

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

InfraRed Environmental Infrastructure GP Limited and others

v.

Kingdom of Spain

(ICSID Case No. ARB/14/12) – Annulment Proceeding

**PROCEDURAL ORDER No. 7
on the Stay of Enforcement of the Award**

Members of the ad hoc Committee

Prof. José-Miguel Júdece, President of the *ad hoc* Committee

Dr. Karim Hafez, Member of the *ad hoc* Committee

Prof. Yuejiao Zhang, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Mr. Marco Tulio Montañés-Rumayor

12 February 2021

I. INTRODUCTION

1. This procedural order addresses the request of the Kingdom of Spain (“**Applicant**” or “**Spain**”) for the continuation of the provisional stay of enforcement of the award rendered on 2 August 2019 in ICSID Case No. ARB/14/12 (“**Award**”), and the letter of 10 February 2021 from 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 (“**Respondents**” in the annulment or “**Infrared**”).

II. PROCEDURAL HISTORY

2. On 27 October 2020, the Committee issued its Decision on the Continuation of the Stay of Enforcement of the Award (“**Decision on Stay**”). The Decision on Stay provided in paragraph 199 that:

“For the reasons stated above, the Committee:

- a. Decides that the stay of enforcement of the Award should be lifted provided that the Respondents comply with the following by December 31, 2020:
 - (i) undertake not to use, and not to transfer or distribute to any shareholder of the InfraRed Capital Partners Group or to any third party (including investors in the InfraRed Environmental Infrastructure fund and/or to entitle any third party funder rights to collect), any amounts collected from the Kingdom of Spain under the Award. This undertaking shall be submitted in draft form to the Committee for its approval. Before doing so, the Committee will grant the Applicant an opportunity to comment on it. The undertaking will be valid and enforceable until the Decision on Annulment (if the Application is denied) or until the total recoupment of any collected amounts (if the Application is upheld), and must be executed in compliance with any relevant formalities existing under English law; and
 - (ii) provide an undertaking from their parent companies - InfraRed Partners LLP and InfraRed Capital Partners (Management) LLP-, assuming a guarantee in favor of the Applicant if for any reason the Applicant may not obtain the total recoupment of any amounts collected from the Kingdom of Spain by the Respondents under any enforcement proceedings, immediately

after the Respondents being ordered to return those amounts to the Kingdom of Spain by the Committee in case of future annulment of the Award. This undertaking shall be submitted in draft form to the Committee for its approval. Before doing so, the Committee will grant the Applicant an opportunity to comment on it. The undertaking will be valid and enforceable until the Decision on Annulment (if the Application is denied) or until the total recoupment of any collected amounts (if the Application is upheld), and must be executed in compliance with any relevant formalities existing under English law...”

3. On 16 December 2020, Infrared submitted, pursuant to the Decision on Stay, a letter which was accompanied by the following:

- Annex 1 – Draft Undertaking No. 1 (para. 199(a)(i) of the Decision on Stay)
- Annex 2 – Draft Undertaking No. 2 (para. 199(a)(ii) of the Decision on Stay)
- Annex 3 – Certificate evidencing the change in corporate name of INFRARED CAPITAL PARTNERS (MANAGEMENT) LLP into CHARLES II REALISATION LLP

The draft undertakings No. 1 and 2 will collectively be referred to as the “Draft Undertakings.”

4. Also on 16 December 2020, the Committee invited Spain to submit any comments on the Draft Undertakings and on the certificate, by 23 December 2020.

5. On 24 December 2020, Spain confirmed that it had “no comments to make regarding the draft undertaking No. 1 and No. 2, and certificate No. 3 submitted by InfraRed on December 16.”

6. On 31 December 2020, the Committee issued Procedural Order No. 6 (“**PO6**”), deciding as follows:

“To approve the Draft Undertakings as submitted by Infrared on 16 December 2020; and

To request Infrared to sign, legalize and/or certify the undertakings as approved by the Committee, in compliance with any relevant formalities existing under English law. The undertakings shall be submitted by email (in pdf format) to the Secretary of the Committee by **Monday 11 January 2021**. Furthermore, the originals of the undertakings shall be couriered to ICSID.”

7. On 11 January 2021, Infrared submitted by email the signed and legalized undertakings pursuant to the Committee’s PO6. Infrared also confirmed that the originals had been couriered to the ICSID Secretariat.

III. THE DECISION

8. In accordance with the Decision on Stay and Procedural Order No. 6, the Committee confirms that the stay of enforcement of the Award has been lifted.

For and on behalf of the *ad hoc* Committee,



Prof. José-Miguel Júdece
President of the Committee