

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

BETWEEN:

Angel Samuel Seda and others

v.

Republic of Colombia

(ICSID Case No. ARB/19/6)

**CONFIDENTIALITY ORDER
PROCEDURAL ORDER NO. 5**

Members of the Tribunal

Prof. Dr. Klaus Sachs, President of the Tribunal

Prof. Hugo Perezcano Díaz, Arbitrator

Dr. Charles Poncet, Arbitrator

Secretary of the Tribunal

Ms. Sara Marzal

14 September 2021

1. For the purposes of this Confidentiality Order:
 - a. “Claimants” means Angel Samuel Seda, JTE International Investments, LLC, Jonathan M. Foley, Stephen J. Bobeck, Brian Hass, Monte G. Adcock, Justin T. Enbody, Justin T. Caruso and The Boston Enterprises Trust;
 - b. “Disputing Party” means either Claimants or the Republic of Colombia;
 - c. “Confidential Information” shall be
 - i. information that discloses identifying information on the owner of Boston Trust Enterprises to be reasonably inferred by either direct or indirect means; or
 - ii. confidential business information or information that is privileged or otherwise protected from disclosure under the Respondent’s law.
 - d. “Written Submission” means the memorial, counter-memorial, reply, rejoinder whether on jurisdiction or on merits and damages; it does not include witness statements, expert reports or exhibits.
2. A Disputing Party may designate Confidential Information contained in any document that the Disputing Party produces to the other Disputing Party, and in any Written Submission, witness statement, expert report, exhibit, order or award.

DOCUMENTS EXCHANGED IN DOCUMENT PRODUCTION

3. If a Disputing Party contends that a document that it produces to the other Disputing Party contains Confidential Information, the Disputing Party shall clearly label each page of the document as “Confidential” at the time that it produces the document. A document produced by a Disputing Party to the other Disputing Party containing such proposed designations shall be deemed to constitute Confidential Information in its entirety.

WRITTEN SUBMISSIONS

4. In order to designate Confidential Information in a Written Submission, witness statement, expert report as Confidential Information, a Disputing Party must, at the time of the filing of the document, provide the other Disputing Party with a copy of the document containing the Disputing Party’s proposed designations of Confidential Information. The Disputing Party must clearly label the cover page of the document “Confidential Information, Dissemination Prohibited”, or some variation thereof. The top of each particular page of the document containing Confidential Information must be labeled “Confidential”. The alleged Confidential Information must then be enclosed in a double set of brackets (“[[]]”), unless the document in its entirety is Confidential Information, in which instance it is sufficient to label the document as “Confidential”. The Disputing Party will file with the Tribunal the following versions of the Written Submission, witness statement, expert report:
 - a. a confidential version in which Confidential Information is unredacted; and
 - b. a non-confidential version, with all Confidential Information redacted.

TREATMENT OF CONFIDENTIAL INFORMATION

5. The Disputing Parties and the Tribunal shall not disclose any documents, including the Written Submission, witness statement, expert report, exhibit, order or award containing Confidential Information to any person not authorized to receive Confidential Information under the terms of this Confidentiality Order until any Confidential Information has been designated in accordance with the terms of this Confidentiality Order.
6. Except with the prior written consent of the Disputing Party that claimed confidentiality with respect to the information, Confidential Information may be used only in these proceedings and may be disclosed only for such purposes to and no more than among:
 - a. Members of the Tribunal (and their assistants, if any) to whom disclosure is reasonably considered by one or more Members of the Tribunal to be necessary;
 - b. ICSID's Secretariat, including counsel and paralegals or administrative personnel to whom disclosure is strictly necessary;
 - c. Attorneys, paralegals, and administrative support staff at Gibson, Dunn & Crutcher LLP, Cález Muñoz Mejía Abogados, Medellín & Durán Abogados, Gaillard Banifatemi Shelbaya Disputes LLP, and Agencia Nacional de Defensa Jurídica del Estado whose involvement in the preparation or conduct of these proceedings is reasonably considered by a Disputing Party to be strictly necessary;
 - d. Claimants, and in the event of legal persons, Claimant's principal representatives that signed the Confidentiality Undertaking in the same form attached as an Appendix to this Confidentiality Order;
 - e. Wilson A. Martínez Sánchez and other experts which Claimants might be required to engage in connection with these proceedings;
 - f. Mr. Yesid Reyes, Mr. Nilson Pinilla, and other experts which the Respondent might required in connection with their engagement for these proceedings
 - g. translation professionals retained by Claimants or Respondent in connection with these proceedings;
 - h. witnesses, who in good faith are reasonably expected by a Disputing Party to offer evidence in these proceedings but only to the extent material relates to their expected testimony; or

- i. court reporters and other hearing support staff that may be engaged in connection with these proceedings.

The Disputing Parties may agree to restrict the disclosure of Confidential Information to one or more of the groups outlined in (a) to (i) above.

7. No Disputing Party shall file any confidential material covered by the terms of this Confidentiality Order in any Court or use it for any other purposes outside of these proceedings, unless so required by law
8. Inadvertent or improper disclosure of Confidential Information, as set forth in the present Order, does not constitute a waiver of the designation of the information as confidential.
9. Each Disputing Party shall:
 - a. have the obligation of notifying all persons receiving Confidential Information of the obligations under this Confidentiality Order;
 - b. ensure that persons receiving Confidential Information execute a Confidentiality Undertaking in the same form attached as an Appendix before receiving any Confidential Information;
 - c. maintain copies of such Confidentiality Undertakings and shall make such copies available to the other Disputing Party immediately after execution of the Confidentiality Undertaking.
10. The obligations created by this Order shall survive the termination of these proceedings.
11. This Confidentiality Order shall be effective and binding upon a Disputing Party upon the signature of the Confidentiality Order by the Tribunal.
12. A Disputing Party may apply to the Tribunal for an amendment to, or a derogation from, this order if compelling circumstances so require.

[Signed]

On behalf of the Tribunal
Prof. Dr. Klaus Sachs (President)

14 September 2021
Date

Signed by both Disputing Parties in acknowledgement of the obligation to abide by this Confidentiality Order:

On behalf of the Republic of Colombia

Date

On behalf of Angel Samuel Seda, JTE International Investments, LLC, Jonathan M. Foley, Stephen J. Bobeck, Brian Hass, Monte G. Adcock, Justin T. Enbody, Justin T. Caruso and The Boston Enterprises Trust

Date

APPENDIX TO CONFIDENTIALITY ORDER

CONFIDENTIALITY UNDERTAKING

TO: The Republic of Colombia (“**Respondent**”) (and its legal counsel) and Angel Samuel Seda, JTE International Investments, LLC, Jonathan M. Foley, Stephen J. Bobeck, Brian Hass, Monte G. Adcock, Justin T. Enbody, Justin T. Caruso and The Boston Enterprises Trust (“**Claimants**”) (and their legal counsel).

FROM: _____

WHEREAS:

- A. On ## September 2021, the Arbitral Tribunal in the matter between Claimants and Respondent (together “**Disputing Parties**”) – ICSID Case No. ARB/19/6 – issued Procedural Order No. 5 (“**Confidentiality Order**”) setting out the Disputing Parties’ agreement on the process for disclosure of materials over which claims for confidentiality have been advanced (“**Confidential Information**”).
- B. Subject to execution of this undertaking, the undersigned is entitled to receive and review Confidential Information pursuant to the terms of the Confidentiality Order.

THE UNDERSIGNED HEREBY GIVES THE FOLLOWING EXPRESS UNDERTAKINGS TO AND FOR THE BENEFIT OF THE DISPUTING PARTIES.

1. I will use and ensure that any use of the Confidential Information is only and solely for the purposes of ICSID Case No. ARB/19/6, and not for any other purpose or other proceedings.
2. I will hold the Confidential Information strictly in secrecy and not disclose it directly or indirectly to any legal or natural third person that has not executed this Confidentiality Undertaking, without the prior written consent of the Disputing Parties.
3. I will only discuss the Confidential Information with the Disputing Parties’ legal counsel of record in ICSID Case No. ARB/19/6 as expressly authorized by the Arbitral Tribunal in the Confidentiality Order.
4. I agree to be liable for any damage caused to either Disputing Party from the unauthorized disclosure of Confidential Information in breach of this Confidentiality Undertaking.
5. This Confidentiality Undertaking shall not prevent me from disclosing or discussing the existence or content of the Confidential Information, to the extent that this information is already in my legitimate possession, or comes into such legitimate

possession through no breach of this Confidentiality Undertaking or any other confidentiality undertaking made in connection with ICSID Case No. ARB/19/6.

6. This Confidentiality Undertaking shall enter into force from the date of signing and shall be valid in perpetuity.
7. This Confidentiality Undertaking shall be construed, interpreted and applied in accordance with the laws of the Republic of Colombia.
8. Any dispute, controversy or claim arising out of or in connection with this Confidentiality Undertaking, or the breach, termination or invalidity thereof, shall be finally resolved by the Arbitral Tribunal in the matter between Claimants and Respondent – ICSID Case No. ARB/19/6.
9. After the issuance of a final award in ICSID Case No. ARB/19/6, all disputes arising out of or in connection with the present Confidentiality Undertaking shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed. Each side shall nominate an arbitrator and the co-arbitrators shall nominate the President within 30 days of the confirmation or appointment of the second arbitrator. The place of the arbitration shall be Paris, France. The language of the arbitration shall be English.

SIGNED, SEALED AND DELIVERED before a witness this _____ day of _____ 20_____.

(Print Name)

(Print Witness Name)

(Signature)

(Witness Signature)