

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

TECO Guatemala Holdings, LLC

v.

Republic of Guatemala

**(ICSID Case No. ARB/10/23)
Resubmission Proceeding**

PROCEDURAL ORDER NO. 2

CONFIDENTIALITY OF DOCUMENTS

Members of the Tribunal

Prof. Vaughan Lowe, Q.C., President of the Tribunal

Dr. Stanimir Alexandrov, Arbitrator

Prof. Brigitte Stern, Arbitrator

Secretary of the Tribunal

Mrs. Mercedes Cordido-Freytes de Kurowski

May 5, 2017

I. Procedural Background

1. Pursuant to paragraph 13.11 of Procedural Order No. 1 dated April 4, 2017, it was contemplated that the Parties could submit for the Tribunal's consideration a proposed joint Confidentiality Agreement to apply to this proceeding, within two (2) weeks from the date of the Tribunal's Procedural Order No. 1.
2. On April 5, 2017, having considered the Parties' respective positions on the question of the Confidentiality Agreement between the Parties that was discussed during the First Session, the Tribunal invited the Parties to liaise and submit to the Tribunal's consideration a joint proposal on a new Confidentiality Agreement to apply to this resubmitted case, by April 19, 2017.
3. By email of April 19, 2017, Respondent informed the Tribunal that the Parties had not been able to agree on the text of a Confidentiality Agreement, noting that in Respondent's view, establishing a Confidentiality Agreement in this proceeding before any request for protection had been made was premature and unnecessary at that procedural juncture.
4. By email of April 20, 2017, Claimant confirmed that the Parties had been unable to reach agreement on the terms of a joint Confidentiality Agreement for this resubmitted arbitration proceeding. As a result, Claimant submitted to the Tribunal's consideration Claimant's proposed Confidentiality Agreement, according to which the confidentiality undertakings set forth in the Confidentiality Agreement concluded between the Parties on January 6, 2012 in the original arbitration proceeding (the "**Original Confidentiality Agreement**," attached to Claimant's communication) should apply *mutatis mutandis* in this proceeding with respect to documents produced and designated as "CONFIDENTIAL" in the original proceeding. Claimant further proposed addressing in that Order also the possibility of any requests for confidentiality of new documents that could arise during the course of the resubmitted arbitration.
5. By letter of April 21, 2017, the Tribunal informed the Parties of its decision that, if either party so requested, it would issue a procedural Order whose effect would be to extend/reimpose the 2012 Confidentiality Agreement for the purposes of the present proceedings, but only in respect of the documents to which it was applicable as of December 19, 2013 (the date of the original Award). Any question of confidentiality arising in relation to other documents would be addressed if and when it arises. The Tribunal further indicated that the Parties might, however, think it preferable to conclude their own agreement on confidentiality. The Tribunal also noted that it would not issue the Order indicated above unless and until requested by one or both Parties to do so.

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6. By email of May 3, 2017, Claimant informed the Tribunal that the Parties had conferred, but that Respondent was not amenable to concluding a Confidentiality Agreement. Claimant requested the Tribunal to issue a procedural order to extend/reimpose the Parties' 2012 Confidentiality Agreement for purposes of the present proceedings in respect of the documents to which it was applicable as of 19 December 2013.
7. By email of May 4, 2017, Respondent confirmed that it has no objection to the issuing of a procedural order in connection with the confidentiality protection requested by Claimant.

II. Consideration and Decision of the Tribunal

8. Having considered the Parties' communications on the question of a Confidentiality Agreement for this resubmitted arbitration proceeding, in particular Claimant's request of May 3, 2017, and Respondent's observations of May 4, 2017, the Tribunal decides:
 - i. To extend/reimpose the Original Confidentiality Agreement ("**Annex A**" to this Procedural Order) for the purposes of the present resubmitted arbitration proceeding, but only in respect of the documents to which it was applicable as of December 19, 2013 (the date of the original Award), referenced in the original proceedings as: "R-128, R-126, C-353 and C-354 corresponding to Respondent's Redfern Schedule categories C1, C3 and E2"; and
 - ii. To address any question of confidentiality arising in relation to other documents if and when it arises.



Vaughan Lowe
President of the Tribunal
Date: May 5, 2017

ANNEX “A”

**INTERNATIONAL CENTRE FOR
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TECO GUATEMALA HOLDINGS, LLC

Claimant

v.

REPUBLIC OF GUATEMALA

Respondent

CONFIDENTIALITY AGREEMENT

Pursuant to Procedural Order No. 1 dated 19 December 2011, the Tribunal has directed the Parties to consult and agree on a confidentiality agreement for the production of certain documents by Claimant in connection with this arbitration that are subject to confidentiality clauses (hereinafter “Confidentiality Agreement”):

1. For the purposes of this Confidentiality Agreement, “Party” means, in the case of Claimant, TECO Guatemala Holdings, LLC and, in the case of Respondent, the Republic of Guatemala.
2. All materials subject to this Confidentiality Agreement shall be designated as “CONFIDENTIAL” at the time of production and shall be referred to in this Confidentiality Agreement as “CONFIDENTIAL INFORMATION.”
3. CONFIDENTIAL INFORMATION shall be used only for purposes of this arbitration, shall not be used by the receiving party for any other purpose, and may not be made public by the receiving Party or disclosed to anyone other than as set forth in this Confidentiality Agreement.
4. Absent a ruling by the Tribunal or a written agreement by the designating Party, access to or disclosure of CONFIDENTIAL INFORMATION shall be limited to the following:

- a. The Tribunal members and any persons employed by them in connection with this arbitration;
 - b. The ICSID Secretariat and persons employed by the ICSID Secretariat, including secretaries, transcribers, translators, and any administrative personnel;
 - c. The Parties to this arbitration, including any Party representatives (officers, directors, partners, employees) assisting in the prosecution or defense of the arbitration and the Parties' respective counsel, including the clerical, secretarial, and paralegal staff employed by such counsel;
 - d. Translators retained by counsel for the Parties;
 - e. Experts and consultants (including necessary clerical and secretarial staff) retained by the Parties to assist with this arbitration, provided that they use the CONFIDENTIAL INFORMATION only for purposes of preparing for or giving written or oral testimony in this arbitration; they have accepted the terms of this Confidentiality Agreement by the execution of the attached Exhibit A; and provided that they return, within 30 days following conclusion of their written or oral testimony, the CONFIDENTIAL INFORMATION to counsel from whom they have received it; and
 - f. Witnesses, provided that such witnesses use the CONFIDENTIAL INFORMATION only for purposes of preparing for or giving written or oral testimony in this arbitration; they have accepted the terms of this Confidentiality Agreement by the execution of the attached Exhibit A; and provided that such witnesses return, within 30 days following conclusion of their written or oral testimony, the CONFIDENTIAL INFORMATION to counsel from whom they have received it.
5. Counsel desiring to qualify a person or persons to receive CONFIDENTIAL INFORMATION under paragraphs 4(d)-(f) above first shall obtain from each such person a signed undertaking in the form of the attached Exhibit A. Counsel shall retain signed copies of each such undertaking.
 6. Respondent agrees to hold Claimant and its parent, subsidiaries, and affiliates harmless and to indemnify them for any liability that any of them may incur as a result of producing to Respondent any CONFIDENTIAL INFORMATION that is subject to confidentiality obligations on the part of Claimant and/or its parent, subsidiaries, or affiliates, where such information is not treated in accordance with this Confidentiality Agreement, to the extent that liability arises from treating CONFIDENTIAL INFORMATION in breach of this Confidentiality Agreement.
 7. Within sixty days of the issuance of the final award in this arbitration, counsel for the receiving Party shall return all copies of the CONFIDENTIAL INFORMATION to counsel for the designating Party, or shall, at the option of the receiving Party, destroy

such CONFIDENTIAL INFORMATION, and certify in writing that said destruction has occurred to counsel for the designating Party.

8. Nothing in this Confidentiality Agreement shall be construed as being inconsistent with ICSID's Administrative and Financial Regulation 28 concerning the Centre's depository functions. To that end, any obligation arising under this Confidentiality Agreement to return CONFIDENTIAL INFORMATION is limited to the Parties, their witnesses, and persons retained or employed by the Parties and their witnesses, and not to the Tribunal, the Centre, or persons retained or employed by the Tribunal or the Centre.
9. If the Tribunal quotes from, cites to, or otherwise references CONFIDENTIAL INFORMATION in any order, decision, or award, then such order, decision, or award shall not be published unless the Party that designated the information CONFIDENTIAL has indicated whether such information should be redacted prior to publication and has made such redactions as may be needed accordingly.
10. The terms of this Confidentiality Agreement shall survive this arbitration, and the Parties shall retain their rights to enforce this Agreement in any court or tribunal of competent jurisdiction.

Dated: January 6, 2012


Andrea Menaker

Counsel for TECO Guatemala
Holdings, LLC (Claimant)



Nigel Blackaby

The Republic of Guatemala
(Respondent)

EXHIBIT A

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CONFIDENTIALITY UNDERTAKING

I, _____, hereby acknowledge and declare that:

1. I have received a copy of the Confidentiality Agreement in this arbitration, which I have read and understand.
2. I will comply with all of the provisions of the Confidentiality Agreement, and will return all CONFIDENTIAL INFORMATION that comes into my possession, and all documents and things that I have prepared relating thereto, to counsel for the Party by whom I am employed or retained or from whom I received such material, when requested by such counsel to do so.
3. I understand that if I violate the provisions of the Confidentiality Undertaking I may be subject to any remedies at law or in equity that the Parties, or any one of them, may assert against me.
4. My address is: _____.

5. My relationship to this case and the Parties thereto is: _____.

I declare that the foregoing is true and correct.

Dated:

(Signature)

Print Name and Title