

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

VESTHEY GROUP LIMITED,
29 Ullswater Crescent
Coulston, Surrey, CR5 2HR
United Kingdom,

Petitioner,

v.

BOLIVARIAN REPUBLIC OF
VENEZUELA,
Ministerio del Poder Popular para Relaciones
Exteriores
Oficina de Relaciones Consulares
Avenida Urdaneta
Esquina de “Carmelitas” a “Puente Llaguno”
Edificio anexo a la Torre “MRE”
Caracas, 1010
República Bolivariana de Venezuela,

Respondent.

Civil Action No. ____

**PETITION TO RECOGNIZE AND
ENFORCE AN ICSID ARBITRATION AWARD**

Petitioner Vestey Group Limited (“Petitioner”), by and through its attorneys, states as follows:

INTRODUCTION

Petitioner respectfully seeks recognition and enforcement of an arbitration award pursuant to 22 U.S.C. § 1650a and Article 54 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159 (the “ICSID Convention”). The arbitration award (the “Award”) was rendered on April 15, 2016, in favor of Petitioner and against Respondent, the Bolivarian Republic of

Venezuela (“Venezuela”), following an arbitration conducted under the auspices of the International Centre for Settlement of Investment Disputes (“ICSID”). In addition, Petitioner seeks an order enforcing the pecuniary obligations imposed by the Award by an entry of judgment in Petitioner’s favor requiring Venezuela to pay Petitioner the full value of the Award, with interest and costs as provided therein and with further interest to accrue pursuant to the Award until the date of payment in full, in addition to the costs of this proceeding. A certified copy of the Award is attached as Exhibit A to the Declaration of Sylvia Noury in support of Petitioner’s Petition to Recognize and Enforce an ICSID Arbitration Award (“Noury Declaration” or “Noury Decl.”), dated June 20, 2018.¹

THE PARTIES

1. Petitioner Vestey Group Limited is a private limited company incorporated under the laws of England and Wales, with its principal place of business located at 29 Ullswater Crescent, Coulsdon, Surrey, CR5 2HR, United Kingdom.

2. Respondent is the Bolivarian Republic of Venezuela, a foreign State within the meaning of the Foreign Sovereign Immunities Act (“FSIA”). *See* 28 U.S.C. § 1603(a). On October 21, 2005, the date that Petitioner initiated arbitration proceedings by filing a Request for Arbitration with ICSID, Venezuela was a signatory to the ICSID Convention.²

¹ The relevant articles of the ICSID Convention are attached as Exhibit B to the Noury Declaration.

² While the arbitration was pending, Venezuela withdrew from the ICSID Convention, effective on July 25, 2012. However, all of the rights of Petitioner and obligations of Venezuela that were at issue in the underlying arbitration, and which Petitioner seeks to have recognized and enforced by this Petition, arose before Venezuela’s denunciation took effect and were therefore unaffected by it. *See* Noury Decl. Ex. B (ICSID Convention Excerpts), at Art. 72 (“Notice [of denunciation] by a Contracting State . . . shall not affect the rights or obligations under this Convention . . . arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.”). In the arbitration,

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1330(a), which provides that the United States District Courts shall have original subject matter jurisdiction over any nonjury civil action against a foreign State unless the foreign State is entitled to immunity under the FSIA or an applicable international agreement.

4. Venezuela is not entitled to immunity here. Venezuela has waived its immunity for the purpose of this Petition by becoming a party to the ICSID Convention. *See* 28 U.S.C. § 1605(a)(1). In addition, Venezuela is not entitled to immunity because this action seeks to recognize an arbitral award made pursuant to a treaty in force in the United States calling for the recognition and enforcement of arbitral awards – specifically, the ICSID Convention. *See* 28 U.S.C. § 1605(a)(6).

5. This Court also has subject matter jurisdiction over this action pursuant to 22 U.S.C. § 1650a(b), which provides that “[t]he district courts of the United States . . . shall have exclusive jurisdiction over actions” to enforce an ICSID award. The United States is a signatory to the ICSID Convention. The Federal Arbitration Act does not apply to this action. *See* 22 U.S.C. § 1650a(a).

6. This Court may exercise personal jurisdiction over Venezuela pursuant to 28 U.S.C. § 1330(b), which provides that the United States District Courts have personal jurisdiction over a foreign State that – like Venezuela in this action – is not entitled to immunity, provided that service of process is effected in accordance with 28 U.S.C. § 1608. Petitioner intends to serve process in a timely manner on Venezuela pursuant to 28 U.S.C. § 1608(a), including, if required, through the Convention of 15 November 1965 on the Service Abroad of

Venezuela raised no objection to the Tribunal’s jurisdiction based on the State’s subsequent denunciation of the ICSID Convention. *See* Noury Decl. ¶ 5, n.2.

Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163.

7. Venue is proper in this district under 28 U.S.C. § 1391(f)(4), which provides that a party may bring a civil action against a foreign State in the United States District Court for the District of Columbia.

THE DISPUTE AND THE AWARD

8. Petitioner Vestey Group Limited is a fourth generation family business based in the United Kingdom. The company's operations encompass farming in South America, wine production in Australia, and a number of food processing and distribution businesses. The underlying dispute arose out of Venezuela's unlawful expropriation of Petitioner's cattle ranching business. Petitioner began operations in Venezuela in 1909 and, prior to the expropriation, Petitioner's business encompassed over 290,000 hectares of land and 100,000 heads of livestock.

9. In October 2005 – before the expropriation, but after Venezuela began improperly interfering with Petitioner's rights – Petitioner filed a Request for Arbitration with ICSID against Venezuela, alleging that Venezuela's actions constituted violations of the bilateral investment treaty between the United Kingdom and Venezuela (the "U.K.-Venezuela BIT"). The arbitration proceedings were then suspended from May 12, 2006 until December 20, 2011, while Petitioner attempted to negotiate a settlement with Venezuela.

10. Negotiations ultimately failed and the arbitration resumed. The parties constituted the arbitral tribunal (the "Tribunal") on July 6, 2012. The arbitration proceedings were extensive, and Petitioner and Venezuela participated fully. The parties filed multiple

rounds of pre-hearing written submissions, along with witness statements and expert reports; engaged in document discovery; and participated in a six-day hearing in Paris, France.

11. On April 15, 2016, the Tribunal issued the Award. The Tribunal concluded that it had jurisdiction over the dispute and that Venezuela had unlawfully expropriated Petitioner's investment in violation of the U.K.-Venezuela BIT. The Tribunal awarded Petitioner monetary damages in the amount of US\$98,145,325, together with interest at the rate applicable to six-month U.S. sovereign bonds, compounded semi-annually, from October 29, 2011 until payment in full. As of June 20, 2018, Award interest is calculated to be US\$2,848,289.26. The Tribunal also ordered Venezuela to reimburse Petitioner for the ICSID arbitration costs, in an additional amount of US\$585,391.82. The full current amount of the Award payable by Venezuela to Petitioner is US\$101,579,006.08.

12. Venezuela did not satisfy the Award, and never responded to Petitioner's letter of June 20, 2016 demanding payment. Instead, on August 12, 2016, Venezuela filed an Application for Annulment of the Award with ICSID (the "Application"). Venezuela also requested a stay of enforcement of the Award pending a decision on its Application. On August 16, 2016, ICSID registered the Application and granted Venezuela an automatic, provisional stay on enforcement of the Award. On November 8, 2016, ICSID appointed an *ad hoc* annulment committee (the "Committee") to rule on the Application.

13. On November 18, 2016, the Committee sought the parties' positions on whether the automatic, provisional stay on enforcement of the Award should remain in place pending the resolution of the Application. Petitioner informed the Committee that it would not oppose Venezuela's request for a continued stay in exchange for an expedited briefing and hearing

schedule. Venezuela and the Committee agreed with Petitioner's proposal, and the stay of enforcement therefore remained in place.

14. In ICSID annulment proceedings, the party seeking annulment is solely responsible for making advance payments to ICSID to cover the costs of the proceedings, as and when requested to do so by the ICSID Secretariat. ICSID asked Venezuela to pay the first advance on costs no later than December 10, 2016. Venezuela failed to pay by that deadline.

15. On February 6, 2017, having still not received the advance payment and with Venezuela unable to state when payment would be made, the Committee suspended the proceedings and, at that same time, lifted the stay on enforcement of the Award.

16. The proceedings resumed on April 6, 2017, after ICSID confirmed that Venezuela had made a belated payment of the first advance on costs. Petitioner again agreed not to oppose a stay of enforcement in exchange for Venezuela's agreement to an expedited (although now extended) procedural timetable, and the Committee thus reinstated the stay on enforcement of the Award on April 27, 2017.

17. On July 12, 2017, ICSID requested that Venezuela pay its second advance on costs no later than August 11, 2017. Again, Venezuela failed to make payment. This led to the cancellation of the hearing on annulment, scheduled for October 10-11, 2017.

18. On October 5, 2017, in order to avoid further prejudice from delayed enforcement of the Award, Petitioner asked the Committee to lift the stay of enforcement. After hearing the parties' views on the matter, the Committee lifted the stay on October 18, 2017.

19. On December 7, 2017, the Committee notified the parties that ICSID had received the second advance on costs from Venezuela and that proceedings would be resumed. The Committee did not reinstate the stay of enforcement. As of the date of this Petition, enforcement

of the Award is not stayed, and Petitioners may therefore enforce the Award. A hearing on annulment is scheduled for August 2018. A decision on Venezuela's Application is not expected until several months thereafter.

LEGAL BASIS FOR RELIEF

20. Article 54(1) of the ICSID Convention requires Contracting States to "recognize an award rendered pursuant to [the] Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State." Noury Decl. Ex. B (ICSID Convention Excerpts), at Art. 54(1).

21. To fulfill this obligation, the United States passed implementing legislation that provides:

An award of an arbitral tribunal rendered pursuant to chapter IV of the [ICSID] convention shall create a right arising under a treaty of the United States. The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States. The Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) shall not apply to enforcement of awards rendered pursuant to the [ICSID] convention.

22 U.S.C. § 1650a(a).

22. The ICSID Convention prevents parties to an ICSID arbitration from challenging an ICSID award in court. *See* Noury Decl. Ex. B (ICSID Convention Excerpts), at Art. 53(1). Accordingly, Venezuela may not collaterally attack the Award in this proceeding. Thus, because the arbitration was conducted pursuant to the ICSID Convention, Venezuela's only opportunity to challenge the Award is through the ICSID annulment process. Venezuela has done so but, as noted above, that is not a bar to recognition or enforcement when, as here, no stay of enforcement is in place.

23. The Court should accordingly recognize and enforce the Award.

THE AWARD MUST BE RECOGNIZED AND ENFORCED

24. Petitioner restates and incorporates Paragraphs 1 through 23 as if set forth fully herein.

25. The Award, a binding arbitration award under the ICSID Convention, has been issued in Petitioner's favor.

26. Awards issued pursuant to the ICSID Convention are subject to recognition and enforcement in the United States pursuant to 22 U.S.C. § 1650a.

27. Petitioner is thus entitled to an order recognizing the Award as a judgment pursuant to Article 54 of the ICSID Convention and 22 U.S.C. § 1650a, and enforcing the pecuniary obligations imposed by the Award by entering judgment thereon in the full value of the Award, with ongoing interest to accrue pursuant to paragraph 472(iii) of the Award until the Award is paid in full, in addition to the costs awarded by the Tribunal and the costs of this proceeding.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court enter an order:

- (a) Recognizing and enforcing the Award as a judgment of this Court, pursuant to 22 U.S.C. § 1650a and Article 54 of the ICSID Convention;
- (b) Entering judgment in favor of Petitioner and against Venezuela in the amount of the full value of the Award, *i.e.*, (i) damages awarded by the Tribunal in the amount of US\$98,145,325; (ii) ongoing interest as provided by the Tribunal, accruing until the date of payment in full (calculated to be US\$2,848,289.26 as of June 20, 2018); and (iii) costs as awarded by the Tribunal, in the amount of US\$585,391.82;

- (c) Ordering Venezuela to pay the costs of this proceeding; and
- (d) Granting Petitioner such other and further relief as the Court deems just and proper.

Dated: June 20, 2018

Respectfully submitted,

By: /s/ Elliot Friedman

Elliot Friedman (D.C. Bar No. NY0106)
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