

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

BA Desarrollos LLC

v.

Argentine Republic

ICSID Case No. ARB/23/32

PROCEDURAL ORDER NO. 17
Post-Hearing Matters (III)

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

24 August 2026

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WHEREAS

1. In accordance with Procedural Order [**“PO”**] No. 1 and PO No. 13, a hearing in the present proceedings was held in Washington, D.C., from 20 to 23 October 2025 at ICSID’s hearing facilities located at 1225 Connecticut Ave., NW, Washington, D.C. [**“Hearing”**].
2. At the outset of the Hearing, the Respondent informed the Tribunal of certain developments concerning the title and deed execution process relating to the land plots at issue in this case [**“Plots”**]. Following this update, the Tribunal considered that certain factual uncertainties remained and required the Parties to provide further updates regarding the status of these developments. Accordingly, the Parties agreed to submit bi-weekly updates concerning the deed execution process for the Plots [**“Bi-Weekly Reports”**]. Between 13 November 2025 and 4 February 2026, the Parties submitted their Bi-Weekly Reports.
3. On 25 November 2025 the Tribunal issued PO No. 15, recording the Parties’ agreements and certain decisions of the Tribunal concerning post-Hearing matters.
4. On 5 December 2025 the Parties filed their respective Jurisdiction PHBs.
5. On 10 December 2025, as part of its third Bi-Weekly Report, the Respondent sought leave to introduce certain additional evidence into the record. On 12 December 2025 the Claimant submitted its comments on those requests.
6. On 19 December 2025 the Tribunal invited the Parties to confer and agree on a procedure for the incorporation of any additional factual materials into the record.
7. On 15 January 2026 the Parties informed that they were able to reach some agreements but also were unable to agree on an orderly and limited exchange of factual exhibits and therefore proposed that each Party submit separate applications to the Tribunal, by a specified date, seeking leave to introduce documents pursuant to para. 17.5 of PO No. 1 [**“Requests for Leave”**].
8. On 4 February 2026 both Parties informed the Tribunal, through their Bi-Weekly Report, that the deed execution process for the Plots had been completed, with the Claimant also indicating that the registration of the corresponding deeds in the relevant property registry remained pending.
9. On 8 April 2026 the Parties submitted their Requests for Leave.
10. On 16 April 2026 the Parties sent their responses to the counterparty’s Request for Leave. In the spirit of procedural efficiency, the Claimant did not object, while expressly reserving its right to respond to any objections Argentina might raise regarding its own proposed exhibits. Argentina objected to the introduction into the record of nine documents that the Claimant sought to submit.
11. On 21 April 2026 the Claimant replied to Argentina’s objections to the Claimant’s Request for Leave.

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12. On 23 April 2026 the Respondent submitted a communication asserting that the Claimant's response to Argentina's objections confirmed its intention to modify its claims and introduce new evidence in support thereof, in violation of Rule 48 of the ICSID Arbitration Rules, due process, and Argentina's right of defence.
13. Argentina therefore requested that the Tribunal reject the disputed documents and direct the Claimant to refrain from modifying its claims. In the alternative, Argentina submitted that, should the Tribunal grant the Claimant's Request for Leave, the existing deadline for the submission of the Merits and Quantum PHBs could no longer be maintained and that Argentina would seek bifurcation of the proceedings pursuant to Rule 42 of the Arbitration Rules in order to address the admissibility of the alleged modification of claims in a separate phase of the arbitration [**"Request for Bifurcation"**].
14. On 25 April 2026 the Claimant submitted an additional Request for Leave to introduce two further documents.
15. On 27 April 2026 the Tribunal informed the Parties that it wished to convene a videoconference to address the Parties' latest communications and requests [**"Videoconference"**].
16. On 6 May 2026 the Respondent replied to the Claimant's further Request for Leave.
17. On 13 May 2026 the Tribunal held the Videoconference with the Parties regarding the post-Hearing matters that remained open.
18. On 20 May 2026 the Tribunal issued PO No. 16, deciding the post-Hearing matters that remained outstanding following the Videoconference. *Inter alia*, the Tribunal:
 - Concluded that the deed execution at such an advanced stage of the proceedings constituted exceptional circumstances justifying the late submission of the relevant documents under para. 17.5 of PO No. 1, and, therefore, decided to authorise the introduction of the vast majority of documents sought by both Parties, with the exception of a request from the Claimant seeking to marshal a letter from Mr. [REDACTED] concerning the Claimant's efforts to sell the Plots – in this vein, the Tribunal noted that Mr. [REDACTED] had presented witness testimony in the proceedings, and it would be inappropriate to expand the scope of his testimony through a new letter; the Tribunal nevertheless clarified that the Claimant remained free to provide updates concerning the sale process through its legal representatives. With respect to certain real estate market reports, the Tribunal further directed the Claimant to conduct a search for and submit the complete series of such reports to assuage the Respondent's concerns.
 - Rejected Argentina's Request for Bifurcation, finding that it was premature to determine whether the Claimant had impermissibly modified its case

PO No. 16, Annex A.
PO No. 16, para. 39 and Annex A.
PO No. 16, Annex A, p. 21.

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before the filing of the Merits and Quantum PHBs. The Tribunal further distinguished between the procedural admissibility of the documents sought to be introduced and the question whether those documents supported an impermissible modification of the Claimant's case, which the Tribunal considered to be more appropriately assessed in the Award in light of the complete evidentiary record.

19. On 26 June 2026 the Parties submitted their Merits and Quantum PHBs.
20. On 7 July 2026 Argentina submitted a request seeking the exclusion of certain passages of the Claimant's Merits and Quantum PHB [**"Exclusion Request"**].
21. On 20 July 2026 the Claimant replied to Argentina's Exclusion Request [**"Claimant's Answer"**].
22. On 30 July 2026 Argentina filed a further communication in connection with its Exclusion Request [**"Argentina's Second Communication"**].
23. On 12 August 2026 and 13 August 2026 the Parties informed the Tribunal that they had agreed to the incorporation of 12 new documents into the record [**"New Documents"**] and requested the Tribunal's authorisation to introduce them into the record. Both Parties also indicated their willingness to submit brief comments on the New Documents but were unable to agree on the manner in which those comments should be presented.
24. On 18 and 19 August 2026 the Parties informed the Tribunal that they had agreed to defer the filing of the submission on costs until the Tribunal had decided the outstanding procedural matters.

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25. The Tribunal will first address the Parties' agreement to introduce the New Documents into the record (1.), and then rule on Argentina's Exclusion Request (2.).

1. SECOND REQUEST FOR LEAVE

26. The Tribunal takes note of the Parties' agreement to the marshalling of the following documents into the record:

"1. Entrevista a Eduardo Costantini en el Coloquio de Acceso a la Vivienda BATEV 2026, coordinado por la Cámara Empresaria de Desarrolladores Urbanos (CEDU) y la Asociación de Empresarios de la Vivienda (AEV), del 24 de junio de 2026 (transcripción).

2. Venden dos terrenos al lado de donde Costantini proyecta tres torres en lo que será el skyline más moderno de Buenos Aires, La Nación, 6 de julio de 2026.

3. Publicación promocional de Newmark Argentina relativa a la comercialización de las Parcelas 2 y 3 a través de su sitio web institucional, 2026.

4. Costantini reactiva en Catalinas su ambicioso proyecto de oficinas de US\$ 400 millones, Forbes Argentina, julio de 2026.

5. Publicación de venta de la Parcela 2 en la plataforma Mercado Libre, realizada por Newmark Argentina, julio de 2026.

6. Publicación de venta de la Parcela 3 en la plataforma Mercado Libre, realizada por Newmark Argentina, julio de 2026.

7. Publicación de venta de la Parcela 2 en la plataforma Roomix, realizada por Newmark Argentina, julio de 2026.

8. Publicación de venta de la Parcela 3 en la plataforma Roomix, realizada por Newmark Argentina, julio de 2026.

9. Publicación de venta de las Parcelas 2 y 3 en la plataforma Roomix, realizada por Newmark Argentina, julio de 2026.

10. Publicación de venta de la Parcela 2 en la plataforma Zonaprop, realizada por Newmark Argentina, julio de 2026.

11. Publicación de venta de la Parcela 3 en la plataforma Zonaprop, realizada por Newmark Argentina, julio de 2026.

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12. Publicación de venta de las Parcelas 2 y 3 en la plataforma Zonaprop, realizada por Newmark Argentina, julio de 2026”.

27. Accordingly, the Tribunal ratifies the Parties’ agreement and authorises the incorporation of the New Documents into the case record, which shall be submitted by **[31 August 2026]**.
28. The Tribunal further notes that the Parties were unable to agree on the manner in which they shall present their comments regarding the New Documents:
- Argentina proposes that both Parties comment on the New Documents in simultaneous submissions not exceeding two pages, to be filed by 21 August 2026 or on such later date as the Tribunal may determine;
 - The Claimant, for its part, proposes that, should the Tribunal grant the Parties an additional opportunity to respond to any allegedly new arguments raised in the opposing Party’s Merits and Quantum PHB, the New Documents be addressed in the context of those submissions; alternatively, the Claimant proposes that the Parties comment briefly on the New Documents in simultaneous one-page letters, on a date to be determined by the Tribunal; in either case, the Claimant requests that the deadline be set no earlier than 2 September 2026, due to availability constraints affecting its counsel team.
29. The Tribunal notes that the Parties’ positions are relatively close and decides to accept Argentina’s proposed length and the Claimant’s suggested deadline. The Parties are, thus, to submit any further comments concerning the New Documents simultaneously by **7 September 2026**, not exceeding two pages (Times New Roman, font size 12).

2. EXCLUSION REQUEST

30. The Respondent requests that the following section of the Claimant’s Merits and Quantum PHB be excluded from the record:
- Paras. 89 – 92 (**2.1.**);
 - Para. 157 (**2.2.**); and
 - Paras. 11, 158 – 160 and 194(c)(ii) (**2.3.**).
31. In turn, the Claimant asks the Tribunal to deny the Respondent’s Exclusion Request with costs.

Respondent’s communication of 12 August 2026.
Claimant’s communication of 13 August 2026.
Claimant’s communication of 13 August 2026.
Claimant’s communication of 13 August 2026.
Claimant’s Answer, p. 18.

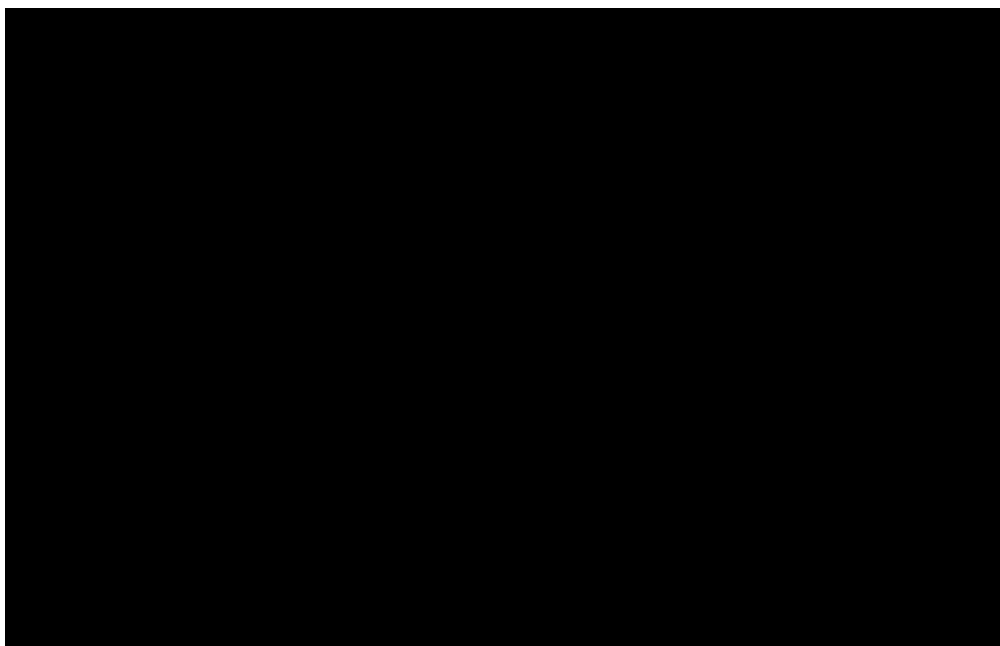
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2.1 PARAS. 89 – 92

32. The contested section of the Claimant's Merits and Quantum PHB reads as follows:

89. However, other key variables underlying the Project also shifted dramatically in the years that Argentina withheld title and destroyed the Project. As set out below, between 2018 and today, construction costs increased by 68%, office lease rates decreased by 48%, and vacancy rates increased almost 3-fold.

	2018	2025	Change
Investment period ²⁰⁰	7.0 years	14.8 years	2.1x
Construction costs, multi-family ²⁰¹	US\$850/m ²	US\$1,428/m ²	+68%
Average asking rent ²⁰²	Actual: US\$37/m ²	Actual: US\$24/m ²	-35% (between 2018 actual and 2025 actual)
	■ expected 4Q2025 ²⁰³ ; US\$45.84/m ²	Actual: US\$24/m ²	-48% (between 4Q2025 expected and actual) ²⁰⁴
Vacancy rate ²⁰⁵	4.7%	13.1%	2.8x



Claimant's Merits and Quantum PHB, paras. 89 – 92. For ease of reference, the footnotes contained in the quoted passages throughout this PO have been omitted. The Tribunal has nevertheless duly considered them. Emphasis in original.

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Impact of expected rent income and construction costs on project profitability (mid-case)

	August 2018 Business Plan (US\$ million)	Impact of current market conditions	August 2018 Business Plan, adjusted for current market (US\$ million)
After-tax return	209	() ²¹⁰	
Total project costs	211		
Of which land and air rights acquisition + related costs	212	-	
Of which development (construction) costs	213	() ²¹⁴	
Of which taxes	215	-	
After-tax profit			

33. The Tribunal will first present the Parties' positions (A.) and then make a decision (B.).

A. Parties' positions

34. Argentina submits that these passages of Claimant's Merits and Quantum PHB should be excluded because they constitute an inadmissible modification of the Claimant's case.
35. The Claimant denies that it has changed its claim. It submits that its case has always been that Argentina's failure to timely transfer title prevented it from developing the Project and destroyed the value of its investment. According to the Claimant, the subsequent grant of title does not undo the alleged Treaty breaches or restore it to the position in which it would have been absent those breaches.
36. The Claimant further explains that current market conditions became relevant only after Argentina changed the factual circumstances of the dispute by making the transfer of title possible and ultimately granting title after the Hearing. The Claimant also notes that the Tribunal expressly asked the Parties to address how a subsequent grant of title would affect the expropriation claim. In its view, paras. 89 – 92 therefore respond directly to issues debated at the Hearing and to questions raised by the Tribunal.
37. Argentina responds that the Claimant itself acknowledges that it did not rely on market conditions in its written pleadings. In Argentina's view, the explanation that it was previously "unnecessary" to do so is itself a new allegation and does not explain why the Claimant failed to raise before the Hearing the contention that obtaining title would not restore the viability of the Project, particularly if the

Argentina's Exclusion Request, pp. 1 – 2.

Claimant's Answer, pp. 2 – 3 and 17.

Claimant's Answer, p. 4.

Claimant's Answer, pp. 6 – 7.

Claimant's Answer, p. 7.

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deterioration in market conditions had already occurred during the pendency of the arbitration.

38. Argentina further objects that the Claimant did not merely develop an argument based on evidence in the record, but introduced new calculations. In particular, Argentina challenges the exercise in para. 91 of Claimant's PHB, in which current market variables are applied to the August 2018 Business Plan. According to Argentina, the Claimant altered the values contained in that document and thereby created new evidence that had not previously formed part of the record and was submitted without leave pursuant to para. 17.5 of PO No. 1.
39. The Claimant disagrees and characterises the exercise as an illustration based exclusively on evidence already admitted into the record. According to Claimant, the calculation merely applies current construction costs, lease rates and vacancy rates to the August 2018 Business Plan in order to demonstrate the economic consequences of developing a new project under present market conditions. The Claimant stresses that it is not claiming lost profits on the basis of the 2018 Business Plan, nor seeking compensation for the losses that would arise from constructing a new project today.
40. Argentina maintains that this explanation confirms that the calculation constitutes new evidence. In its view, the fact that the Claimant derived new figures by "plugging" 2025 data into the 2018 Business Plan does not transform the resulting calculation into mere argument. Rather, Argentina considers that the Claimant modified the original evidentiary material and introduced a new economic analysis which was neither submitted in accordance with the applicable procedural rules nor subjected to expert evidence or examination at the Hearing.
41. Argentina also questions the methodology underlying the exercise. It notes, *inter alia*, that the [REDACTED] figure identified as the "After tax return" does not appear directly in the August 2018 Business Plan, and challenges the Claimant's treatment of project costs and "after tax profit". Argentina also objects to the Claimant's statements concerning the cash-on-cash multiple, the relationship between lease income and expected sales proceeds, and the proportional adjustment of construction costs. According to Argentina, these are new economic allegations that were not previously pleaded and that it had no opportunity to test through documentary, expert or witness evidence.

Argentina's Second Communication, pp. 1 – 2.

Argentina's Exclusion Request, p. 2.

Argentina's Exclusion Request, p. 2.

Claimant's Answer, p. 9.

Claimant's Answer, pp. 9 – 10.

Claimant's Answer, pp. 9 – 10.

Argentina's Second Communication, p. 2.

Argentina's Second Communication, p. 2.

Argentina's Second Communication, p. 2.

Argentina's Exclusion Request, pp. 2 – 3.

Argentina's Exclusion Request, pp. 2 – 3.

Argentina's Exclusion Request, pp. 2 – 3.

Argentina's Exclusion Request, p. 3.

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42. The Claimant rejects those criticisms. It submits that there is no double-counting of costs; that the [REDACTED] figure represents the approximate midpoint of the return range reflected in the Business Plan and Mr. [REDACTED]'s evidence; and that the relationship between lease rates and expected returns is supported by evidence already in the record. The Claimant further maintains that the percentage increase in construction costs derives from post-Hearing exhibits admitted by the Tribunal.
43. More generally, Argentina argues that it was deprived of an opportunity to adequately respond to Claimant's new calculations and allegations, or to examine witnesses or experts on those matters at the Hearing. It, therefore, submits that admitting the challenged paragraphs would violate due process, equality of the Parties and its right of defence.
44. The Claimant responds that Argentina had ample opportunity to address the relevance of market conditions and notes that Argentina itself made submissions at the Hearing concerning these matters, and even cross-examined Mr. [REDACTED] on issues relating to market conditions and the 2018 Business Plan.
45. The Claimant further relies on the post-Hearing procedure agreed by the Parties, pursuant to which both Parties sought and obtained leave to introduce evidence concerning market conditions and subsequently relied on such evidence in their Merits and Quantum PHBs. In the Claimant's view, Argentina cannot invoke procedural inequality while relying on the same post-Hearing evidentiary record to make its own submissions concerning the real estate market and the viability or value of a new project.
46. The Claimant therefore requests that the exclusion request be rejected. In the alternative, should the Tribunal consider that Argentina was not afforded a sufficient opportunity to respond to the matters raised in paras. 89 – 92, the Claimant submits that the appropriate remedy would be to grant Argentina a limited right of reply rather than to exclude the challenged paragraphs, coupled with an equivalent opportunity for Claimant to respond to the corresponding portions of Argentina's PHB.
47. Argentina opposes that proposal, submitting that it would disrupt the procedural sequence by allowing the Claimant to have the last word, while leaving unaddressed Argentina's inability to submit evidence or examine witnesses or experts on the challenged matters.

Claimant's Answer, pp. 10 – 12.

Claimant's Answer, p. 12.

Argentina's Exclusion Request, pp. 3 – 4.

Argentina's Exclusion Request, pp. 3 – 4.

Claimant's Answer, pp. 5 – 6 and 12 – 13.

Claimant's Answer, pp. 6 and 12.

Claimant's Answer, pp. 7 – 9.

Claimant's Answer, pp. 7 – 9.

Claimant's Answer, p. 9.

Claimant's Answer, pp. 9 and 18.

Argentina's Second Communication, p. 3.

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B. Tribunal's decision

48. The Tribunal takes note of the Parties' positions, which may be divided into the following two issues:

- The alleged modification of the Claimant's claim (a.); and
- The calculations regarding the 2018 Business Plan (b.).

a. Alleged modification of claim

49. Argentina submits that, as it anticipated, the Claimant effectively modified its claim in the PHB by arguing that Argentina destroyed the value of its alleged investment due to the deterioration of the market conditions.

50. The Claimant reacts by averring that this is the fourth time since the Hearing that Argentina has raised the same complaint, without any success.

51. The Tribunal recalls that, in PO No. 16, it concluded that the question whether the Claimant had impermissibly modified its claim was more properly linked to the merits and/or causation and could only be assessed in light of the complete evidentiary record.

52. As anticipated therein, the Tribunal will assess this question in the Award, once it has had the opportunity to consider the entirety of the Parties' submissions and the evidentiary record as a whole, including the relevance, probative value and evidentiary weight of the evidence relied upon, as well as whether the Claimant's allegations merely support its existing claim or instead reflect an impermissible modification thereof.

b. Calculations regarding the 2018 Business Plan

53. The Tribunal does not agree that the calculations performed in paras. 89 – 92 of the Claimant's Merits and Quantum PHB should be excluded from the record for the following three reasons:

54. *First*, the Tribunal has analysed the relevant tables and confirms that the variables used by the Claimant in preparing the challenged calculations derive from evidence already on the record, mainly Docs. C-134, C-375, C-376, C-402 and R-287.

55. In particular, they are closely connected with the evidence concerning current market conditions that was introduced following the Parties' Requests for Leave. *Pro memoria* and as recorded in PO No. 16, both Parties sought to introduce additional evidence concerning, *inter alia*, the current situation of the Catalinas

Argentina's Exclusion Request, p. 1.
Claimant's Answer, p. 2.
PO No. 16, para. 50.
PO No. 16, para. 52.

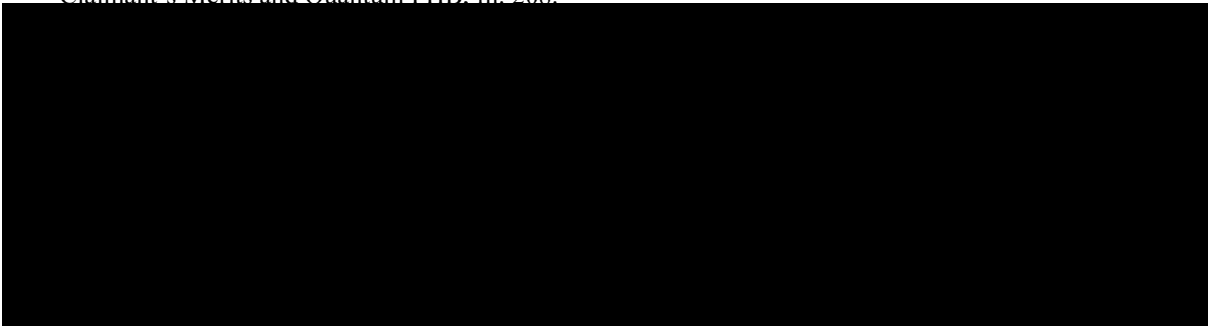
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Norte II area and its development value, and the Tribunal considered that the introduction of such evidence did not create an imbalance between the Parties.

56. The Tribunal also agrees with the Claimant that the exercise is more appropriately characterised as illustrating its argument concerning the effect of current market conditions than as constituting an independent component of its damages claim. Indeed, in fn. 208 of its Merits and Quantum PHB, the Claimant expressly states that it is not claiming damages on the basis of either the 2018 Business Plan or the adjusted calculations. The Claimant's damages claim has always been and remains one of sunk costs.
57. In these circumstances, the Tribunal is not persuaded that the fact that the Claimant combined information contained in exhibits already admitted into the record with assumptions from the August 2018 Business Plan transforms the resulting exercise into inadmissible new evidence.
58. *Second*, to the extent that Argentina challenges the methodology underlying the calculations, its criticisms are directed mainly at their reliability and probative value rather than their admissibility. Those are substantive matters that are more appropriately assessed in the Award.
59. *Third*, Argentina itself advanced arguments concerning current market conditions in its Merits and Quantum PHB and compared figures contained in certain of the Claimant's business plans with data included in the market-condition documents introduced in connection with the Parties' Requests for Leave.
60. Thus, both Parties appear to have conducted a similar comparative exercise, combining figures contained in the Claimant's business plans with market-condition evidence admitted into record in connection with the Requests for Leave. Against this background, the Tribunal does not consider that the challenged calculations contravene the applicable procedural framework.
61. Therefore, the Tribunal decides to reject Argentina's Exclusion Request in connection with paras. 89 – 92.

PO No. 16, paras. 39 – 40. The Tribunal noted that both Parties sought to introduce a similar number of documents concerning deed execution, the situation of Catalinas Norte II and the development value of the area.

Claimant's Merits and Quantum PHB, fn. 208.



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2.2 PARA. 157

62. This paragraph reads as follows:

“The Tribunal’s Question No. 8 asked how obtaining title to the Plots would impact BA’s request for relief. This section responds to the Tribunal’s question. While granting title in 2026 does not restore BA to the position it would have been in but for Argentina’s wrongful conduct, it could serve to mitigate BA’s damages. [REDACTED]

”.

63. And, more specifically, Argentina takes issue with the following footnotes included in such paragraph:

[REDACTED]

64. Argentina submits that, in this paragraph, the Claimant introduced allegations concerning the ongoing process to sell the Plots which appear to derive from the letter of Mr. [REDACTED] that the Tribunal declined to admit in PO No. 16. Argentina recalls that the Tribunal rejected that document because it would have expanded Mr. [REDACTED]’s testimony without affording Argentina an opportunity to cross-examine him on the additional statements contained therein.

Claimant’s Merits and Quantum PHB, fns. 376, 378 and 379.
Argentina’s Exclusion Request, pp. 4 – 5.
Argentina’s Exclusion Request, pp. 4 – 5.

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65. The Claimant responds that PO No. 16 expressly permitted its legal representatives to continue providing the Tribunal with updates concerning the subject matter of Mr. [REDACTED]'s letter. In the Claimant's view, the Tribunal did not prescribe the form in which those updates were to be provided, and it was therefore permissible to include the latest information concerning the sales process in the Merits and Quantum PHB.
66. Argentina nevertheless submits that the Claimant went beyond providing a neutral status update. It points in particular to the Claimant's statements that, of more than [REDACTED] substantive allegations and assessments that it had no opportunity to address through argument, evidence or cross-examination.
67. The Claimant disagrees. It avers that this paragraph contains factual information regarding the sales process and a reasonable inference drawn from that information. [REDACTED]
68. In any event, the Claimant states that it would not object to Argentina being granted a limited opportunity to respond to the factual updates concerning that process, while rejecting the proposition that Argentina requires a further opportunity to introduce documentary, witness or expert evidence in order to do so.
69. The Tribunal sides with the Claimant.
70. The Tribunal expressly confirmed that the Claimant remained free to continue providing, through its legal representatives, updates concerning developments relevant to the outcome of the case.
71. In the Tribunal's view, the information contained in para. 157 falls within the scope of that authorisation. The Tribunal likewise does not consider that the Claimant was precluded from drawing submissions from that information as to the prospects of the sales process. Accordingly, the inclusion of the challenged information and related submissions in the Claimant's Merits and Quantum PHB was not impermissible.

Claimant's Answer, p. 14.

Claimant's Answer, p. 14.

Argentina's Exclusion Request, p. 4.

Argentina's Exclusion Request, pp. 4 – 5.

Claimant's Answer, pp. 14 – 15.

Claimant's Answer, pp. 14 – 15.

Claimant's Answer, p. 15.

PO No. 16, Annex A, p. 24.

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72. Accordingly, the Tribunal rejects Argentina's request to exclude para. 157 of the Claimant's Merits and Quantum PHB from the record.

2.3 PARAS. 11, 158 – 160 AND 194(C)(II)

73. The Respondent takes issue with the following sections of the Claimant's Merits and Quantum PHB:

Para. 11

"11. Argentina's granting of title does not repair these losses; at most it mitigates them. BA is working on selling the Plots and commits to credit any net proceeds against Argentina's liability for the price that BA paid for the Plots, so that there is no double recovery. Should BA's efforts to sell the Plots be unsuccessful, BA requests that the Tribunal order the unwinding of the entire transaction against Argentina's payment of full compensation, allowing BA to return the Plots and exit the investment that Argentina's unlawful conduct has destroyed. In the interim, until full payment is made, the contractual obligations in the Terms and Conditions must be suspended. This is the only way to put BA in the situation it would have been but for Argentina's measures".

Paras. 158 to 160

"158. If, by the time the sales process has concluded (i.e. approximately by [REDACTED]), BA is not able to sell the Plots, then BA requests that the Tribunal order that, upon payment of the Award in full, BA is to return the Plots to Argentina, and Argentina is to unwind the entire transaction, allowing BA to exit the Terms and Conditions so that it is no longer subject to Argentina's imposed contractual obligations.³⁸⁰ Additionally, BA requests that, from the date of the Award and until the date of Argentina's payment of the Award and BA's return of the Plots, the Tribunal order Argentina to suspend all contractual obligations under the Terms and Conditions. This is in response to the Tribunal's Question No. 8 how obtaining title impacts BA's request for relief.³⁸¹ This is the only relief that will put BA in the position it would have been in but for Argentina's breaches.

159. With regards to the unwinding of the transaction, the Tribunal has broad powers to order specific performance under the Treaty and the ICSID Rules.³⁸² Indeed, in *BBVA v. Bolivia*, the tribunal awarded full compensation and separately ordered the transfer of the investor's participation in the local subsidiary to the respondent state, which the state was required to accept within one year of the award.³⁸³ The tribunal reasoned that monetary compensation alone would not place the investor in the position it would have occupied had the expropriation been implemented correctly; specifically, payment alone "*no liberaría a la Demandante de su obligación de continuar operando*" in the respondent's territory.³⁸⁴ Thus, the Tribunal has tools available to place the investor in the situation it would have been in but for the state's breaches.

Claimant's Merits and Quantum PHBs, paras. 11, 158 – 160 and 194(c)(II).

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160. Furthermore, contrary to Argentina's allegation, there is no risk of double recovery here.³⁸⁵ The Plots will either be sold, and the net amounts applied to BA's claim for the Plots when issuing the Award, or the Plots will be returned to Argentina in exchange for full compensation and the possibility of exiting the Terms and Conditions".

Para. 194(c)(ii)

"194. On the basis of the foregoing, BA respectfully requests that the Tribunal:

(...) (c) In relation to BA's ongoing sale process of the Plots which is expected to conclude approximately [REDACTED]:

(...) (ii) Should BA's sale process conclude without a buyer for the Plots ([REDACTED]), ORDER that, in exchange for Argentina's payment in full of the compensation awarded, Argentina's sale of the Plots to BA will be unwound, namely order that Argentina allow BA to exit the Terms and Conditions and return the Plots to Argentina, in which case Argentina shall cover all fees, taxes and costs associated with title transfer, and that until full payment is made, all contractual obligations under the Terms and Conditions are to be suspended".

74. Argentina calls for the exclusion of these paras. on the basis that they introduce a new form of relief. Argentina points, in particular, to the Claimant's request that, if the Plots are not sold, the transaction be unwound upon Argentina's payment of compensation, that the Plots be returned to Argentina, and that the contractual obligations under the Terms and Conditions be suspended in the meantime.
75. The Claimant responds that this requested relief directly answers the Tribunal's question at the Hearing as to how the subsequent grant of title should affect its prayer for relief. Claimant recalls that the Tribunal expressly invited the Parties to address whether the request for relief should be adapted to take account of the transfer of title, including the possibility of returning the Plots. In the Claimant's view, its revised request for relief therefore does precisely what the Tribunal asked the Parties to do.
76. Argentina is not convinced, and submits that the Claimant could have advanced this relief earlier but did not. It notes that the Claimant had consistently maintained that the Terms and Conditions remained valid and that, even after informing the Tribunal in February 2026 of its intention to sell the Plots, Claimant did not suggest that it would seek either to unwind the transaction or to suspend the contractual obligations arising from the Terms and Conditions.

Argentina's Exclusion Request, pp. 5 – 6.

Argentina's Exclusion Request, pp. 5 – 6.

Claimant's Answer, pp. 15 – 16.

Claimant's Answer, pp. 15 – 17.

Claimant's Answer, pp. 15 – 16.

Argentina's Exclusion Request, p. 6.

Argentina's Exclusion Request, p. 6.

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77. The Claimant disagrees and argues that the timing of the requested relief reflects the timing of Argentina's own conduct. According to the Claimant, when it filed its Reply Memorial it had not received title and the applicable legal framework did not permit the transfer to take place. The Claimant further notes that title was granted only after the Hearing and that the contractual obligations whose suspension it now seeks arise from the grant of title itself. It, therefore, argues that there would have been no basis to formulate the present relief earlier.
78. Be that as it may, Argentina finds that ordering the unwinding of the transaction or suspending obligations under the Terms and Conditions would entail deciding matters outside the Tribunal's jurisdiction and disregarding the law applicable to those contracts. Argentina therefore argues that granting the relief would amount to a manifest excess of powers.
79. The Claimant rejects that objection. It submits that the consequences of an internationally wrongful act are governed by international law and that a State cannot rely on its domestic law to limit the reparation due to a breach of the Treaty. Claimant further argues that investment tribunals have authority to order non-pecuniary relief where necessary to achieve full reparation, including relief requiring the unwinding of a transaction.
80. According to the Claimant, the relief it seeks is designed to restore it to the position it would have occupied but for Argentina's alleged breaches and does not improperly intrude upon Argentina's sovereign or judicial functions. The Claimant thus requests that Argentina's request to exclude the challenged passages be rejected.
81. The Tribunal understands Argentina's principal concern to be that the relief sought by the Claimant concerning the unwinding of the sale of the Plots and the termination of the Terms and Conditions is inadmissible because it was formulated for the first time in the Claimant's Merits and Quantum PHB. Argentina further submits that, in any event, the Tribunal lacks jurisdiction to grant such relief, as the matters concerned are governed by Argentine law and subject to the exclusive jurisdiction of the Argentine courts.
82. The Claimant does not dispute that this relief was formally requested for the first time in its Merits and Quantum PHB. It submits, however, that such relief directly follows from and answers a question posed by the Tribunal, and only became relevant following the execution of the deeds, since, before title to the Plots was

Claimant's Answer, p. 15.

Claimant's Answer, p. 15.

Claimant's Answer, pp. 15 – 16.

Argentina's Exclusion Request, p. 6.

Argentina's Exclusion Request, p. 6.

Claimant's Answer, pp. 16 – 17.

Claimant's Answer, pp. 16 – 17.

Claimant's Answer, p. 17.

Claimant's Answer, p. 18.

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transferred, there was no need to address either the unwinding of the transaction or the consequences arising from the Terms and Conditions.

83. The Tribunal finds that it did ask the Claimant to explain how the potential sale of the Plots would affect its relief and, therefore, the answer, including introduction of the relief in question was authorised by the Tribunal. It follows that it is admissible.
84. The Respondent argues that, even if admissible, the relief touches upon issues that are outside the Tribunal's jurisdiction. This objection is duly noted. The Respondent is invited to submit by **7 September 2026** two pages of further comments regarding the Claimant's relief sought by the Claimant concerning the unwinding of the sale of the Plots and the termination of the Terms and Conditions.
85. Therefore, the Tribunal rejects the Respondent's request to exclude paras. 11, 158 – 160 and 194(c)(ii) of the Claimant's Merits and Quantum PHB from the record.

* * *

86. In light of the above, the Tribunal decides to:
- Admit the New Documents into the record;
 - Reject Argentina's Exclusion Request;
 - Invite both Parties to submit by **7 September 2026** comments on the New Documents, not exceeding two pages;
 - Afford the Respondent the opportunity by the same deadline, to address, in no more than two pages, the relief sought by the Claimant concerning the unwinding of the sale of the Plots and the termination of the Terms and Conditions; and
 - Defer its decision on the costs arising out of the present procedural incident to a later stage of the proceedings.
87. Finally, the Tribunal takes note that the Parties have agreed to defer the filing of the submission on costs until after the issuance of this PO. Accordingly, the Tribunal invites the Parties to confer and agree on a new filing date for the submission on costs, and to inform the Tribunal of the outcome of their discussions by **10 September 2026**.

On behalf of the Arbitral Tribunal,

[Signed]

Ms. Deva Villanúa
President of the Tribunal
Date: 24 August 2026