.</p>
<b>(b) Response to the request</b>	Claimant accepts without prejudice to the reservations set out under the above Objections and in its Introductory Remarks, including as to the relevance and materiality of the Requested Documents, and more specifically in terms of access given that the Requested Documents date back to seven years ago, and subject to withholding any documents covered by confidentiality or legal privilege, to use its best efforts to search for and produce the specific Requested Document, with or without redactions depending on any of its privileged and confidential content.
<b>(c) Reply to the responses</b>	<p><b>No decision required:</b></p> <p>The Claimant has agreed "<i>to use its best efforts to search for and produce</i>" the requested documents. In case NICO finds any responsive documents,</p>

	<p>it must immediately either produce these or inform Bahrain that it has found responsive documents but is withholding them and the basis for doing so.</p> <p><u>Confidentiality and legal privilege:</u></p> <p>NICO makes a blanket assertion that it can “<i>withhold... any documents covered by confidentiality or legal privilege</i>” and produce documents “<i>with or without redactions depending on any of its privileged and confidential content</i>”. This is unconvincing for the reasons set out in paragraphs 26 to 28 above, and in particular because NICO has already selectively produced documents responsive to this request.</p>
<b>(d) Tribunal’s decision</b>	No decision required.



<b>Request No.</b>	19.
<b>Description of requested document or category of documents</b>	Documents exchanged between NICO (and/or its advisers) and the LFSA relating to NICO's winding up and reinstatement in Labuan between 11 January 2017 (the day of [REDACTED] letter to the LFSA, C-0048) and 17 November 2017 (the day of the LFSA's response, DSMHYDPN-0001).
<b>(a) Reasons for the request</b>	<p>On 11 January 2017, NICO's representative, [REDACTED], wrote to the LFSA regarding NICO's reinstatement to Labuan (C-048). On 17 November 2017, the LFSA issued to NICO a notice of winding up (DSMHYDPN-0001). The notice refers to "various correspondences with [NICO's] authorized representative, Portcullis TrustNet (Labuan) Limited". NICO has not explained or addressed the correspondence that took place with the LFSA between this period.</p> <p>Bahrain's position is that NICO was not and could not have been a Labuan company in the Absence Period (Preliminary Objections, paras 48-50, 150).</p> <p>The requested documents are necessary to understand the LFSA's contemporaneous position on NICO's transfer out of Labuan and, in turn, NICO's status during the Absence Period.</p> <p>This is relevant to the issues of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO's standing and rights under the Treaty from December 2014 – March 2018. Both of these are issues the Tribunal is expressly seeking to address in these proceedings (Procedural Order No. 4, para 77(a)). The documents are therefore necessary to ascertain whether the Tribunal has jurisdiction during the Absence Period and are material to the outcome of the dispute</p>
<b>(b) Response to the request</b>	Claimant accepts without prejudice to the reservations set out under the above Objections and in its Introductory Remarks, including as to the relevance and materiality of the Requested Documents, and more specifically in terms of access given that the Requested Documents date back to eight years ago, and subject to withholding any documents covered by confidentiality or legal privilege, to use its best efforts to search for and produce the specific Requested Document (insofar as in NICO's possession, as opposed to third parties), with or without redactions depending on any of its privileged and confidential content.
<b>(c) Reply to the responses</b>	<p><b>No decision required:</b></p> <p>The Claimant has agreed "to use its best efforts to search for and produce" the requested documents. In case NICO finds any responsive documents, it must immediately either produce these or inform Bahrain that it has found responsive documents but is withholding them and the basis for doing so.</p> <p><u>Confidentiality and legal privilege:</u></p> <p>NICO makes a blanket assertion that it can "withhold... any documents covered by confidentiality or legal privilege" and produce documents "with or without redactions depending on any of its privileged and</p>

	<i>confidential content</i> ". This is unconvincing for the reasons set out in paragraphs 26 to 28 above.
<b>(d) Tribunal's decision</b>	No decision required.



<b>Request No.</b>	20.
<b>Description of requested document or category of documents</b>	<p>LFSA-related documents referred to in exhibits on the record but not yet provided, specifically:</p> <p>(a) LFSA's email dated 2 January 2018, referred to in the letter from [REDACTED] dated 10 January 2018, <b>TSDCA-0025</b>, p 3;</p> <p>(b) documents relating to the meeting between the LFSA and NICO held on or around 25 January 2018, referred to in <b>C-0049</b>, para 4; and</p> <p>(c) letter from [REDACTED] dated 25 January 2018, referred to in the LFSA's letter dated 26 January 2018, <b>C-0050</b>, para 1.</p>
<b>(a) Reasons for the request</b>	<p>NICO alleges that, once its Gambian registration was discovered to be invalid, it remained a Labuan company as though it never de-registered. To this end, NICO sought permission to be reinstated from the LFSA despite there being no legal basis to do so in Section 133(5)(b) of the LCA, and, when such permission was not forthcoming, NICO applied to the High Court, based on the LFSA's advice (Merits Memorial, para 207; Counter-Memorial, paras 68, 111.7, 112; <b>Yunus-Devarajoo Opinion</b>, para 22).</p> <p>Following which, NICO states that the LFSA confirmed in a letter dated 18 January 2018 that NICO could "<i>apply to the High Court for a declaration and/or order to be recognized as a Labuan company</i>", which the LFSA would "<i>not contest</i>" and would "<i>issue a letter of no objection towards NICO's application</i>" (<b>C-0049</b>, para 2; Counter-Memorial, paras 68, 111.7; <b>Yunus-Devarajoo Opinion</b>, para 22). The LFSA then invited NICO to a meeting to discuss this matter further (<b>C-0049</b>, para 4).</p> <p>Bahrain's Malaysian law expert has explained that there is no provision in the LCA providing for reinstatement of a company, let alone under Section 133(5)(b) of the LCA, which provides for winding up as the only remedy for an invalid registration (<b>Abraham Opinion</b>, paras 69-71). Section 133(5) of the LCA does not provide for an automatic reinstatement of NICO as a Labuan company.</p> <p>The requested document is relevant and material to the Tribunal to understand the basis on which the LFSA concluded that NICO could apply to the High Court for reinstatement in Labuan instead of winding up (<b>C-0049</b>) and also to the Tribunal's determination of the validity of NICO's Labuan reinstatement. It is, in turn, relevant to addressing the questions of whether NICO benefited from protection under the Bahrain-Malaysia BIT from December 2014 to March 2018 and the effect, if any, of the 2018 Malaysian Court Decision (questions that the Tribunal is expressly seeking to address, as seen in Procedural Order No. 4, para 77(a)(ii)).</p>
<b>(b) Response to the request</b>	<p>Claimant accepts without prejudice to the reservations set out under the above Objections and in its Introductory Remarks, including as to the relevance and materiality of the Requested Documents, and more specifically in terms of access given that the Requested Documents date back to nearly seven years ago, and subject to withholding any documents</p>



	covered by confidentiality or legal privilege, to use its best efforts to search for and produce the specific Requested Document (insofar as within NICO's possession, as opposed to third parties), with or without redactions depending on any of its privileged and confidential content.
<b>(c) Reply to the responses</b>	<p><b>No decision required:</b></p> <p>The Claimant has agreed "<i>to use its best efforts to search for and produce</i>" the requested documents. In case NICO finds any responsive documents, it must immediately either produce these or inform Bahrain that it has found responsive documents but is withholding them and the basis for doing so.</p> <p>Bahrain assumes that NICO will also be producing the email from [REDACTED] to [REDACTED] dated 20 January 2018, at 05:12am, which was excluded from the email chain that NICO produced on 13 January 2025 (No. 3 of Request 20). On the assumption that this email was mistakenly excluded, Bahrain is not pursuing this request further. Bahrain asks that NICO must inform Bahrain if it does not agree to disclose this email within five days of receiving this Reply.</p> <p><u>Confidentiality and legal privilege:</u></p> <p>NICO makes a blanket assertion that it can "<i>withhold... any documents covered by confidentiality or legal privilege</i>" and produce documents "<i>with or without redactions depending on any of its privileged and confidential content</i>". This is unconvincing for the reasons set out in paragraphs 26 to 28 above, and in particular because NICO has already selectively produced documents responsive to this request.</p>
<b>(d) Tribunal's decision</b>	No decision necessary, in light of Respondent's withdrawal of the present request in its communication of 7 February 2025.

<b>Request No.</b>	21.
<b>Description of requested document or category of documents</b>	Any Notice of Demand and/or other documents issued or sent by the Director General of Inland Revenue Board in Labuan ( <b>IRB</b> ) to NICO seeking payment of the penalties and compounds for late tax return between 2014 and 2018, and NICO's Company's Statement of Tax Status dated 18 April 2018, as referred to in [REDACTED] letter to the IRB dated 5 June 2018 ( <b>TSDCA-0035</b> ).
<b>(a) Reasons for the request</b>	<p>[REDACTED]'s letter to the IRB dated 5 June 2018 states that NICO paid penalties under Section 13 of LBATA 1990 and compounds under Section 24(1) of LBATA. Both of these provisions require the IRB to take active steps, either by issuing a Notice of Demand or by obtaining the public prosecutor's consent to compound offences (<b>Abraham Opinion</b>, para 60).</p> <p>Bahrain's position is that NICO's payment of penalties and compounds for late tax return after the 2018 Malaysian Court Decision does not remedy NICO's contemporaneous non-compliance with the LBATA and consequently, the fact that it was not a Labuan company during the Absence Period (<b>Abraham Opinion</b>, paras 58-63). NICO's position, on the other hand, is that each instance of non-compliance by NICO during the Disputed Period will only attract pecuniary penalties which would not affect NICO's status as a Labuan company during the Disputed Period (<b>Yunus-Devarajoo Opinion</b>, paras 142-144).</p> <p>The requested documents are relevant to understand whether the IRB, in its correspondence with NICO, recognised NICO as a Labuan entity under the LBATA during the Disputed Period. This is, in turn, relevant to the issues of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO's standing and rights under the Treaty from December 2014 – March 2018. Both of these are issues the Tribunal is expressly seeking to address in these proceedings (Procedural Order No. 4, para 77(a)(ii)).</p>
<b>(b) Response to the request</b>	<p><b><u>Partial Objection</u></b></p> <p>Claimant accepts without prejudice to the reservations set out in previous Objections regarding the relevance and materiality of the Requested Documents and in Claimant's Introductory Remarks, and more specifically in terms of access given that the Requested Documents date back to six years ago, and without any admission as to the relevance and materiality of the Requested Documents, to use its best efforts to try to locate and produce the "<i>NICO's Company's Statement of Tax Status dated 18 April 2018, as referred to in [REDACTED] letter to the IRB dated 5 June 2018 (TSDCA-0035)</i>" requested by Bahrain with or without redactions depending on any of its privileged and confidential content.</p> <p>Otherwise Claimant objects to the Request as the remainder of the Requested Documents, notably "[a]ny Notice of Demand and/or other documents issued or sent by the Director General of Inland Revenue Board in Labuan (<b>IRB</b>) to NICO seeking payment of the penalties and compounds for late tax return between 2014 and 2018" cannot be relevant and material to the resolution of the bifurcated issues in these proceedings,</p>

	<p>nor even the stated purpose for Requested Documents, namely that the <i>“requested documents are relevant to understand whether the IRB, in its correspondence with NICO, recognised NICO as a Labuan entity under the LBATA during the Disputed Period. This is, in turn, relevant to the issues of whether NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period and whether the 2018 Malaysian Court Decision has any effect on NICO’s standing and rights under the Treaty from December 2014 – March 2018.”</i></p> <p>Indeed, Claimant has already demonstrated in Section III of its CMPO that <i>“NICO was a validly incorporated Malaysian company as of January 2012, as confirmed by the 2018 Decision, and that the only effect of the 2018 Decision was to confirm that NICO had continuous standing and rights under the BIT since January 2012”</i> (See Para. 129 of the CMPO). This moreover was supported by contemporaneous documentary evidence including proof of NICO’s payment of taxes for the years 2014 to 2018 as confirmed in the Abraham Opinion at Paras. 58-63.</p> <p>Claimant moreover objects to the remainder of the Requested Documents on grounds of existence and access, as Claimant has in any event already produced all relevant and material documents in its possession pertaining to the Labuan authorities’ appreciation of its status as a Labuan company from January 4, 2012 by way of the March 2018 Decision, and no further responsive documents (other than those already offered for production) could be located to date, especially as more than 6 years have lapsed since then.</p> <p>For all of the above reasons, Claimant partially objects to Bahrain’s Production Request No. 21.</p>
<p><b>(c) Reply to the responses</b></p>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains its request for <i>“[a]ny Notice of Demand and/or other documents issued or sent by the Director General of Inland Revenue Board in Labuan (IRB) to NICO seeking payment of the penalties and compounds for late tax return between 2014 and 2018”</i>.</p> <p>The Claimant has produced <i>“NICO’s Company’s Statement of Tax Status dated 18 April 2018”</i>. Bahrain therefore no longer pursues this part of the request.</p> <p><u>Relevance and materiality:</u></p> <p>Contrary to the Claimant’s assertion, it has not <i>“demonstrated”</i> that NICO <i>“had continuous standing and rights under the BIT since January 2012”</i>. Instead, the Tribunal has decided to bifurcate Objection 3 (including, <i>“Was NICO incorporated in Malaysia and hence did it benefit from protection under the Treaty from December 2014-March 2018?”</i>).</p> <p>For the reasons set out in paragraphs 22 to 24 above, the fact that NICO has exhibited some documents with its prior submissions to support its own case does not negate Bahrain’s right to seek disclosure of all relevant and material documents. If anything, NICO’s claimed overlap between the documents it has exhibited and the documents that Bahrain now requests demonstrates that the requested category of documents are relevant and material, and that it would not be unduly burdensome for NICO to produce any remaining documents that fall within the category requested.</p>



	<p>As Bahrain has explained, the requested documents are relevant to understand whether or not the IRB recognised NICO as a Labuan entity under the LBATA during the Absence Period. This in turn determines whether or not NICO could benefit from the Bahrain-Malaysia BIT during the Absence Period (<b>Abraham Opinion</b>, paras 58-63).</p> <p><u>Existence and access:</u></p> <p>NICO's assertion that it has "<i>already produced all relevant and material documents ... by way of the March 2018 Decision and no further responsive documents ... could be located to date</i>" (emphasis added) is, as set out in paragraphs 24 and 26 above, unavailing. The March 2018 Decision alone clearly cannot satisfy this request. In any event, the documents exhibited by NICO with its prior submissions pre-date Bahrain's Requests, meaning that NICO would not have specifically searched for documents responsive to this request at the time of its submissions. Further, NICO cannot unilaterally decide what documents are relevant and material to the bifurcated issues and NICO's response indicates the existence of other responsive documents that in NICO's subjective opinion are irrelevant and immaterial.</p> <p>Lastly, as set out in paragraph 30 above, NICO's assertion that the requested documents are no longer in NICO's control as they date back several years is undermined by NICO's production of several documents from the same time period.</p>
<b>(d) Tribunal's decision</b>	<p>The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.</p>

## 6. OTHER DOCUMENTS

<b>Request No.</b>	22.
<b>Description of requested document or category of documents</b>	<p>Documents sent or received by NICO's Board of Directors and documents exchanged between NICO and its advisers between 1 January 2022 to 31 December 2022:</p> <p>(a) relating to NICO's decision to serve the Notice of Dispute dated 5 August 2022 (C-0017); or</p> <p>(b) evidencing that NICO became aware "<i>only at the time of their December 2022 initiation of this arbitration [...] that the blockage of its Funds had been orchestrated – not by the Bahraini Banks of their own motion – but by Bahrain</i>".</p>
<b>(a) Reasons for the request</b>	<p>In its Counter-Memorial (at para 79), NICO asserts that it was not aware of Bahrain's alleged involvement in the non-return of its funds (as alleged and particularised in the Merits Memorial) at the time of its various re-domiciliations. Instead, NICO asserts that it was only after serving the Notice of Dispute dated 5 August 2022 (C-0017) that NICO became of aware of Bahrain's alleged involvement, namely in December 2022 (Counter-Memorial, para 79). NICO has not referred to or cited any documents that explain what new development prompted NICO to serve the Notice of Dispute and led NICO to this new understanding or awareness of Bahrain's alleged involvement.</p> <p>NICO's submission is also contrary to its position elsewhere in its Counter-Memorial that it "<i>became aware of the probable nature and extent of CBB's role as the cause for the blockage and source of the illegality in relation to the blockage of the funds</i>" in November 2012 (Counter-Memorial, para 93; see also para 85).</p> <p>Bahrain's position is that both of NICO's move to Labuan (in January 2012 and March 2018) were at a time when its dispute with Bahrain was foreseeable (and on foot), and therefore are an abuse of process (Preliminary Objections, paras 80, 83, 85).</p> <p>As such, the requested documents are relevant to verifying whether NICO only became aware of the CBB and Bahrain's involvement in the non-return of its Funds (as alleged and particularised in the Merits Memorial) in 2022. This is in turn relevant to the foreseeability of NICO's dispute with Bahrain at the time of its nationality changes. As the Tribunal noted in Procedural Order No. 4, para 74, to determine NICO's contemporaneous motives, there needs to be "<i>very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s)</i>". The documents are therefore relevant to whether there was an abuse of process, which may determine whether NICO's claim is admissible, and are material to the outcome of the dispute.</p>
<b>(b) Response to the request</b>	<p><b><u>Objection</u></b></p> <p>Claimant objects to the Request for the following independent reasons.</p>

	<p><u>Relevance and materiality:</u> the Requested Documents cannot be relevant, let alone material, to Bahrain’s abuse of process objection, or the resolution of the dispute, and Respondent has certainly failed to suggest, let alone particularize and substantiate otherwise.</p> <p>The stated justification for the Requested Documents is that “<i>the requested documents are relevant to verifying whether NICO only became aware of the CBB and Bahrain’s involvement in the non-return of its Funds (as alleged and particularised in the Merits Memorial) in 2022. This is in turn relevant to the foreseeability of NICO’s dispute with Bahrain at the time of its nationality changes.</i>”</p> <p>Respondent’s reasons for their Request No. 22 is based on a fundamental misrepresentation of NICO’s position that it “<i>became aware of the probable nature and extent of CBB’s role as the cause for the blockage and source of the illegality in relation to the blockage of the funds</i>” in November 2012 ( see CMPO Para. 93). Therefore, Bahrain’s Request No. 22 is irrelevant and immaterial to the outcome of the case since it is premised on a deformation of NICO’s case.</p> <p><u>Existence and access to the Requested Documents:</u> Claimant has in any event already produced of its own motion, and in its own interest, all relevant and material documents in its possession pertaining to NICO’s knowledge of Bahrain’s interference prior to November 2012, and no further responsive documents (other than those already offered for production) could be located to date.</p> <p>For all of the above reasons, Claimant partially objects to Bahrain’s Production Request No. 22.</p>
<p><b>(c) Reply to the responses</b></p>	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this Request.<sup>32</sup></p> <p>Each of NICO’s objections is ill-founded and addressed below.</p> <p><u>Relevance and materiality:</u></p> <p>NICO’s objection to this request is unclear. NICO asserts that Bahrain’s reasons for this request “<i>is based on a fundamental misrepresentation of NICO’s position that it became aware of ... CBB’s [alleged] role</i>” in the non-return of NICO’s funds in November 2012. NICO has not explained how Bahrain misrepresents NICO’s position. Both Bahrain and NICO’s position is the same, i.e., that NICO argued in para 93 of its Counter-Memorial that it became aware of the CBB’s alleged involvement in November 2012. Bahrain goes a step further by pointing out that this is contrary to para 79 of the Counter-Memorial, in which NICO submitted that it was not aware of Bahrain’s alleged involvement until it served the Notice of Dispute (in August 2022). Thus, the requested documents are relevant and material to understand when the dispute became foreseeable to NICO.</p> <p><u>Existence and access to the Requested Documents:</u></p> <p>NICO’s assertion that it has “<i>already produced of its own motion, and in its own interest, all relevant and material documents in its possession pertaining to NICO’s knowledge of Bahrain’s interference prior to</i></p>

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Although the end of NICO’s Responses says that it “*partially objects*” to this request, its Responses suggest that it objects in full. As NICO has produced no responsive documents and it is unclear what searches, if any, NICO conducted, Bahrain maintains this request in full.



	<p><i>November 2012</i>” is irrelevant – the requested documents pertain to the year 2022.</p> <p>Moreover, NICO accepts that NICO’s searches were for documents in furtherance of its own position. For the reasons set out in paragraphs 22 to 24 above, the fact that NICO has exhibited some documents with its prior submissions to support its own case does not negate Bahrain’s right to seek disclosure of all relevant and material documents.</p> <p>Further, as set out in paragraphs 24 and 26 above, the documents exhibited by NICO with its prior submissions pre-date Bahrain’s Requests, meaning that NICO would not have specifically searched for documents responsive to this request at the time of its submissions.</p> <p>Lastly, NICO’s response indicates the existence of other responsive documents that in NICO’s subjective opinion are irrelevant and immaterial.</p>
<b>(d) Tribunal’s decision</b>	<p>The request is rejected, as <i>prima facie</i> the documents do not appear sufficiently relevant and material to the resolution of the bifurcated issues.</p>

Request No.	23.
Description of requested document or category of documents	<p>Documents evidencing NICO's cash and liquidity position in the periods before its re-domiciliations to Labuan, Malaysia. Bahrain requests the following documents for the following time periods:</p> <ol style="list-style-type: none"> <li>1. <b>Financial Statements and Reports:</b> <ol style="list-style-type: none"> <li>(a) Annual financial statements of NICO for the years 2010, 2011, 2012, 2017 and 2018 including balance sheets, income statements, and cash flow statements.</li> <li>(b) Audited financial reports for the same years, if available.</li> </ol> </li> <li>2. <b>Bank Statements and Transaction Records:</b> <ol style="list-style-type: none"> <li>(a) Bank statements from NICO's primary banking institutions for the years 2010, 2011, 2012, 2017 and 2018, showing the balances and transactions that reflect NICO's cash position.</li> </ol> </li> <li>3. <b>Correspondence and Internal Communications:</b> <ol style="list-style-type: none"> <li>(a) Internal communications, including emails, memos, and reports, for the years 2010, 2011, 2012, 2017 and 2018 discussing NICO's liquidity and/or cash position.</li> <li>(b) Correspondence with financial advisors, auditors, or regulatory bodies that discuss or confirm NICO's liquidity or cash position for the same years.</li> </ol> </li> </ol>
(a) Reasons for the request	<p>The requested documents are directly relevant and material to: (1) Bahrain's arguments that NICO's re-domiciliations to Malaysia in 2012 and 2018 were abusive attempts to gain treaty protection; and (2) to NICO's defence in paras 42 and 51 of the Counter-Memorial.</p> <p>In para 42, NICO contends that it is "<i>absurd to suggest that a company, let alone one managing billions of euros, with only a small portion of its assets placed in Bahrain, that always had and continues to have access to investor-State arbitration under the UNCITRAL Rules, would engage in restructuring merely to access ICSID.</i>" In para 51, NICO states: "<i>By way of reminder, the assets under NICO's management in 2012 amounted to several billion euros. The EUR 243 million deposited in Bahrain by October 2010 thus represented only a fraction thereof. It is therefore farcical to suggest, as Bahrain does in its MPO, that NICO's re-domiciliation to Malaysia in January 2012 was driven by any treaty protection concerns related to its minor Bahraini investments, rather than the broader concerns, including taxation and sanction security, as listed in the February 16, 2011 advice obtained from [REDACTED], that would affect its broader array of assets and situation long-term.</i>"</p> <p>NICO uses the claim that it manages "<i>billions of euros</i>" in an attempt to refute that its re-domiciliations to Labuan were motivated by treaty protection. However, NICO's Audited Financials for the years 2013-2016 reveal that NICO's cash frozen at Ithmaar and GFH constituted a significant portion of NICO's overall cash position (TSDCA-0025, pp 44,</p>

	<p>94, 144, 194-195). For example, in 2015 NICO reported cash at bank and in hand of around USD 108 million with around USD 278 million frozen in Bahrain (TSDCA-0025, p 144). As such, having access to the money in Bahrain would have increased cash in hand for NICO by around 257%. Furthermore, in 2016, NICO reported USD 680 million in cash at bank and in hand with around USD 272 million frozen in Bahrain (Bahrain assumes that the difference in the amounts frozen between 2015 and 2016 results from the EUR/USD exchange rate) (TSDCA-0025, pp 194-195). Having access to the money in Bahrain would therefore have increased NICO's cash in hand by 40%.</p> <p>Bahrain lacks evidence for the period immediately before the re-domiciliations, i.e. 2010, 2011 and 2012 for the first re-domiciliation and 2017 and 2018 for the second re-domiciliation. This information is important for Bahrain to properly rebut NICO's defence and will allow the Tribunal to assess NICO's argument and decide whether the restructuring was abusive or legitimate. Furthermore, as the Tribunal noted in Procedural Order No. 4, para 74, to determine NICO's contemporaneous motives, there needs to be "<i>very careful consideration of the information available to Claimant prior to and at the time of its restructuring(s)</i>". These documents are part of the information available to NICO at the time of the restructurings. Given TSDCA-0025 provided by NICO, audited financials for 2010, 2011, 2012, 2017 and 2018 should also be in NICO's possession custody or control. NICO should also have bank statements and relevant correspondence for the same time periods as well.</p>
<p><b>(b) Response to the request</b></p>	<p><b><u>Objection</u></b></p> <p>Claimant objects to the Request for the following independent reasons.</p> <p><u>Relevance and materiality/fishing expedition:</u> the Requested Documents cannot be relevant, let alone material, to Bahrain's abuse of process objection, or the resolution of the dispute and the Request is in reality nothing but a fishing expedition for documents.</p> <p>The stated justification for the Requested Documents is that "NICO <i>uses the claim that it manages "billions of euros" in an attempt to refute that its re-domiciliations to Labuan were motivated by treaty protection</i>" and that on that basis the Requested Documents "<i>will allow the Tribunal to assess NICO's argument and decide whether the restructuring was abusive or legitimate.</i>"</p> <p>As reminded in NICO's Introductory Remarks and above especially at Claimant's Objections to Request 1 and 4, NICO has already submitted extensive contemporaneous documents evidencing that NICO's decision in 2011 to re-domiciliate out of Jersey and the March 2018 Decision was prompted by reasons that had nothing to do with any treaty shopping concerns, which is why the Requested Documents are irrelevant and immaterial.</p> <p>Moreover, and in any event, Bahrain has failed to explain, let alone substantiate, why documents relating to NICO's cash and liquidity position would in any event be whatsoever relevant to its abuse of process objection or any of the remaining bifurcated issues, and the one statement from CMPO (as reproduced above) that it cherry picks in an attempt to do so does not and cannot establish the relevance of the Request, which is advanced in an overly broad manner, as NICO's position is that it would</p>



	<p>be non-sensical for it to re-domiciliate to a jurisdiction only to gain access to treaty arbitration for its funds in Bahrain whereas the same only makes up a fraction of its total funds (CMPO, ¶ 42). It is thus clear that Bahrain's Request No. 23 is, in reality, a fishing expedition that Bahrain wishes to pursue in the hope of somehow finding a document to support its defence against NICO's claims on the merits and is thus also abusive.</p> <p><u>Existence and access to the Requested Documents:</u> Claimant has in any event already searched and produced all relevant and material documents in its possession pertaining to its motivations underlying NICO's 2011 re-domiciliation to Labuan and the March 2018 Decision.</p> <p>For all of the above reasons, Claimant objects to Bahrain's Production Request No. 23 in its entirety.</p>
(c) Reply to the responses	<p><b>Tribunal decision required:</b></p> <p>Bahrain maintains this request. However, request 23(3) is deleted entirely and replaced with the following:</p> <p><b>"3. Correspondence and Internal Communications:</b></p> <p>(c) Documents sent or received by NICO's Board of Directors for the years 2010, 2011, 2012, 2017 and 2018 discussing NICO's liquidity and/or cash position."</p> <p>Each of NICO's objections is ill-founded and addressed below.</p> <p><u>Relevance and materiality:</u></p> <p>For the reasons set out in paragraphs 22 to 24 above, the fact that NICO has exhibited some documents with its prior submissions to support its own case does not negate Bahrain's right to seek disclosure of all relevant and material documents. If anything, NICO's claimed overlap between the documents it has exhibited and the documents that Bahrain now requests demonstrates that the requested category of documents are relevant and material, and that it would not be unduly burdensome for NICO to produce any remaining documents that fall within the category requested.</p> <p>NICO has advanced, of its own accord, the argument that it manages "<i>billions of euros, with only a small portion of its assets placed in Bahrain</i>" and therefore have no cause to re-domicile for treaty protection reasons (Counter-Memorial, paras 42 and 51). The requested documents will enable the Tribunal to assess the strength of NICO's argument and, in turn, decide whether the restructuring was abusive, which is a key issue in these bifurcated proceedings. As NICO has not retracted this argument, the requested documents remain relevant and material.</p> <p><u>Overly broad and unduly burdensome:</u></p> <p>NICO asserts that the request is "<i>advanced in an overly broad manner</i>". However, this request identifies specific documents with a precise time frame (e.g. request 23(1) and (2): the annual financial statements and bank statements for specific years) that is targeted and relevant to the timeline of NICO's re-domiciliations, the custodians (e.g. request 23(2): NICO's</p>

	<p>primary banking institutions) and the subject matter (e.g. request 23(3): NICO's liquidity and/or cash position).</p> <p>Moreover, as explained in paragraph 29 above, the Tribunal has confirmed the relevance of the information available to NICO at the time of its restructuring(s), which is only in NICO's possession. As such, this request is proportionate to the issues in disputes and is not "<i>unduly burdensome</i>" or an attempt to "<i>fish for documents</i>" as NICO asserts.</p> <p>Without prejudice to the above, Bahrain has amended request 23(3) to make it narrower.</p> <p><u>Existence and access:</u></p> <p>NICO's assertion that it has "<i>in any event already searched and produced all relevant and material documents in its possession pertaining to its motivations underlying NICO's 2011 re-domiciliation to Labuan and the March 2018 Decision</i>" is, as set out in paragraphs 24 and 26 above, unavailing. The documents exhibited by NICO with its prior submissions pre-date Bahrain's Requests, meaning that NICO would not have specifically searched for documents responsive to this request at the time of its submissions. Further, NICO cannot unilaterally decide what documents are relevant and material to the bifurcated issues and NICO's response indicates the existence of other responsive documents that in NICO's subjective opinion are irrelevant and immaterial.</p>
<b>(d) Tribunal's decision</b>	<p>The request is granted in respect of Request 23(1)(a) and (b). The remainder of Request 23 is rejected as overly broad and unduly burdensome.</p>