

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

INFRARED ENVIRONMENTAL
INFRASTRUCTURE GP LIMITED,
12 CHARLES II Street
London, SW1Y 4QU
United Kingdom

EUROPEAN INVESTMENTS (MORÓN) 1
LIMITED,
12 CHARLES II Street
London, SW1Y 4QU
United Kingdom

EUROPEAN INVESTMENTS (MORÓN) 2
LIMITED,
12 CHARLES II Street
London, SW1Y 4QU
United Kingdom

EUROPEAN INVESTMENTS (OLIVENZA)
1 LIMITED,
12 CHARLES II Street
London, SW1Y 4QU
United Kingdom

-and-

EUROPEAN INVESTMENTS (OLIVENZA)
2 LIMITED
12 CHARLES II Street
London, SW1Y 4QU
United Kingdom

Plaintiffs

v.

KINGDOM OF SPAIN
The Ministry of Justice
of the Government of Spain
Calle Ayala 5
28001 Madrid
Spain

Defendant

Civil Action No.: _____

COMPLAINT

Plaintiffs InfraRed Environmental Infrastructure GP Limited, European Investments (Morón) 1 Limited, European Investments (Morón) 2 Limited, European Investments (Olivenza) 1 Limited, and European Investments (Olivenza) 2 Limited (collectively, “Plaintiffs”), by and through their undersigned counsel, hereby bring this action seeking an order pursuant to 22 U.S.C. § 1650a registering as a foreign judgment an arbitral award (“the ICSID Award”) issued on August 2, 2019 pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270 (the “ICSID Convention”) in favor of Plaintiffs and against the Kingdom of Spain (“Spain”). *See* Declaration of Alexander A. Yanos (“Yanos Decl.”) filed concurrently herewith, Ex. 1. Pursuant to 22 U.C.S. § 1650a, the pecuniary obligations imposed by an award issued pursuant to the ICSID Convention “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 ICSID Award should therefore be registered and enforced as a foreign judgment and afforded full faith and credit in this district.

The Parties

1. Plaintiff InfraRed Environmental Infrastructure GP Limited (“InfraRed”) is a private limited company organized and existing under the laws of the United Kingdom. InfraRed acts in its own name and on its own behalf and as a General Partner in the name and on behalf of InfraRed Environmental Infrastructure Fund I LP, InfraRed Environmental Infrastructure Fund II LP, and InfraRed Environmental Infrastructure Fund III LP.

2. Plaintiff European Investments (Morón) 1 Limited is a private limited company organized and existing under the laws of the United Kingdom.

3. Plaintiff European Investments (Morón) 2 Limited is a private limited company organized and existing under the laws of the United Kingdom.

4. Plaintiff European Investments (Olivenza) 1 Limited is a private limited company organized and existing under the laws of the United Kingdom.

5. Plaintiff European Investments (Olivenza) 2 Limited is a private limited company organized and existing under the laws of the United Kingdom.

6. Defendant Spain is a foreign state within the meaning of the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. §§ 1330, 1332, 1391(f), 1441(d), 1602-1611.

Jurisdiction and Venue

7. This Court has original subject matter jurisdiction pursuant to 22 U.S.C. § 1650a as well as under 28 U.S.C. § 1330(a) because this is a case in which the Plaintiffs seek to confirm against a foreign state an arbitration award “governed by a treaty or other international agreement in force in the United States calling for the recognition and enforcement of arbitral awards,” specifically the ICSID Convention.

8. The Court may exercise personal jurisdiction over Spain pursuant to 28 U.S.C. §§ 1330(b) and 1605(a). Spain waived its immunity from the jurisdiction of this Court under 28 U.S.C. § 1605(a)(1) by becoming a party to the ICSID Convention. This action also falls within the FSIA’s exception to sovereign immunity provided for at 28 U.S.C. § 1605(a)(6)(B) because Plaintiffs seek confirmation of an arbitration award governed by the ICSID Convention, a treaty in force in the United States calling for the recognition and enforcement of arbitral awards.¹

9. Venue in this District is proper under 28 U.S.C. § 1391(f)(4).

¹ See *Tidewater Inv. SRL v. Bolivarian Republic of Venezuela*, No. 17-cv-1457 (TJK), 2018 U.S. Dist. LEXIS 211469, * 10 (D.D.C. Dec. 17, 2018) (“To our knowledge, every court to consider whether awards issued pursuant to the ICSID Convention fall within the arbitral award exception to the FISA has concluded that they do”) (quoting *Blue Ridge Invs., LLC v. Republic of Argentina*, 735 F.3d 72, 85 (2d Cir. 2013)); *Tatneft v. Ukraine*, 301 F. Supp.3d 175 (D.D.C. 2018), *aff’d* 2019 U.S. App. LEXIS 15787 (D.C. Cir. May 28, 2019), *cert. denied* 2020 U.S. LEXIS 392 (U.S. Jan. 13, 2020) (holding that Ukraine waived its sovereign immunity pursuant to 28 U.S.C. § 1605(a)(1) by ratifying the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), 9 U.S.C. §§ 201-208, a conclusion directly applicable under the ICSID Convention).

The ICSID Convention and the Treaty

10. The ICSID Convention, *see* Yanos Decl., Ex. 2, establishes a framework for the arbitration of investor-state disputes arising between “Contracting States” and nationals of other Contracting States. The Convention also establishes the International Centre for Settlement of Investment Disputes (“ICSID”) as a part of the World Bank to administer investor-state arbitrations governed by the ICSID Convention, such as the arbitration leading to Plaintiffs’ ICSID Award.

11. Article 25(1) of the ICSID Convention gives ICSID jurisdiction over “any legal dispute arising directly out of an investment, between a Contracting State . . . and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.” Article 25(1) further provides that “[w]hen the parties have given their consent, no party may withdraw its consent unilaterally.” *Id.*

12. The ICSID Convention also obliges each of the ICSID Convention’s 163 Contracting States to recognize and enforce ICSID awards.² Article 54(1) of the Convention provides that:

Each Contracting State shall recognize an award rendered pursuant to this 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. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

² *See* Database of ICSID Member States, available at <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx> (last visited March 17, 2020).

13. The United States has been a Contracting State to the ICSID Convention since 1966. The United States' obligations under Article 54(1) of the Convention are implemented in U.S. law at 28 U.S.C. § 1650a(a), which in relevant part provides:

An award of an arbitral tribunal rendered pursuant to chapter IV of the 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.*** (emphasis added)

14. Unlike other international arbitration awards, awards rendered under the ICSID Convention are not subject to review under the Federal Arbitration Act and do not require confirmation in the manner prescribed by the Federal Arbitration Act. This is explicit from 28 U.S.C. § 1650a, which provides that “[t]he Federal Arbitration Act (9 U.S.C. 1 *et seq.*) shall not apply to enforcement of awards rendered pursuant to the Convention.” *See OI European Grp. B.V. v. Bolivarian Republic of Venezuela*, No. 16-1533, 2019 U.S. Dist. LEXIS 85128, *11 (D.D.C. 2019) (“ICSID’s enabling statute makes clear that the Court may not re-examine the propriety of the award”); *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, No. CV-17-102, 2018 U.S. Dist. LEXIS 168518, *12 (D.D.C. Sept. 30, 2018) (“a member state is ‘not permitted to examine an ICSID award’s merits, its compliance with international law, or the ICSID tribunal’s jurisdiction to render the award’; all it may do is ‘examine the judgment’s authenticity and enforce the obligation imposed by the award.’”); *Teco Guatemala Holdings, LLC v. Republic of Guatemala*, No. 17-102, 2019 U.S. Dist. LEXIS 169168, at *17 (D.D.C. Oct. 1, 2019) (noting that Congress “plac[ed] ICSID awards beyond the scope of the FAA”). *See also Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela*, 863 F.3d 96, 102 (2d Cir. 2017) (“Member states’ courts are . . . not permitted to examine an ICSID award’s merits, its compliance with international law, or the ICSID tribunal’s jurisdiction to render the award; under

the Convention's terms, they may do no more than examine the judgment's authenticity and enforce the obligations imposed by the award.”).

15. Instead, and by design, review of ICSID awards is encapsulated within the framework of the ICSID Convention itself. ICSID Awards may be annulled or set aside only by specially constituted *ad hoc* committees appointed by the Chairman of the Administrative Council of ICSID (*ex officio* the President of the World Bank) on specific grounds enumerated in the ICSID Convention. *See Yanos Decl., Ex. 2 (Arts. 52-53).*

16. Both Spain and the United Kingdom are Contracting States to the ICSID Convention. The ICSID Convention entered into force for Spain on September 17, 1994 and for the United Kingdom on January 18, 1967.³

17. The Energy Charter Treaty (“Treaty”), 2080 U.N.T.S. 100 (1994), is a multilateral treaty that was signed in December 1994 and that entered into force in April 1998. The purpose of the Treaty is to “promote long-term cooperation in the energy field, based on complementarities and mutual benefits, in accordance with the objectives and principles of the European Energy Charter.” *Yanos Decl., Ex. 1, ¶ 10.* Spain and the United Kingdom are both parties to the Treaty.⁴

18. Pursuant to Article 26(4) of the Treaty, the United Kingdom and Spain, among others, consented to arbitrate disputes with one another's investors arising under the Treaty before ICSID.

³ *See* Database of ICSID Member States, available at <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx> (last visited March 17, 2020).

⁴ *See* Energy Charter Treaty Secretariat, “Signatories / Contracting Parties to the Energy Charter Treaty,” available at <https://www.energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/> (last visited March 17, 2020).

The Arbitration and the ICSID Award

19. In the late 1990s and early 2000s, Spain pursued a policy intended to attract foreign investment in renewable technologies, including concentrated solar power (“CSP”) plants. Yanos Decl., Ex. 1, ¶ 3. As of 1999, Spain had put in place a regulatory regime that assured renewable energy producers of the remuneration necessary to make renewable energy production profitable, and that made Spain into a uniquely attractive destination for investments in renewable energy technology. *Id.*, ¶ 5.

20. In 2011, and in reliance on Spain’s regulatory framework for renewable energy, Plaintiffs invested a total of US\$ 31 million in two Spanish CSP plants. *Id.*, ¶ 7.

21. Spain subsequently enacted a series of changes to its regulatory regime for renewable energy production. These changes reduced the remuneration available to renewable energy producers, including CSP plants, and adversely impacted the economics of Plaintiffs’ investments in a manner contrary to the expectations on which Plaintiffs relied in making their investment and in breach of Spain’s duty to afford Plaintiffs’ investment Fair and Equitable Treatment pursuant to Article 10 of the Treaty. Plaintiffs filed a Request for Arbitration against Spain on May 8, 2014, thus accepting Spain’s standing offer to arbitrate investor-state disputes arising under the Treaty. *See id.* ¶ 96.

22. In that Request, Plaintiffs sought compensation on the basis that Spain’s legislative and regulatory changes violated Spain’s obligations under the Treaty. *Id.* ¶ 9. The ICSID Secretariat registered Plaintiffs’ Request as *InfraRed Environmental Infrastructure GP Limited and others v. Kingdom of Spain* (ICSID Case No. ARB/14/12) on June 3, 2014. Yanos Decl., Ex. 1 at ¶ 97.

23. Consistent with the ICSID Convention and the ICSID Arbitration Rules, a three-member Tribunal was constituted for the case. The Tribunal was composed of three eminent international lawyers: Professor William W. Park, a national of the United States of America and Switzerland, appointed by Plaintiffs; Professor Pierre-Marie Dupuy, a national of France, appointed by Spain; and Mr. Stephen L. Drymer, a national of Canada, as a presiding arbitrator, based on the ICSID Secretary-General's proposal pursuant to the parties' request to ICSID. *Id.*, ¶¶ 98-102.

24. Following the exchange of voluminous written submissions, the Tribunal held a four-day oral hearing in Paris, France, from April 24 to April 28, 2017. *See id.* at 5.

25. Subsequently, on August 2, 2019, the Tribunal issued the ICSID Award pursuant to Chapter IV (Articles 48-49) of the ICSID Convention. The Tribunal ordered Spain to pay Plaintiffs compensation as follows:

- (i) € 28,200,200 as the principal amount of compensation to Plaintiffs;
- (ii) pre-award interest from June 30, 2014 through August 2, 2019, calculated at a rate equal to 2% compounded annually;
- (iii) post-award interest on the principal amount of compensation calculated at a rate equal to 2% compounded annually until the date of payment;
- (iv) The costs of the arbitration, in the amount of US\$ 642,757.70;
- (v) an amount equivalent to 66.66 % of the Plaintiffs' legal costs; and
- (vi) post-award interest on costs calculated at a rate equal to 2% compounded annually until the date of payment.

See Yanos Decl., Ex. 1 ¶¶ 599-618. A detailed calculation of amounts payable under the ICSID Award as of March 13, 2020 is attached as Exhibit 2 to the Yanos Declaration.

26. The ICSID Award is binding on Spain. Pursuant to Article 53 of the ICSID Convention, Spain is obligated to “abide by and comply with the terms of the award” unless and “except to the extent that enforcement shall have been stayed” by an *ad hoc* committee constituted under Article 52 of the ICSID Convention.

27. The ICSID Award was stayed by an ICSID *ad hoc* committee constituted on February 21, 2020 at Spain’s request.⁵ As such, Spain may defer payment of the pecuniary obligations imposed by the ICSID Award and Plaintiffs correspondingly may not collect on the ICSID Award against Spanish assets until the stay is lifted. The ICSID Award nevertheless retains the status of a final judgment of a court of one of the several states entitled to full faith and credit in this Court. *See* 22 U.S.C. § 1650a.

CAUSE OF ACTION (22 U.S.C. § 1650a)

28. Plaintiffs restate and reincorporate all of the foregoing paragraphs of this Petition as though fully set forth herein.

29. The United States is a Contract State to the ICSID Convention. Article 54(1) of the ICSID Convention requires Contracting States to “recognize an award rendered pursuant to [the ICSID] 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.”

30. Article 54(1) is incorporated into U.S. law by 22 U.S.C. § 1650a, which requires that the pecuniary obligations imposed by the Plaintiffs’ ICSID Award “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

⁵ *See InfraRed Environmental Infrastructure GP Limited and others v. Kingdom of Spain* (ICSID Case No. ARB/14/12), Procedural Details, available at <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/14/12>.

of the several States.” In turn, 28 U.S.C. § 1738 requires this Court to accord full faith and credit to the authenticated judgments of the several states.

31. An authenticated copy of the ICSID Award, bearing the certification of the Secretary General of ICSID is attached as to the supporting declaration of Alexander Yanos as Exhibit 1.

32. For all these reasons, pursuant to 22 U.S.C. § 1650a, Article 54 of the ICSID Convention, and 28 U.S.C. § 1738 the ICSID Award must be recognized and the pecuniary obligations thereof enforced “as if the award were a final judgment of a court of general jurisdiction of one of the several states.”

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter an order and judgment: (i) recognizing the ICSID Award and enforcing the pecuniary obligations imposed by the ICSID Award as if the ICSID Award were a final judgment of a court of general jurisdiction of one of the several States; (ii) staying execution of such judgment until the stay imposed by the *ad hoc* committee has been lifted; and (iii) granting such other relief as may be just and proper.

Dated: March 25, 2020

New York, New York

Respectfully submitted,



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