

Simmons & Simmons LLP
PO Box 79023, 1070 NB
Claude Debussylaan 247
1082 MC, Amsterdam
The Netherlands

T: +31 20 7222500
F: +31 20 7222599



3 March 2023

URGENT

Ampere Equity Fund B.V.
Attn. Board of Directors
Schiphol Boulevard 269
Toren D, 10th floor, 1118BH Schiphol

Attn:
Mr. W. Blaasse
Ms. A.M. Snel-Simmons

With a copy to: Houthoff

Our ref DR/122097-00009/RBP1/PL8T

Dear mr. Blaasse and ms. Snel,

Kingdom of Spain / AEF, mr. Blaasse and Ms. Snel-Simmons,

On behalf of the Kingdom of Spain ("**Spain**") we request your immediate attention.

1. **Recent developments**

1.1 As you are aware, Spain summoned AES Solar Energy Coöperatief U.A. ("**AES**") and Ampere Equity Fund B.V. ("**AEF**") before the District Court of Amsterdam in order to prevent AES and AEF from evading binding EU state aid rules by seeking enforcement of an arbitral award at the District Court of Columbia. The proceedings before the District Court of Amsterdam are filed under docket number C/13/728512.

1.2 On Wednesday 1 March 2023, the interlocutory judge of the District Court of Amsterdam rendered an ex parte judgment on AES, AEF and Blasket Renewable Investments LLC, preventing these parties from filing an anti-suit injunction against Spain in the United States. Following this judgment, yesterday, AES and AEF filed a petition at the District Court of Columbia in order to expedite the process of substitution in the enforcement proceedings in the United States. The aim of this substitution is to replace AES and AEF as claimants by Blasket Renewable Investments LLC, a company established in the United States. By doing

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so, AES and AEF aim to make the main proceedings in the Netherlands illusory, as Blasket Renewable Investments LLC is no defendant in that proceedings.

2. **You are acting in violation of EU and Dutch laws**

2.1 It is apparent that this substitution has only one purpose: AEF and its directors are wilfully avoiding binding EU state aid laws, and are depriving Spain from seeking justice at the court of the Netherlands. AEF does not even hide this plan. In its petition to substitute, the US lawyer of AEF stated the following:

“Petitioners have therefore requested that the Court substitute Blasket as petitioner, so that Blasket can carry this case through to judgment regardless of whether Spain succeeds in the Dutch action.”

2.2 If this plan succeeds, Blasket Renewable Investments LLC is able to obtain the enforcement judgment in the United States and will, in violation of EU laws and thus through an illegal route, collect state aid from a European Member State. By doing so, AEF and its directors are deliberately acting in violation of EU laws and Dutch laws, which may lead to damages in the amount of EUR 11.1 million¹ or even more, considering interests and lawyer’s fees.

3. **Director’s liability**

3.1 This letter serves a first and final warning to AEF and to all board members personally, as you can still prevent this process of substitution in the United States. You are all subject to EU law and to Dutch laws. Your actions are in violation of EU and Dutch corporate (liability) laws and they will most likely cause significant damage to Spain.

3.2 The Dutch rules on director’s liability are clear: if one or more directors cause the company to breach its obligations, the directors can be held liable for the damages. The execution of this plan is a textbook example of directors liability:

- I. AEF knows that it cannot enforce the arbitral award in the EU because of binding EU laws. Therefore, AEF tries to evade EU laws by enforcing the award in the United States.
- II. To prevent this, Spain started proceedings before the District Court of Amsterdam against AEF and served the writ of summons on AEF on 28 December 2022.
- III. AEF then assigned its rights and title of the arbitral award to Blasket Renewable Investments LLC and filed a petition for substitution in the United States. The sole aim of this assignment and substitution is to make the proceedings before the District Court of Amsterdam illusory.
- IV. Spain obtained an ex parte injunction against AEF to start anti-suit injunctions. The inter partes hearing will take place on 13 March 2023.

¹ This is the amount of the arbitral award.

V. In response, AEF requested to expedite the motion to substitute, in order to finalize the substitution of Blasket Renewable Investments LLC even before 13 March 2023.

- 3.3 It is evident that through the substitution, AEF will (try to) to evade the Dutch courts and to collect the arbitral award in violation of EU laws, simultaneously depriving Spain of an amount of (at least) EUR 15,4 million.
- 3.4 Following standard Dutch case law, a director can be held liable for damages if he brings about or permits the legal entity to fail to fulfil its legal obligations, while he knew or ought reasonably to have understood that the legal entity's conduct, which he effected or permitted, would result in the legal entity failing to meet its obligations and would not provide redress for the damage arising as a result (frustration of payment and redress).²
- 3.5 In addition, according to article 347 of the Dutch Criminal Code (*Wetboek van Strafrecht*), directors of a company may receive a prison sentence of up to two years, if they wilfully dispose of the company's funds. This provision also aims to protect creditors (in this case: the Kingdom of Spain).

Article 347 Dutch Criminal Code: "The director or commissioner of a legal entity who, other than in the case of Articles 342 and 343, has excessively consumed, spent or disposed of the legal entity's funds, or has lent his cooperation or consent to this, as a result of which the legal entity suffers serious disadvantage and its continued existence is endangered, shall be punished with imprisonment of not more than two years or a fifth-category fine."

3.6 Should you be in any doubt of the civil, criminal and financial consequences of your current actions, please contact your law firm Houthoff for advice.

4. **Urgent request**

- 4.1 For the above reasons, we urgently request AEF and its directors to confirm that they will not proceed with the substitution of AEF by Blasket Renewable Investments LLC. We ask you to confirm this ultimately by **Friday 3 March 2023 at 5:00 PM CET** via e-mail to: paul.tjiam@simmons-simmons.com and edwin.vandervelde@simmons-simmons.com.
- 4.2 If you refuse to confirm this unconditionally, Spain reserves the right to immediately and without further notice start proceedings before the Dutch court against AEF and its directors, to enjoin them from completing the substitution of AEF by Blasket Renewable Investments LLC. In addition, Spain holds AEF and its directors liable for all damages resulting from a successful substitution, including any enforcement of and measure to enforce the arbitral award by Blasket Renewable Investments LLC.

² Dutch Supreme Court 8 December 2006, ECLI:NL:HR:2006:AZ0758.

Yours sincerely,



Paul Tjiam
Partner
Simmons & Simmons LLP



Edwin van der Velde
Associate