

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

BA Desarrollos LLC

v.

Argentine Republic

(ICSID Case No. ARB/23/32)

PROCEDURAL ORDER No. 10
(Parties' Document Production and Requests Related to the NDP Submission)

Members of the Tribunal

Ms. Deva Villanúa, President of the Tribunal

Mr. Stephen L. Drymer, Arbitrator

Mr. Luis Alberto González García, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

Assistant to the Tribunal

Mr. Ethan Shannon-Craven

17 March 2025

WHEREAS

1. On 15 March 2024 the Arbitral Tribunal issued Procedural Order [**“PO”**] No. 1, in which the procedural calendar of the proceeding was established [**“Procedural Calendar”**], including the dates for the relevant deadlines in a document production phase.
2. On 30 December 2024, in accordance with the Procedural Calendar, each Party shared their requests for document production with the Tribunal [**“Request for DP”**], containing the response of the counterparty to the Request for DP [**“Response on DP”**], and the requesting Party’s reply to the Response on DP.
3. On 6 and 7 January 2025 each Party produced those documents requested by the counterparty whose production it did not object to.
4. On 13 January 2025 the Tribunal issued PO No. 8, through which it made a decision on the Parties’ Requests for DP.
5. On 22 January 2025 the Tribunal received an application from the United States Government [**“United States”**] for access to certain case documents¹ [**“Request for Case Documents”**] in order to assess whether to make a non-disputing Treaty party submission [**“NDP Submission”**]².
6. On 27 January 2025 the Parties produced further documents in response to the Tribunal’s decision in PO No. 8.
7. On 11 February 2025 the Tribunal issued PO No. 9, rejecting the Request for Case Documents but allowing the United States to make an NDP Submission by 21 March 2025, subject to certain conditions.
8. On 17 February 2025 the Tribunal received a letter from Claimant alleging deficiencies in Respondent’s document production³.
9. On 26 February 2025, as per the Tribunal’s instructions, Argentina produced its comments regarding its document production⁴. Simultaneously, Respondent also shared an additional letter arguing that Claimant had not complied with its document production obligations⁵.
10. On 5 March 2025 the Tribunal received a further letter from the United States

¹ Namely, the Notice of Arbitration, the Parties’ pleadings and the relevant procedural orders.

² United States’ letter of 22 January 2025.

³ Claimant’s letter of 17 February 2025.

⁴ Respondent’s second letter of 26 February 2025.

⁵ Respondent’s first letter of 26 February 2025.

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requesting guidance from the Tribunal regarding the relevant provisions of the Treaty and the Parties' arguments relating to them or, alternatively, the receipt of partial and/or redacted versions of the pleadings [**"Supplementary Request"**]⁶.

11. On 6 March 2025, following the Tribunal's indications, Claimant provided its comments on its own document production⁷.
12. On 11 March 2025, in response to the Supplementary Request, Respondent contacted the Tribunal asking that a redacted version of its Memorial on Preliminary Objections and Counter-Memorial on the Merits [**"Memorial"**] be published [**"Publication Petition"**] and requesting that the deadline for the United States to make its NDP Submission be extended [**"Deadline Extension Request"**]⁸.
13. On 12 March 2025 the Tribunal received a communication from Claimant regarding the Supplementary Request, the Publication Petition and the Deadline Extension Request⁹. Also on the same date, Respondent sent a further communication on the same matters¹⁰.
14. On 13 March 2025, following the publication of PO No. 9, the Tribunal received a further communication from the United States reaffirming its Supplementary Request¹¹.

⁶ United States' letter of 5 March 2025.

⁷ Claimant's letter of 6 March 2025.

⁸ Respondent's letter of 11 March 2025.

⁹ Claimant's letter of 12 March 2025.

¹⁰ Respondent's letter of 12 March 2025.

¹¹ United States' email of 13 March 2025.

DISCUSSION

15. As has been evidenced above, both Parties contest each other's compliance with its document production obligations. The Tribunal will first focus on Argentina's alleged deficiencies (1.) before assessing whether Claimant is in breach of its obligations (2.). The Tribunal will then turn to the Supplementary Request (3.) and make a decision regarding the Publication Petition (4.) and the Deadline Extension Request (5.).

1. RESPONDENT'S DOCUMENT PRODUCTION

16. The debate between the Parties centres around Claimant's Document Request No. 1 [**"Claimant's Document Request"**] which set out as follows¹²:

"Copy of the court file *"GARCÍA LLORENTE, Ramón y otros s/ negociaciones incompatibles (art. 265 CP), defraudación por administración fraudulenta y defraudación contra la administración pública"*, File No. CFP 6850/2020 (Coirón N° 68424/2020), submitted before the Federal Criminal and Correctional Court No. 11 under investigation by the National Criminal and Correctional Prosecutor's Office No. 10. This request includes (but is not limited to) (a) the criminal complaint filed by the Anticorruption Office; (b) the pleadings or defense briefs filed by those persons who are the target of the investigation; (c) the accusation brief (*imputación*) filed by the Public Prosecutor's Office (if any); (d) any court order providing for interim measures in connection with Plots 2 and 3; and (e) any order, ruling or judgment which orders the "lack of merit" (*falta de mérito*), dismissal (*sobreseimiento*) or indictment (*procesamiento*) of the investigated persons".

17. On 7 January 2025, after entering into a confidentiality agreement, Argentina voluntarily produced certain documents that were responsive to Claimant's Document Request [**"Court File Documents"**], applying redactions to some documents¹³.
18. The Tribunal's decision in PO No. 8 ordered Respondent to produce any remaining Court File Documents by 27 January 2025. Argentina did not produce any further Court File Documents¹⁴.
19. The parties exchanged responses regarding Claimant's Document Request between 28 January 2025 and 11 February 2025, with Claimant alleging that

¹² PO No. 8, Annex A, p. 1.

¹³ Claimant's letter of 17 February 2025, p. 1; Respondent's second letter of 26 February 2025, pp. 1 – 2.

¹⁴ Claimant's letter of 17 February 2025, p. 2.

Argentina was yet to produce some, and wrongly redacted other, Court File Documents¹⁵. Argentina, on the other hand, retorted that it had produced all the responsive documents in its possession and offered to request that the Federal Criminal and Correctional Court No. 11 [**“Criminal Court”**] grant Claimant authorisation to access the Court File Documents [**“Respondent’s Offer”**]¹⁶.

20. The Tribunal will first deal with Claimant’s allegation that Argentina has failed to produce all responsive Court File Documents (A.) before dealing with the redaction of certain other Court File Documents (B.).

A. Alleged failure to produce all Court File Documents

21. Claimant argues that Respondent has failed to produce documents for certain timeframes and that, for those periods of time it has produced Court File Documents, it has not delivered all the responsive documents in its possession¹⁷. In particular, Claimant ascertains that, although Respondent may argue that further Court File Documents are not directly in the possession of the *Procuración del Tesoro de la Nación* [**“Procuración”**], Respondent’s counsel in this arbitration, this does not equate to them not being in the possession of Argentina as Party to the proceedings – as confirmed by various arbitration tribunals¹⁸. Moreover, Claimant points to the fact, as recognised in PO No. 8, that Respondent’s counsel has previously obtained documents from the relevant court file and that it has not demonstrated efforts to regain access to the Court File Documents¹⁹.
22. In addition, Claimant argues that Respondent’s Offer, as made in its previous correspondence, is merely a way of flouting the Tribunal’s order and has already been rejected by the Tribunal as an argument²⁰. Moreover, Claimant itself making such a request would implicate it in criminal proceedings to which it is not a party, with the associated expenses and months of delay in gaining access. In contrast, Argentina, Claimant claims, would be able to gain much quicker access, due to Respondent’s counsel’s previously being granted Court File Documents²¹.
23. Argentina, on the other hand, points to the fact that both the Criminal Court and the General Public Prosecutor, who is in charge of the investigation behind the underlying case file, are separate from the Argentine executive – with Respondent’s counsel therefore not having access to the remaining Court File Documents²². Moreover, turning to the decisions provided by Claimant, in

¹⁵ Claimant’s letter of 17 February 2025, p. 2.

¹⁶ Respondent’s second letter of 26 February 2025, p. 2.

¹⁷ Claimant’s letter of 17 February 2025, p. 3.

¹⁸ Claimant’s letter of 17 February 2025, pp. 3 – 4.

¹⁹ Claimant’s letter of 17 February 2025, pp. 4 – 5.

²⁰ Claimant’s letter of 17 February 2025, pp. 4 – 5.

²¹ Claimant’s letter of 17 February 2025, p. 5.

²² Respondent’s second letter of 26 February 2025, p. 3.

particular Procedural Order No. 8 in *Elliot Associates*²³, Argentina argues that they in fact support the reasoning behind Respondent's Offer, with the tribunal in that decision arguing that the responsive documents should be provided to the claimant directly by the Korean judiciary or prosecutors²⁴.

24. Moreover, Argentina finds fault with the idea that the Tribunal has rejected Respondent's Offer; the Tribunal, it suggests, merely recognised that Respondent seemed to have access to the relevant record – an access that was time-limited and already revoked²⁵. As for any burden on Claimant's lawyers to request the Court File Documents themselves, Respondent argues that it is not in a privileged position and would face the same difficulties, and associated delays, with Claimant in fact being able to make a request to the Criminal Court more efficiently on account of having a better understanding of the documents it requires²⁶. As a final point, Argentina rejects any suggestion that Claimant making a request to the Criminal Court would implicate it in criminal proceedings – suggesting this does not adequately reflect Argentinian law²⁷.
25. The Tribunal notes that the Respondent in this arbitration is the Argentine Republic – not the Procuración. Thus, the relevant question is not whether the requested Court File Documents are in the possession of the Procuración, but whether Argentina, as Respondent, possesses them – a fact that does not seem to be in dispute.
26. As indicated in *Elliott Associates*²⁸ and *Mason Capital*²⁹, it is for Argentina to determine whether the Criminal Court should provide Claimant with the Court File Documents directly, or whether to request them on Claimant's behalf; nevertheless, in any case, it has a duty to make its best efforts to provide the Court File Documents – a duty which Respondent seems to recognise³⁰. The fact that under Argentine law the Procuración (Executive branch) cannot oblige the criminal court (Judicial branch) to provide the Court File Documents does not excuse Argentina of its duty to produce the documents to Claimant. Respondent has failed to justify why it seemingly did not immediately request the remaining Court File Documents following the Tribunal's decision in PO No. 8.
27. The Tribunal notes that Respondent references the tribunal in *Elliott Associates*' later decision in its Procedural Order No. 14 to deny a subsequent request for

²³ *Elliott Associates L.P. v. Republic of Korea*, PCA Case No. 2018-51, PO No. 8, 13 January 2020 (Doc. CL-124) and PO No. 14, 24 June 2020 (Doc. RL-223) [collectively "**Elliott Associates**"]

²⁴ Respondent's second letter of 26 February 2025, pp. 3 – 4; *Elliott Associates*, PO No. 8, para. 14.

²⁵ Respondent's second letter of 26 February 2025, p. 4.

²⁶ Respondent's second letter of 26 February 2025, pp. 4 – 5.

²⁷ Respondent's second letter of 26 February 2025, p. 5.

²⁸ *Elliott Associates*, PO No. 8, para. 14.

²⁹ *Mason Capital L.P. and Mason Management LLC. v. Republic of Korea*, PCA Case No. 2018-55, PO No. 5, 15 January 2021 (Doc. CL-125) [**"Mason Capital"**], para. 34.

³⁰ Respondent's first letter of 26 February 2025, p. 5.

documents. Said decision, however, was the result of the fact that complying with the request was seemingly illegal under Korean Law due to being related to ongoing criminal proceedings³¹. The same cannot be said in relation to the Court File Documents, which have been produced by Argentina previously.

28. Considering the above, the Court File Documents, to the extent that they are in the possession of the Criminal Court, are found to be in Respondent's possession. In accordance with its decision in PO No. 8³², Argentina is ordered to **immediately** make the necessary arrangements to produce any Court File Documents that have not previously been provided to Claimant.

B. Redaction of Court File Documents

29. Claimant makes the argument that Respondent has not fulfilled its documentary production obligations by needlessly applying redactions to certain Court File Documents pursuant to *Ley N° 25.326 de Protección de Datos Personales* – which does not apply to the relevant documents³³. In any case, Claimant has signed a confidentiality agreement, restricting the use of any such documents which enter its possession³⁴.
30. Although Claimant has identified various Court File Documents which are unnecessarily redacted, for the sake of procedural efficiency, and without waving any rights, it agreed to limit its present request regarding the lifting of redactions to three documents [**“Redaction Lifting Request”**]³⁵.
31. At the time of Claimant's letter, Argentina had agreed to the lifting of the redactions on two of the documents in the Redaction Lifting Request, but rejected to doing so on a third document, that being “a court transcript of the examination by the public prosecutor of the head of disputes at the AABE” [**“Court Transcript”**]³⁶. According to Claimant, Respondent did so under legal privilege on litigation defence strategy grounds as the Head of Disputes recounted his communications and conversations with Argentina's lawyers³⁷. These grounds, Claimant argues, do not meet the standard for legal privilege to apply set out in PO No. 8 and, in any case, any such privilege has been waived by the Head of Disputes by him relaying the content of his communications to a public prosecutor³⁸.
32. Respondent, on the other hand, does not directly comment on Claimant's

³¹ *Elliott Assoicates*, PO No. 14, para. 72.

³² PO No. 8, Annex A, p. 4.

³³ Claimant's letter of 17 February 2025, pp. 1 – 2; fn. 3.

³⁴ Claimant's letter of 17 February 2025, p. 5.

³⁵ Claimant's letter of 17 February 2025, p. 6.

³⁶ Claimant's letter of 17 February 2025, p. 6.

³⁷ Claimant's letter of 17 February 2025, p. 6; Annexes E and G.

³⁸ Claimant's letter of 17 February 2025, p. 6.

arguments, suggesting that any debate on the Redaction Lifting Request is now moot due to Argentina previously producing two of the documents and producing the third on 26 February 2025 – the date of its reply³⁹.

33. The Tribunal notes that although Claimant alleges to have found various Court File Documents that were needlessly redacted, ultimately its Redaction Lifting Request only amounted to three documents – two of which Claimant confirms have now been provided to it unredacted⁴⁰ and the third has allegedly been handed over⁴¹. Consequently, Claimant is invited to confirm by **18 March 2025** whether it has received the Court Transcript.

2. CLAIMANT’S DOCUMENT PRODUCTION

34. On 27 January 2025, as a result of the Tribunal’s decision in PO No. 8, Claimant produced a privilege log which included twenty-one documents being withheld, and eight being redacted, on account of legal privilege [**“Privilege Log”**]⁴². Additionally, Claimant produced certain responsive documents, whilst redacting eight others⁴³ due to parts of them being non-responsive and unrelated to the dispute [**“Allegedly Irrelevant Documents”**]⁴⁴.
35. The Tribunal will first settle the dispute between the Parties regarding the Allegedly Irrelevant Documents (A.) before turning to issues relating to the Privilege Log (B.).

A. Allegedly Irrelevant Documents

36. Respondent submits that in its PO No. 8 the Tribunal made a *prima facie* analysis on the relevance of each of the Allegedly Irrelevant Documents. Therefore, it is not for Claimant to “replace” the Tribunal’s analysis with its own⁴⁵. Moreover, Argentina argues that neither PO No. 8 nor the IBA Rules on the Taking of Evidence [**“IBA Rules”**] refer to a lack of relevance as a ground for not producing documents; instead, the reference to a lack of relevance in the IBA Rules is a ground for the Tribunal to not order production in the first place⁴⁶. Once the Tribunal has ruled that the Allegedly Irrelevant Documents are *prima facie* relevant, they must be produced, with the Parties able to comment on their

³⁹ Claimant’s second letter of 26 February 2025, p. 2.

⁴⁰ Claimant’s letter of 17 February 2025, p. 6.

⁴¹ Claimant’s second letter of 26 February 2025, p. 2.

⁴² Respondent’s first letter of 26 February 2025, Annex C.

⁴³ Respondent has not clarified exactly which documents are the Allegedly Irrelevant Documents. As per Annex A to Respondent’s first letter of 26 February 2025, these seem to be Documents BA-[002054], BA-[002056], BA-[002066], BA-[002076], BA-[002080], BA-[002086], BA-[002115], BA-[002111] and BA-[002096] although the Tribunal notes that these amount to nine documents.

⁴⁴ Claimant’s letter of 6 March 2025, p. 2.

⁴⁵ Respondent’s first letter of 26 February 2025, p. 3.

⁴⁶ Respondent’s first letter of 26 February 2025, p. 3.

relevance in their pleadings and during the hearing⁴⁷. Claimant's argument that the redactions, which in some cases account for more than half of the Withheld Document, "do not eliminate the context needed to understand the responsive portions of the documents"⁴⁸ is irrelevant: Respondent has the right to assess the Allegedly Irrelevant Documents in full, without redactions based on a lack of relevance, materiality or not being related to the dispute⁴⁹. In any case, Claimant has failed to summarise or explain the redacted content⁵⁰.

37. Claimant, meanwhile, does not dispute that the Tribunal has decided that the Allegedly Irrelevant Documents are *prima facie* relevant as a whole, arguing that it made the redactions as certain documents that were responsive to the relevant document requests also contained unresponsive information, entirely unrelated to the dispute, that did not eliminate the context necessary to understand the responsive parts – a decision in line with Article 9.2(a) of the IBA Rules which provides for the exclusion of "any Document... in whole or in part" for "lack of sufficient relevance to the case of materiality to its outcome"⁵¹. Claimant has no duty to summarise or explain the redacted content, but gives two examples, documents BA-[002056] and BA-[002080], that are email chains containing information unrelated to the document request in question⁵².
38. The Tribunal finds that, as Respondent correctly points out, both PO No. 8 and the IBA Rules do not recognise a lack of relevance, unilaterally assessed by the Party, as a reason not to produce documents, once the Tribunal has already ruled on their relevance. Although it is true, as set out in PO No. 8, that the Tribunal's assessment of the Allegedly Irrelevant Documents' relevance was made on a *prima facie* basis, the Tribunal clarified that its analysis did not "prejudge[e] any final decision that [it] may adopt ... **once all the evidence has been furnished**"⁵³. Once this occurs, it will be for the Parties to argue in their pleadings, and for the Tribunal to ultimately decide, the relevance of the Allegedly Irrelevant Documents. Therefore, any redactions of the Allegedly Irrelevant Documents based purely on one Party's assessment of their irrelevance or materiality shall not be allowed.
39. That being said, if the Tribunal is provided with adequate grounds, such as legal privilege, commercial or other confidentiality, or privacy, which prevent certain documents, or segments of documents, from being disclosed, the Party in question will not be required to produce such information. From what the Tribunal can gather from the information and documents it has been provided, and according to Claimant⁵⁴, six of the eight documents also contain redactions based either solely

⁴⁷ Respondent's first letter of 26 February 2025, p. 4.

⁴⁸ Respondent's first letter of 26 February 2025, Annex B, p. 2.

⁴⁹ Respondent's first letter of 26 February 2025, p. 4.

⁵⁰ Respondent's first letter of 26 February 2025, p. 3.

⁵¹ Claimant's letter of 6 March 2025, pp. 2 – 3.

⁵² Claimant's letter of 6 March 2025, p. 3.

⁵³ PO No. 8, para. 21.

⁵⁴ Claimant's letter of 6 March 2025, fn. 4. Documents BA-[002076], BA-[002096], BA-[002056], BA-

or completely on legal privilege. As confirmed by the Tribunal's decision in para. 49 *infra*, any such redactions shall be permitted as long as they comply with the conditions set out in PO No. 8⁵⁵.

40. Nevertheless, as far as Documents BA-[002054] and BA-[002115] are concerned, as acknowledged by Claimant⁵⁶, these documents contain redactions purely based on alleged irrelevance and immateriality. These redactions must, therefore, be immediately removed.

B. Privilege Log

41. Respondent points to 23 of the 29 entries contained in the Privilege Log whose redaction or withholding it objects to, arguing that Claimant's arguments for doing so are inconsistent – sometimes producing documents containing communications between or with its lawyers, but not always, and not providing a sufficient justification for such a difference⁵⁷. Moreover, withholding a document on the grounds of privilege, it argues, should only be a last resort when redaction cannot adequately safeguard the document's content⁵⁸.
42. The information contained within the Privilege Log, Argentina claims, is inadequate to assess whether the requirements for invoking legal privilege contained in PO No. 8 are met; in fact, on the limited information provided, it seems that certain documents describe “an event, situation or state of affairs” and are therefore not subject to such privilege⁵⁹.
43. Furthermore, the Privilege Log fails to identify the Bates number of the withheld documents or their length, hindering any determination of whether an allegation of privilege has been correctly made⁶⁰. Consequently, Respondent requests that the withheld documents be produced and the redactions be “modified so as to reach only, exclusively and strictly to the legal advice given or requested in a context in which the client and the lawyer acted with the expectation that, in the event of a legal dispute, such advice would be kept in confidence”⁶¹.
44. Conversely, Claimant argues that its decision on whether or not to classify communications with or between lawyers as being subject to privilege is consistent: if the communication pertained to information of a factual nature, it was produced, whereas if it related to “legal advice or work product” it was

[002066], BA-[002080], BA-[002086], BA-[002111].

⁵⁵ PO No. 8, para. 28.

⁵⁶ Claimant's letter of 6 March 2025, fn. 4.

⁵⁷ Respondent's first letter of 26 February 2025, pp. 4 – 5.

⁵⁸ Respondent's first letter of 26 February 2025, p. 5.

⁵⁹ Respondent's first letter of 26 February 2025, p. 5.

⁶⁰ Respondent's first letter of 26 February 2025, p. 5.

⁶¹ Respondent's first letter of 26 February 2025, pp. 5 – 6.

redacted or, when the privilege could not be adequately safeguarded, withheld⁶². This laborious task was carried out with the Tribunal's explicit instructions to only redact the privileged information⁶³.

45. Additionally, Claimant disputes the notion that certain documents in the Privilege Log contain factual information lacking legal privilege; such documents do not contain factual non-privileged information but legal advice being sought or provided in relation to a factual scenario⁶⁴.
46. Claimant also comments on arguments made by Respondent in an annotated version of the Privilege Log⁶⁵. One of such arguments is that the documents included in the Privilege Log are relevant and material – a classification that Claimant accepts but deems to be unimportant; the fact that documents are relevant does not prevent them from being subject to legal privilege, and so dispensing of the need to produce part or all of them⁶⁶.
47. A further argument Claimant contests, is the idea that documents relating to submissions before state agencies means there was no expectation that their content would be kept in confidence; in Claimant's view, legal advice or work in relation to a document submitted to a third-party do not cease to be privileged once the document is handed over⁶⁷.
48. As a final point, Claimant rejects Respondent's claim that the Privilege Log contains insufficient information; in particular, the idea that the description in Entry 6⁶⁸ does not contain sufficient information. According to Claimant, in the Privilege Log it explained that Entry 6 consists of an email from Marval O'Farrell Mairal to a representative of Promotora Fiduciaria (then Fideicomiso BAP's trustee), in which the former was "collecting information for the purposes of providing legal advice"⁶⁹. For the avoidance of doubt, Claimant confirms that the email contains "specific information for the purposes of providing legal advice on the replacement of the trustee of Fideicomiso BAP"⁷⁰. Furthermore, the fact that the Privilege Log does not identify the Bates number of the documents, or their length, is not required by PO No. 8 or the IBA Rules and has no bearing on the assessment of whether privilege was properly asserted⁷¹.
49. After analysing the Parties' arguments, and based on the information they have provided, the Tribunal does not find *prima facie* that Claimant has inappropriately

⁶² Claimant's letter of 6 March 2025, p. 5.

⁶³ Claimant's letter of 6 March 2025, p. 5.

⁶⁴ Claimant's letter of 6 March 2025, p. 5.

⁶⁵ Respondent's first letter of 26 February 2025, Annex D.

⁶⁶ Claimant's letter of 6 March 2025, p. 5.

⁶⁷ Claimant's letter of 6 March 2025, p. 6.

⁶⁸ Respondent's first letter of 26 February 2025, Annex D, Entry 6.

⁶⁹ Claimant's letter of 6 March 2025, p. 6.

⁷⁰ Claimant's letter of 6 March 2025, p. 6.

⁷¹ Claimant's letter of 6 March 2025, fn. 31.

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redacted or withheld documents within its Privilege Log. As Claimant suggests, all documents within the Privilege Log, as per the Tribunal's decision in PO No. 8, have necessarily been recognised as *prima facie* relevant and material – this being so does not imply that legal privilege may not apply to part or all of any responsive documents. Moreover, just because legal advice pertains to a factual scenario, or submissions made before state agencies, does not preclude privilege from applying; information, however, that is purely factual should remain unredacted and provided. In particular:

- In relation to Entries 3 and 4⁷²: if the email chains contain purely factual information on the “requirements established in the Terms and Conditions of the Auctions for Plots 2 and 3”, as opposed to the legal advice related to it, this should be produced;
- In relation to Entry 5⁷³: if the email chain contains purely factual information on the “administrative decision awarding Plot 3 to Fideicomiso BAP”, as opposed to the legal advice related to it, this should be produced;
- In relation to Entry 6⁷⁴: if the email chain contains purely factual information on the “replacement of the trustee of Fideicomiso BAP”, as opposed to the legal advice related to it, this should be produced;
- In relation to Entry 7⁷⁵: if the email chain contains purely factual information on “the presence of power lines and other fixtures in Plots 2 and 3”, as opposed to the legal advice related to it, this should be produced;
- In relation to Entry 8⁷⁶: if the email chain contains purely factual information on the “grounds invoked by AABE to request the change of trustee”, as opposed to the legal advice related to it, this should be produced;
- In relation to Entry 9⁷⁷: if the email chain contains purely factual information on the “the appointment of a new trustee to replace Promotora Fiduciaria”, as opposed to the legal advice related to it, this should be produced;
- In relation to Entry 11⁷⁸: if the email chain contains purely factual information on the “the criminal complaint submitted by the Anticorruption Office against certain officials of the Macri Administration”, as opposed to the legal advice related to it, this should be produced;

⁷² Respondent's first letter of 26 February 2025, Annex D, Entries 3 and 4.

⁷³ Respondent's first letter of 26 February 2025, Annex D, Entry 5.

⁷⁴ Respondent's first letter of 26 February 2025, Annex D, Entry 6.

⁷⁵ Respondent's first letter of 26 February 2025, Annex D, Entry 7.

⁷⁶ Respondent's first letter of 26 February 2025, Annex D, Entry 8.

⁷⁷ Respondent's first letter of 26 February 2025, Annex D, Entry 9.

⁷⁸ Respondent's first letter of 26 February 2025, Annex D, Entry 11.

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- In relation to Entry 13⁷⁹: if the email chain contains purely factual information on the “the criminal investigations initiated by the Anticorruption Office”, as opposed to the legal advice related to it, this should be produced;
- In relation to Entry 15⁸⁰: if the email chain contains purely factual information on the “Meeting with AABE officials with regard to the execution of the deeds” or the “criminal investigations initiated by the Anticorruption Office”, as opposed to the legal advice related to them, this should be produced;
- In relation to Entry 16⁸¹: if the email chain contains purely factual information on the “the criminal investigations initiated by the Anticorruption Office” or the “meeting with AABE officials with regard to the execution of the deeds in light of those criminal investigations”, as opposed to the legal advice related to them, this should be produced;
- In relation to Entry 17⁸²: if the email chain contains purely factual information on “a meeting with AABE officials with regard to the execution of the deeds in light of the criminal investigations initiated by the Anticorruption Office”, as opposed to the legal advice related to it, this should be produced;
- In relation to Entries 18, 19 and 20⁸³: if the email chains contain purely factual information on “the criminal investigations initiated by the Anticorruption Office”, as opposed to the legal advice related to it, this should be produced;
- In relation to Entry 21⁸⁴: if the email chain contains purely factual information on “a request for Fideicomiso BAP’s information from the Public Prosecution in charge of the criminal investigations” or “a request made by the Registry of Commerce (*Inspección General de Justicia*)”, as opposed to the legal advice related to them, this should be produced;
- In relation to Entry 22⁸⁵: if the email chain contains purely factual information on “a request for information from the Public Prosecutor in charge of the criminal investigations”, as opposed to the legal advice related to it, this should be produced;

⁷⁹ Respondent’s first letter of 26 February 2025, Annex D, Entry 13.

⁸⁰ Respondent’s first letter of 26 February 2025, Annex D, Entry 15.

⁸¹ Respondent’s first letter of 26 February 2025, Annex D, Entry 16.

⁸² Respondent’s first letter of 26 February 2025, Annex D, Entry 17.

⁸³ Respondent’s first letter of 26 February 2025, Annex D, Entries 18, 19 and 20.

⁸⁴ Respondent’s first letter of 26 February 2025, Annex D, Entry 21.

⁸⁵ Respondent’s first letter of 26 February 2025, Annex D, Entry 22.

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- In relation to Entry 23⁸⁶: if the email chain contains purely factual information on “a second request for information from the Public Prosecutor in charge of the criminal investigations”, as opposed to the legal advice related to it, this should be produced;
 - In relation to Entry 25⁸⁷: if the email chain contains purely factual information on “a request for information from the Public Prosecutor in charge of the criminal investigations”, as opposed to the legal advice related to it, this should be produced;
 - In relation to Entry 27⁸⁸: if the email chain contains purely factual information on the possibility that “DAPSA failed to comply with the vacancy agreement” or “a potential new auction by AABE to sell the remaining plot in Catalinas Norte II”, as opposed to the legal advice related to them, this should be produced. Similarly, if Claimant has redacted a summary of a meeting between Edmond Safra and AABE this should be produced. If, however, Mr. Safra’s impressions of the meeting were linked to the seeking of legal advice these should remain redacted;
 - In relation to Entry 28⁸⁹: if the email chain contains purely factual information on “the necessary approvals for executing the Viñoly Project”, as opposed to the legal advice related to it, this should be produced;
 - In relation to Entry 29⁹⁰: if the email chain contains purely factual information on “on the assignment of Catalinas Norte II Plot 8 from TGLT S.A. to Fideicomiso Financiero Privado Inmobiliario de Administración Catalinas I.”, as opposed to the legal advice related to it, this should be produced.
50. As for the sufficiency of the information in the Privilege Log, the Tribunal notes that PO No. 8 did not require Claimant to identify the Bates numbers of the documents or their length. It cannot be said, therefore, that Claimant has gone against the Tribunal’s instructions in this respect. Additionally, the Tribunal does not find the descriptions contained in the Privilege Log to be inadequate, with the exception of Entry 6. The Tribunal is, however, satisfied with the description provided by Claimant in its letter of 6 March 2025 which should allow Respondent to understand Claimant’s reasoning for not producing the associated document⁹¹.

⁸⁶ Respondent’s first letter of 26 February 2025, Annex D, Entry 23.

⁸⁷ Respondent’s first letter of 26 February 2025, Annex D, Entry 25.

⁸⁸ Respondent’s first letter of 26 February 2025, Annex D, Entry 27.

⁸⁹ Respondent’s first letter of 26 February 2025, Annex D, Entry 28.

⁹⁰ Respondent’s first letter of 26 February 2025, Annex D, Entry 29.

⁹¹ Claimant’s letter of 6 March 2025, p. 6.

3. SUPPLEMENTARY REQUEST

51. On account of the Tribunal's decision in PO No. 9, the United States makes its Supplementary Request, seeking guidance from the Tribunal regarding the relevant provisions of the Treaty and the Parties' arguments relating to them. This, it argues, would enhance the utility of the NDP Submission as, without such information, the United States would have to address the Treaty's fourteen articles and protocol in a 15-page submission – something that is not feasible. In the alternative, it reiterates its willingness to receive partial and/or redacted versions of the pleadings⁹².
52. In response to the Supplementary Request, Claimant argues that the United States already has access to seven procedural orders and will shortly have access to another two, providing it with sufficient detail on the legal and factual arguments in dispute. This being the case, the Claimant requests that the Tribunal direct the United States to certain parts of PO Nos. 2, 7 and 8 [**"Claimant's Proposal"**]⁹³.
53. As noted in its decision in PO No. 9⁹⁴, the wording of Rule 68 of the ICSID Arbitration Rules, is unambiguous in that the non-disputing Treaty party may only be provided with documents filed during the proceeding if both Parties agree to the Tribunal doing so⁹⁵ – a condition that has not been met⁹⁶. In this context, the Tribunal believes that referring the United States to the relevant parts of the publicly available procedural orders that make reference to the relevant Treaty provisions, and the Parties' arguments relating to them, is a reasonable suggestion that does not go against any rule. These relevant parts include those segments highlighted in Claimant's Proposal. Argentina is invited to indicate by **18 March 2025** whether it wishes to draw the United States' attention to any further parts of the procedural orders in the public record. After which, on the Tribunal's instructions, the Secretariat will proceed to direct the United States point to the relevant parts of the procedural orders.

⁹² United States' letter of 5 March 2025, p. 1.

⁹³ Claimant's letter of 12 March 2025, p. 2.

⁹⁴ PO No. 9, para. 14.

⁹⁵ The intention of States when negotiating the 2022 ICSID Arbitration Rules is made clear from "Working Paper # 6: Proposals for Amendment of the ICSID Rules" of 12 November 2021 in its para. 31 which indicates that the purpose Rule 68(3) is to replicate Rule 67(6) and its prohibition on providing a non-disputing Treaty party with case documents if one of the parties objects.

⁹⁶ Claimant's letter of 31 January 2025, pp. 1 – 2.

4. PUBLICATION PETITION

54. Respondent has decided to make a Publication Petition under ICSID Arbitration Rule 64 [**“Rule 64”**]⁹⁷:

- (1) With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.
- (2) Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal a dispute regarding the redaction of a written submission, excluding supporting documents, that it filed in the proceeding. The Tribunal shall decide any disputed redactions and the Centre shall publish the written submission in accordance with the decision of the Tribunal.
- (3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.

55. As per Rule 64(1), Argentina has communicated its desire to make the redacted Memorial public to Claimant who, as evidenced by its letter of 12 March 2025⁹⁸, has not provided its consent⁹⁹. Therefore, Argentina requests that the Tribunal make a decision in accordance with Rule 64(2) on its Publication Petition¹⁰⁰.

56. Claimant finds that it is particularly vital that the Tribunal rejects the Publication Petition on account of the impending deadline for it to produce its Reply Memorial¹⁰¹ and the significant time and resources that have been dedicated to addressing the Parties’ alleged deficient document production, putting Claimant at an unfair disadvantage¹⁰².

57. Respondent rejects any claim that it is attempting to circumvent the decision in PO No. 9, instead arguing that it is merely exercising its rights as per Rule 64¹⁰³. Moreover, Rule 64 does not provide for Claimant to reject to its Publication Request as a whole, but instead to contest the proposed redactions to the Memorial¹⁰⁴.

⁹⁷ Respondent’s letter of 11 March 2025, p. 1.

⁹⁸ Claimant’s letter of 12 March 2025, p. 3.

⁹⁹ Respondent’s letter of 11 March 2025, p. 1.

¹⁰⁰ Respondent’s letter of 11 March 2025, p. 1.

¹⁰¹ Capitalised terms not defined in this communication shall have the definition given to them in the Tribunal’s previous decisions.

¹⁰² Claimant’s letter of 12 March 2025, p. 3.

¹⁰³ Claimant’s letter of 12 March 2025, p. 1.

¹⁰⁴ Respondent’s letter of 12 March 2025, p. 1.

58. Argentina appears to be in the right, as made explicit by ICSID itself¹⁰⁵:

“Even if the parties do not agree on publication of such documents, a party can request that ICSID publish its own written submission (without witness statements, expert reports, legal authorities and exhibits). The other party cannot object to such publication but can request that the document be redacted. If the parties disagree on any redactions, either party may refer disputed redactions to the Tribunal for decision”.

59. Claimant is not entitled to object to publication of Argentina’s Memorials. However, it retains the right to voice its opinion on any proposed redactions. This being the case, the Parties are invited to confer and agree on redactions to the Memorial by **24 March 2025**. In this regard, the Tribunal notes that the Parties have access to multiple decisions from the Tribunal on redactions and should therefore be aware of the criteria that it uses to make a decision.

5. DEADLINE EXTENSION REQUEST

60. The Tribunal acknowledges the fact that Respondent wishes for the Tribunal to consider a Deadline Extension Request¹⁰⁶ – a plea that Claimant urges the Tribunal to reject¹⁰⁷.

61. The Tribunal does not find it necessary to consider a Deadline Extension Request at this time. A more complete decision, outlining the Parties’ positions and providing the reasons behind the Tribunal’s conclusion, will follow shortly.

¹⁰⁵ See <https://icsid.worldbank.org/procedures/arbitration/convention/confidentiality-transparency/2022>.

¹⁰⁶ Respondent’s letter of 11 March 2025, pp. 1 – 2; Respondent’s letter of 12 March 2025, pp. 1 – 2.

¹⁰⁷ Claimant’s letter of 12 March 2025, pp. 3 – 4.

DECISION

62. As per the decisions made *supra*, the Tribunal hereby orders the following:
- That Argentina **immediately** make the necessary arrangements to produce any Court File Documents that have not previously been provided to Claimant;
 - That Claimant confirm by **18 March 2025** whether it has received the Court Transcript;
 - That Claimant **immediately** produce Documents BA-[002054] and BA-[002115] with any redactions based purely on alleged irrelevance and immateriality removed, and in any case no later than **20 March 2025**.
 - That Claimant produce or remove redactions of any purely factual information contained within the documents referenced in the Privilege Log, as set out in para. 49 *supra*, by **20 March 2025**.
 - That Respondent indicate by **18 March 2025** whether it wishes to draw the United States' attention to any further parts of the procedural orders in the public record.
 - That the Parties confer and agree on redactions to the Memorial by **24 March 2025**.

On behalf of the Arbitral Tribunal,

[Signed]

Deva Villanúa
President of the Arbitral Tribunal
Date: 17 March 2025