

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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CEF ENERGIA, B.V.)	
)	
)	Civil Action No.
	Petitioner,)	
)	
	v.)	
)	
THE ITALIAN REPUBLIC,)	
)	
	Respondent.)	
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NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 9 U.S.C. § 205, 28 U.S.C. § 1441(a) and (d), and 28 U.S.C. § 1446, the Italian Republic ("Italy") hereby removes to this Court the state court action described in paragraph 1 below, as follows:

1. The removed action is a proceeding to confirm an arbitral award pursuant to the United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards (June 10, 1958), 21 U.S.T. 2517, 330 U.N.T.S. 38 (the "New York Convention") and Chapter 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 201, *et seq.*, filed in the Supreme Court of the State of New York, County of New York: Commercial Division, on August 16, 2019. The case has been assigned Index No. 654707/2019 and is styled *CEF Energia, B.V. v. The Italian Republic* (the "State Action").

2. As required by 28 U.S.C. § 1446(a), attached as Exhibit A are copies of all process, pleadings, and orders received by – and purportedly served on – Italy in the removed action. Italy

reserves its rights, among others, to challenge the validity, sufficiency and adequacy of such process and purported service.

3. This is a proceeding to confirm and recognize an arbitration award pursuant to the New York Convention and the FAA. Removal is thus based on 9 U.S.C. § 205, which provides:

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

Because section 205 permits removal "at any time before the trial" of the substantive issues in an action, removal is timely here. *See LGC Holdings, Inc. v. Julius Klein Diamonds, LLC*, 238 F. Supp. 3d 452, 464 (S.D.N.Y. 2017) ("removal under Section 205 timely" where "no substantive issues in the [state court case] were resolved"). The state court action was initiated by notice of petition in August 2019. There has not yet been a hearing held on the petition.

4. The removed action is also a civil action against a foreign state, Italy. Pet. ¶ 3 (Ex. A). It is thus alternatively removed to this Court pursuant to 28 U.S.C. § 1441(d), which provides:

Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

5. This action is properly removed to this Court under 28 U.S.C. § 1441(a) because the Southern District of New York is "the district and division embracing" the County of New York. Italy reserves its rights, among others, to move to dismiss under Fed. R. Civ. P. 12(b) and to transfer this case under 28 U.S.C. § 1404(b) to the United States District Court for the District of

Columbia, "the dedicated venue for actions against foreign states." *Bettis v. Islamic Republic of Iran*, 315 F.3d 325, 332 (D.C. Cir. 2003).

6. As required by 28 U.S.C. § 1446(d), written notice of the removal of this action will be given to Petitioners' counsel forthwith. A copy of this Notice is also being filed with the Clerk of the Supreme Court of New York, County of New York: Commercial Division.

7. Nothing in this Notice of Removal shall be considered as consent to jurisdiction in the United States or a waiver of Italy's sovereign immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 *et seq.*, or any other available immunity or defense. Nor shall anything in this Notice be considered a waiver of service on Italy in accordance with 28 U.S.C. § 1608(a). Italy hereby reserves all of its rights with regard to all such issues, immunities and defenses.

WHEREFORE, Respondent the Italian Republic hereby removes *CEF Energia, B.V. v. The Italian Republic* from the Supreme Court of the State of New York, County of New York: Commercial Division, and requests that further proceedings be conducted in this Court as provided by law.

Dated: October 2, 2019

Respectfully submitted,

THE ITALIAN REPUBLIC

By its attorneys,

/s/ Christian Leathley

Christian Leathley, Esq.

Benjamin Mills, Esq.

HERBERT SMITH FREEHILLS NEW YORK LLP

450 Lexington Avenue

New York, NY 10017

Tel: (917) 542-7600

Fax: (917) 542-7601

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2019, I caused a true and correct copy of the foregoing document to be served upon the following individuals via email and first-class mail:

James E. Berger
Charlene C. Sun
King & Spalding LLP
1185 Avenue of the Americas
New York, NY 10036
Counsel for Petitioners

/s/ Benjamin Mills
Benjamin Mills, Esq.