

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

TECO Guatemala Holdings, LLC
(Claimant)

v.

Republic of Guatemala
(Applicant)

(ICSID Case No. ARB/10/23)
Third Annulment Proceeding

DECISION ON STAY OF ENFORCEMENT

Members of the Committee

Ms. Deva Villanúa, President of the *ad hoc* Committee
Prof. Lawrence Boo, Member of the *ad hoc* Committee
Prof. Doug Jones AO, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Mercedes Cordido-Freytes de Kurowski

Assistant to the ad hoc Committee

Mr. Felipe Aragón Barrero

May 17, 2021

I. PROCEDURAL BACKGROUND

1. On February 12, 2021, the Republic of Guatemala filed with the International Centre for Settlement of Investment Disputes [“**ICSID**”] an Application for Annulment of the Award rendered on May 13, 2020 [the “**Resubmission Award**”] and supplemented by the **Supplementary Decision** dated October 16, 2020, in the resubmission proceeding in *TECO Guatemala Holdings, LLC v. Republic of Guatemala* (ICSID Case No. ARB/10/23), [the “**Annulment Application**”]. In its Annulment Application the Republic of Guatemala requested the stay of enforcement of the Resubmission Award and the Supplementary Decision pursuant to Article 52(5) of the ICSID Convention. The Annulment Application was filed pursuant to Article 52 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States [the “**ICSID Convention**”] and Rule 50 of the ICSID Rules of Procedure for Arbitration Proceedings [“**Arbitration Rules**”].
2. On February 22, 2021, the Secretary-General of ICSID registered the Annulment Application and notified the Parties that the enforcement of the Award was provisionally stayed pursuant to Arbitration Rule 54(2).
3. On March 31, 2021, the Secretary-General notified the Parties of the constitution of the *ad hoc* Committee [the “**Committee**”] in accordance with Article 52(3) of the Convention. Its members are: Ms. Deva Villanúa, a national of Spain, as President, Prof. Doug Jones, a dual national of Australia and Ireland, and Prof. Lawrence Boo, a national of Singapore. All members were appointed by the Chairman of the ICSID’s Administrative Council. Ms. Mercedes Cordido-Freytes de Kurowski, Legal Counsel, was appointed to serve as Secretary of the Committee.
4. On April 3, 2021, the Secretary of the Committee wrote to the Parties on instructions of the *ad hoc* Committee regarding the arrangements for the First Session and the request for stay of enforcement of the Resubmission Award and the Supplementary Decision.
5. On April 10, 2021, the Committee, through the ICSID Secretariat, circulated a draft Procedural Order No. 1 to the Parties and invited the Parties to submit a joint proposal advising the *ad hoc* Committee of the Parties’ agreements on procedural matters. The Committee made reference to ICSID Arbitration Rule 54(2) and paragraph 92 of the Annulment Application in which the Republic of Guatemala requested that the stay of enforcement of the Resubmission Award and the Supplementary Decision be maintained until the Decision of the *ad hoc* Committee on the Application has been issued. In such regard, the Committee invited the Parties to confer and jointly propose by April 14, 2021 a schedule of written submissions so as to efficiently address the Guatemala’s request for the continuation of the stay; to consider whether an extension of the Rule 54(2) 30-day

deadline was necessary and would be agreed between the Parties; and to agree on the language of their written submissions on the stay.

II. THE PARTIES' POSITIONS

6. On April 14, 2021, the Republic of Guatemala informed the Committee, *inter alia*, that:

“the Parties had conferred and agreed to the continuation of the stay of enforcement of the Resubmission Award until the Committee has rendered a decision on the Republic’s Annulment Request. Thus, we respectfully request the Committee to confirm the Parties’ agreement and order the continuation of the stay of the enforcement of the Resubmission Award until after the final decision in these annulment proceedings is rendered, dispensing the parties with written submissions on the matter”.

7. On April 15, 2021, TECO informed the Committee, among other things, that it did not oppose Guatemala’s request that the stay of enforcement of the Resubmission Award be maintained until the decision of the *ad hoc* Committee is rendered.

8. On April 16, 2021, the Republic of Guatemala after referring to TECO’s communication of April 15, 2021, requested that the Committee issue the corresponding decision, ordering the “continuation of the stay of the enforcement of the award” during the Annulment Proceedings and until the final decision on the annulment of the Resubmission Award is rendered.

9. On May 6, 2021, the Committee asked the Parties to confirm whether they required the Committee to issue a Decision recording the Parties’ agreement on the stay of enforcement.

10. On the same date, and in response to the Committee’s letter of May 6, 2021, the Republic of Guatemala requested “the issuance of an order confirming the continuation of the stay of enforcement of the Award of Resubmission dated May 13, 2020 and the Supplemental Decision dated October 16, 2020. The Committee will note from the Parties’ comments on the draft Procedural Order No. 1 submitted to the Committee on April 27, 2021 that TECO has no objection to the Republic making this request”.

III. THE COMMITTEE'S ANALYSIS

11. The applicable rules to the stay of enforcement of an award are Article 52(5) of the ICSID Convention and Rule 54 of the ICSID Arbitration Rules.
12. Article 52(5) of the ICSID Convention provides that:

“The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request”.
13. Arbitration Rule 54(1) provides that:

“The party applying for the interpretation, revision or annulment of an award may in its application, and either party may at any time before the final disposition of the application, request a stay in the enforcement of part or all of the award to which the application relates. The Tribunal or Committee shall give priority to the consideration of such a request”.
14. Additionally, the Committee takes note that Article 10(26)(6) of the Dominican Republic-Central America Free Trade Agreement [“**DR-CAFTA**” or the “**Treaty**”], in force for the United States since March 1, 2006, and for Guatemala since July 1, 2006, under which the Resubmission Award and Supplementary Decision were rendered, states that:

“A disputing party may not seek enforcement of a final award until:

 - (a) in case of a final award made under the ICSID Convention
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) revision or annulment proceedings have been completed [...]”.
15. The Committee takes note of (i) the above provisions, which foresee the non-enforceability of an award while an annulment proceeding is pending; and (ii) Claimant’s lack of opposition to Respondent’s request for stay of enforcement of the Resubmission Award and the Supplementary Decision until the Committee has rendered a decision on the Republic’s Annulment Request.

IV. DECISION

16. In light of the above, and pursuant to Article 52(5) of the ICSID Convention, ICSID Arbitration Rule 54 and Article 10(26)(6) DR-CAFTA, the Committee confirms the continuation of the stay of enforcement of the Resubmission Award rendered on May 13, 2020 and supplemented by the Supplementary Decision dated October 16, 2020, in the resubmission proceeding in *TECO Guatemala Holdings, LLC v. Republic of Guatemala* (ICSID Case No. ARB/10/23), until the Committee has rendered its Decision on Annulment.

[signed]

Ms. Deva Villanúa
President of the *ad hoc* Committee

[signed]

Prof. Lawrence Boo
Member of the *ad hoc* Committee

[signed]

Prof. Doug Jones AO
Member of the *ad hoc* Committee