

ALERT MEMORANDUM

English High Court Rules That Awards Rendered Under The ICSID Convention Are Not Assignable

12 December 2025

In a judgment that is likely to have an impact on the cross-jurisdictional enforcement of awards rendered in investor-state arbitration, the English High Court recently held in *Operafund Eco-Invest SICAV PLC, Schwab Holding AG v Kingdom of Spain* [2025] EWHC 2874 (Comm) that ICSID awards are not assignable to third parties, expressly departing from the position taken by U.S. and Australian courts in prior cases.

The Judge, HHJ Pelling KC, held that (i) on a proper construction of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (the “**ICSID Convention**”), only parties to the underlying arbitration are entitled to enforce an ICSID award, and (ii) registering ICSID awards pursuant to the Arbitration (International Investment Disputes) Act 1966 (the “**1966 Act**”), the statute implementing the ICSID Convention into English law, does not render them assignable. The Judge also found that Spain was not estopped from asserting that the award in this case was unassignable on the basis that the Federal Court of Australia had reached a contrary conclusion in an earlier case involving the same parties.

The Judge has granted the parties permission to appeal.

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I. Background

The Claimants, Operafund Eco-Invest SICAV PLC and Schwab Holding AG, are investment funds. Between 2008 and 2009, they invested in a number of solar energy plants in Spain allegedly in reliance on representations made on behalf of Spain that certain subsidies would be available for renewable energy projects. These subsidies were later revoked, which the Claimants alleged breached the terms of the Energy Charter Treaty 1994 (“ECT”). The dispute was submitted to arbitration under the ICSID Convention and, on 6 September 2019, the Claimants obtained an award against Spain for €29.3 million (the “Award”).

Seeking to enforce the Award in the United Kingdom (“U.K.”), the Claimants applied on 9 August 2021 to register the Award under section 1(2) of the 1966 Act, which would grant the Award the same force and effect for enforcement purposes as a judgment of the English High Court. As is the normal procedure for registering ICSID awards in the U.K.,¹ a registration order was granted *ex parte* by the English High Court on 14 September 2021 and, following a period of delay to effect service of the order,² Spain then applied on 6 January 2023 for the order to be set aside, including on the basis that, as a sovereign state, it is immune from the adjudicative jurisdiction of the English courts.

The question of whether state immunity is an available defence to resist the registration of an ICSID award is currently pending appeal to the U.K. Supreme Court in another case involving Spain, *Infrastructure Services Luxembourg S.à.r.l. v the Kingdom of Spain*,³ and the parties agreed to adjourn the determination of Spain’s set-aside application until after judgment was handed down in that appeal. In the meantime, the Claimants entered into an agreement with Blasket Renewable Investments LLC (“Blasket”), a Delaware-based investment fund, purporting to assign all of their rights

under the Award to Blasket. They then applied to the English High Court to arrange for Blasket to be substituted as the new claimant in the proceedings.

Under r. 19.2(4)(a) of the English Civil Procedure Rules, substitution of a party to an existing claim can only occur where “*the existing party’s interest or liability has passed to the new party*”. Spain therefore resisted the Claimants’ substitution application on the basis that the assignment to Blasket was invalid because the Award was unassignable as a matter of international law. In response, the Claimants contended that Spain was estopped from making this argument because the Federal Court of Australia (“FCA”) had only months before decided in a case involving the same parties that assignment was permissible.⁴ In the alternative, the Claimants also argued that, by registering the Award pursuant to the 1966 Act, this created new substantive rights of enforcement that were capable of assignment.

Consequently, there were three issues for determination in relation to the Claimants’ substitution application:

- (1) Are ICSID awards capable of assignment?
- (2) Was Spain estopped from asserting that the Award was unassignable based on the FCA’s decision?
- (3) Does the registration of an ICSID award pursuant to the 1966 Act give rise to assignable rights?

II. The Court’s Decision

Following a two-day hearing which, as the Judge was careful to note, had generated thousands of pages of materials and over 65 different authorities, including statutes, treatises, regulations and textbooks,⁵ the English High Court found for Spain on all three issues, handing down its decision on 10 November 2025.

¹ The procedure for registering an ICSID award is governed by s. 1(2) of the 1966 Act and r. 62.21 of the English Civil Procedure Rules.

² Service of a registration order on a sovereign state must be transmitted through the U.K.’s Foreign, Commonwealth and Development Office to the Ministry of Foreign Affairs of the state in question, in accordance with s. 12 of the State Immunity Act 1978.

³ *Infrastructure Services Luxembourg S.à.r.l. & Anor v Kingdom of Spain* [2025] 1 WLUK 664. The hearing of the appeal took place on 1-3 December 2025: <https://www.supremecourt.uk/cases/uksc-2024-0155>.

⁴ *Blasket Renewable Investments LLC v Kingdom of Spain* [2025] FCA 1028.

⁵ *Operafund Eco-Invest SICAV PLC, Schwab Holding AG v Kingdom of Spain* [2025] EWHC 2874 (Comm) (the “Judgment”), [5].

Assignability of the Award

It was common ground that the ICSID Convention contains no express prohibition on the assignment of awards. Accordingly, the key question at issue between the parties was whether Article 54(2) of the ICSID Convention, which entitles a “party” to seek recognition and enforcement of an ICSID award, can be interpreted as permitting assignment to third parties.

Applying the principles of construction embodied in Articles 31 and 32 of the Vienna Convention on the Law of Treaties 1969 (the “**Vienna Convention**”), the Judge concluded that the use of the term “party” in Article 54(2) of the ICSID Convention can only be interpreted as referring to a party to the underlying arbitration, not a third-party assignee:

“I do not consider that the phrase “a party” in Article 54(2) of the ICSID Convention refers to anyone other than a party to the arbitration in issue and in consequence only a party to the underlying arbitration can seek recognition or enforcement of a ICSID Convention award”.⁶

The Judge took a similar view of the ECT, the instrument on which the Claimants had initiated arbitration against Spain. Investor claims and awards under the ECT were not assignable in the absence of any provision positively permitting assignment, and to conclude otherwise would be inconsistent with ECT Article 15 on subrogation, which allows for the assignment of indemnity payments only if the express consent of a host state is obtained.⁷

In reaching this decision, the Judge rejected the Claimants’ argument that the position was contrary to customary international law. In particular, he expressed skepticism of the Claimants’ reliance on decisions by the FCA and the U.S. Southern District Court of New York (“SDNY”) as indication that the assignment of

ICSID awards was in accordance with international custom. Both of the decisions cited by the Claimants were only first instance decisions, and the Judge considered that the SDNY’s decision, issued in *Blue Ridge Investments LLC v Republic of Argentina*,⁸ had improperly relied on U.S. federal laws of interpretation to the exclusion of the Vienna Convention.⁹

Finally, the Judge disagreed with the Claimants that refusing to permit the assignment of the Award would lead to “commercial absurdity or injustice”.¹⁰ The Claimants remained entitled to enforce the Award, and Blasket, as their intended assignee, could control the proceedings through the Claimants and thereby acquire any sums recovered by them.¹¹

Issue estoppel

The Claimants’ primary submission in the application had been that Spain was estopped from arguing that the Award was unassignable by reason of the FCA’s earlier decision to the contrary.

However, for a foreign judgment to give rise to issue estoppel, it must first be capable of being recognized by the English courts. Applying the principles for issue estoppel set out by the English Court of Appeal in *Hulley Enterprises Ltd v Russian Federation* [2025] EWCA Civ 108,¹² the Judge found that the FCA’s decision failed at this first hurdle:

- (1) First, at the time of the Claimants’ application, the FCA’s decision had not yet become final and binding as a matter of Australian law, including because Spain had indicated its intention to appeal the decision.¹³
- (2) Second, the FCA’s decision did not satisfy the English statutory requirements for recognizing a foreign judgment issued against a sovereign state because Spain had only appeared in the FCA

⁶ Judgment, [51].

⁷ Judgment, [52]-[53].

⁸ *Blue Ridge Invs., LLC v. Republic of Argentina*, 902 F. Supp. 2d 367 (S.D.N.Y. 2012), *aff’d sub nom. Blue Ridge Invs., L.L.C. v. Republic of Argentina*, 735 F.3d 72 (2d Cir. 2013).

⁹ Judgment, [62]-[64].

¹⁰ Judgment, [49].

¹¹ *Ibid.*

¹² See Judgment, [16] for the relevant principles set out in *Hulley*.

¹³ Judgment, [18]-[20].

proceedings to contest the jurisdiction of the Australian courts.¹⁴

The Judge therefore held that no issue estoppel arose from the FCA's earlier decision, thereby permitting Spain to advance arguments on the assignability of the Award.

Effect of registration pursuant to the 1966 Act

The Claimants' alternative argument was that, even if ICSID awards were held to be unassignable, by registering them under section 1(2) of the 1966 Act, this statutory process gave rise to new substantive rights capable of assignment.

The Judge, however, held that the 1966 Act was concerned "*exclusively with the provision of a procedural means by which effect was to be given to ICSID Convention awards in the United Kingdom*", and so did not vest any new rights in ICSID awards.¹⁵ It followed that because ICSID awards were not assignable *in se*, the position did not change upon registration pursuant to the 1966 Act.¹⁶

The Judge also observed that to hold otherwise would lead to "*an entirely random outcome*" in which an ICSID award could become assignable depending on which jurisdiction in the world it might be registered. This would be an "*entirely undesirable*" result that would run contrary to the purpose and effect of the ICSID Convention.¹⁷

III. Implications

Historically speaking, the U.K. has been a common forum for pursuing the enforcement of awards rendered in investor-state arbitration. London is a global financial hub where both commercial parties and sovereign states possess assets, and the English courts are endowed with significant powers to grant injunctive relief and other

remedies to effect the enforcement of awards and their execution over assets.

Although subject to appeal,¹⁸ the Judge's decision in this case therefore presents a real hurdle to such enforcement efforts, in particular attempts by investment funds to take over collection rights from original award holders.

The decision also puts the U.K. at odds with other key jurisdictions, including the U.S. and Australia, on issues relating to assignment, so it will be important for award holders and potential investors alike to seek local law advice as to matters of enforcement.

Unless the decision is overturned, third-party investors seeking to enforce ICSID awards in the U.K. may need to structure their agreements so that they provide a mechanism for the original award holders to pursue the enforcement proceedings, as suggested by the Judge.

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¹⁴ Judgment, [23]-[27]. The English requirements for recognizing a foreign judgment against a sovereign state are governed by s. 31 of the Civil Jurisdiction and Judgments Act 1982.

¹⁵ Judgment, [75]-[78].

¹⁶ Judgment, [78].

¹⁷ Ibid.

¹⁸ The Judge granted the Claimants permission to appeal when handing down his decision. Further information regarding the appeal is pending.