

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

JGC Holdings Corporation,

2-3-1, Minato Mirai, Nishi-ku  
Yokohama-shi, Kanagawa,  
220-6001, Japan  
*Petitioner,*

v.

Kingdom of Spain,

Abogacia General del Estado  
Calle Ayala, 5  
28001 – Madrid  
Spain

*Respondent.*

Civil Action No. \_\_\_\_\_

**Petition to Enforce Arbitral Award**

Petitioner JGC Holdings Corporation (“JGC”) brings this action to enforce an arbitral award (the “Award”) issued on November 9, 2021, in ICSID Case No. ARB/15/27 against Respondent, the Kingdom of Spain (“Spain”), following arbitration proceedings conducted in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”). Pursuant to Article 54 of the ICSID Convention and 22 U.S.C. § 1650a, arbitral awards issued under the ICSID Convention are not subject to collateral attack and must be enforced and given the same full faith and credit as if the award were a final judgment of a court in the United States. Accordingly, Petitioner requests that this Court (1) enter an order enforcing the Award in the same manner as a final judgment issued by a court of one of the several states, and (2) enter judgment in Petitioner’s favor in the amounts and currency denominations specified in the Award.

A certified copy of the Award is attached as Exhibit A to the Declaration of Matthew S. Rozen (“Rozen Decl.”), Exhibit 1 hereto. The Tribunal’s Decision on Jurisdiction, Liability and Certain Issues of Quantum (“Jx. Dec.”) is attached to the Award and incorporated by reference therein. *See* Award ¶ 6. A copy of the ICSID Convention is attached hereto as Exhibit 2.

### **Parties**

1. Petitioner JGC is a corporation incorporated under the laws of Japan.
2. Respondent, the Kingdom of Spain, is a foreign state within the meaning of the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. §§ 1330, 1332, 1391(f), 1602-1611.

### **Jurisdiction and Venue**

3. This Court has subject-matter jurisdiction over this action pursuant to the FSIA, 28 U.S.C. § 1330(a), because this is a “nonjury civil action against a foreign state” on a claim “with respect to which the foreign state is not entitled to immunity” under the FSIA. Pursuant to Section 1605(a)(1) of the FSIA, Spain is not entitled to immunity from this Court’s jurisdiction in an action to enforce an ICSID Convention award because it has waived that immunity by agreeing to the ICSID Convention. *See Tatneft v. Ukraine*, 771 F. App’x 9, 9 (D.C. Cir. 2019) (per curiam); *Blue Ridge Invs., L.L.C. v. Republic of Argentina*, 735 F.3d 72, 84 (2d Cir. 2013). Further, pursuant to Section 1605(a)(6) of the FSIA, Spain is not immune from suit because this is an action to enforce an arbitral award governed by the ICSID Convention, which is a treaty in force in the United States for the recognition and enforcement of arbitral awards. *Blue Ridge*, 735 F.3d at 85.

4. This Court also has subject-matter jurisdiction pursuant to 22 U.S.C. § 1650a(b), which provides that “[t]he district courts of the United States . . . shall have exclusive jurisdiction over actions and proceedings” to enforce awards entered under the ICSID Convention.

5. This Court has personal jurisdiction over Spain pursuant to the FSIA, 28 U.S.C. § 1330(b). Venue is proper in this Court pursuant to 28 U.S.C. § 1391(f)(4).

6. The Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, et seq., does “not apply to enforcement of awards rendered pursuant to the [ICSID] convention.” 22 U.S.C. § 1650a(a). Thus, the FAA’s jurisdictional requirements do not apply to this action.

### **The Underlying Dispute**

7. Beginning in 1997, Spain adopted legislation that liberalized its electricity market and sought to attract investment in renewable energies, including concentrated solar power, within its territory. Jx. Dec. ¶¶ 123-211. In reliance on the financial incentives and inducements provided by these legislative measures, in 2010, JGC invested in Spanish companies that own and operate concentrated solar power plants in Spain’s territory. *Id.* ¶¶ 279, 329-47. After a change in governmental leadership, Spain adopted a series of laws between 2012 and 2017 retrenching on, and eventually revoking, the economic incentives on which JGC had relied in investing in the solar power plants. *Id.* ¶¶ 212-273.

8. JGC’s investments in solar power plants were protected by the Energy Charter Treaty (“ECT”) (Exhibit 3 hereto), which “establishes a legal framework [for] promot[ing] long-term cooperation in the energy field,” ECT, art. 2, and seeks to “create stable, equitable, favourable and transparent conditions for Investors . . . includ[ing] a commitment to accord . . . fair and equitable treatment,” *id.* art. 10(1). *See also* Jx. Dec. ¶¶ 122; 813-16.

9. The ECT protects investments in the territory of a “Contracting Party” to the treaty by “Investors” located or incorporated in “other Contracting Parties.” ECT, arts. 1(7), 10(1), 26.

10. Spain and Japan are both Contracting Parties to the ECT, so the ECT protects investments in Spain by investors located or incorporated in Japan. Award ¶ 1; Jx. Dec. ¶¶ 1, 122.

11. JGC is an investor under the ECT, and is incorporated under the laws of Japan. JGC’s investments in Spain are therefore protected by the ECT.

12. Contracting Parties to the ECT consent to submit disputes arising under that treaty to arbitration. Article 26(3)(a) of the ECT provides that “each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration . . . in accordance with the provisions of this Article.” Article 26(4)(a)(i) further provides that where “the Contracting Party of the Investor and the Contracting Party . . . to the dispute are both parties to the ICSID Convention,” the dispute will be submitted for arbitration under that convention. Accordingly, Spain consented to arbitrate the underlying dispute pursuant to the ICSID Convention.

13. On June 8, 2015, JGC filed a request with the International Centre for Settlement of Investment Disputes (“ICSID”) for arbitration under the ICSID Convention. Jx. Dec. ¶ 6. JGC contended that Spain’s legislative and regulatory actions that retrenched on the incentives offered for JGC’s investments constituted a breach of Spain’s obligations under the ECT. *Id.* ¶¶ 1-2, 376-78, 562-647.

14. An ICSID arbitral tribunal (the “Tribunal”) was constituted on January 4, 2016. Jx. Dec. ¶ 18.

15. The Tribunal conducted hearings on merits and jurisdiction in Paris, France from September 17, 2018, to September 22, 2018. Jx. Dec. ¶¶ 78.

16. On May 21, 2021, the Tribunal issued its Decision on Jurisdiction, Liability and Certain Issues of Quantum, a 393-page decision that is incorporated by reference in the Award. In the decision, the Tribunal noted that Spain had withdrawn its sole objection to the Tribunal’s jurisdiction, except as to a narrow dispute that the Tribunal held it lacked jurisdiction to hear. Jx. Dec. ¶¶ 387, 465. Exercising jurisdiction over the remainder of JGC’s claim, the Tribunal decided that by “fundamentally alter[ing] the remuneration regime on which [JGC] relied at the time of its investment,” Spain had breached its obligation under Article 10(1) of the ECT to create stable conditions for JGC’s investments. *Id.* ¶¶ 1053-56. The Tribunal decided various issues related to

the calculation of damages, including the date of valuation, the valuation method, and how to determine the pre- and post-award interest rates. *Id.* ¶¶ 1072-346, 1349. But it reserved its final decision on the amount of damages pending new submissions from the parties reflecting its decisions. *Id.* ¶¶ 1350-52. It also reserved its decision on costs. *Id.* ¶ 1352.

17. On November 9, 2021, the Tribunal issued the Award, in which it ordered Spain to pay €23,510,000 as compensation, in addition to pre-Award interest at the rate of 2.748%, compounded monthly, from June 21, 2014 until the date of the Award and post-Award interest at the rate of 1.6%, compounded monthly, from the date of the Award until date of payment. Award ¶ 73(ii), (v). The Tribunal also ordered Spain to pay arbitration and legal costs in the amounts of €1,579,314.52, \$623,737.08, and ¥25,260,284.40, in addition to post-Award interest at the rate of 1.6%, compounded monthly, from the data of the Award until the date of payment. *Id.* ¶ 73(iii)-(v).

#### **Legal Basis for Relief**

18. The ICSID Convention provides that contracting parties must “recognize an award rendered pursuant to [the] 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.” ICSID Convention, art. 54(1). The ICSID Convention further provides that 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.” *Id.*

19. The United States is a contracting party to the ICSID Convention and is therefore obligated to enforce the Award as if it were a final judgment of a court in the United States.<sup>1</sup> That obligation is fulfilled by 22 U.S.C. § 1650a, which provides:

(a) 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

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<sup>1</sup> ICSID, *List of Contracting States and Other Signatories of the Convention* (Aug. 4, 2021), [https://icsid.worldbank.org/sites/default/files/2021\\_Aug\\_4\\_ICSID\\_3\\_ENG.pdf](https://icsid.worldbank.org/sites/default/files/2021_Aug_4_ICSID_3_ENG.pdf).

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. The Federal Arbitration Act (9 U.S.C. 1 et seq.) shall not apply to enforcement of awards rendered pursuant to the convention.

20. Arbitral awards issued against a foreign state pursuant to the ICSID Convention may be enforced by bringing a plenary action in federal court in compliance with the requirements for commencing a civil action under the Federal Rules of Civil Procedure, and with the personal jurisdiction, service, and venue requirements of the FSIA. *See Micula v. Gov't of Romania*, 104 F. Supp. 3d 42, 49-50 (D.D.C. 2015); *Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela*, 863 F.3d 96, 100, 117-20 (2d Cir. 2017).

21. Awards issued pursuant to the ICSID Convention are not subject to collateral attack in enforcement proceedings under 22 U.S.C. § 1650a. “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.” *Mobil Cerro*, 863 F.3d at 102.

22. The ICSID Convention therefore “reflects an expectation that the courts of a member nation will treat the award as final.” *Mobil Cerro*, 863 F.3d at 102; *see also* ICSID Convention, arts. 53(1), 54(1). Consistent with this mandate, 22 U.S.C. § 1650a(a) provides that the FAA “shall not apply to enforcement of awards rendered pursuant to the convention,” thereby “mak[ing] [the FAA’s defenses] unavailable to ICSID award-debtors in federal court enforcement proceedings.” *Mobil Cerro*, 863 F.3d at 120-21. District courts thus enforce ICSID awards without allowing substantive challenges to enforcement of the awards. *See, e.g., Perenco Ecuador Ltd. v. Republic of Ecuador*, 2023 WL 2536368, at \*5 (D.D.C. Mar. 16, 2023); *Tethyan Copper Co. PTY Ltd. v. Islamic Republic of Pakistan*, 590 F. Supp. 3d 262 (D.D.C. Mar. 10, 2022); *Tidewater Inv. SRL v. Bolivarian Republic*

*of Venezuela*, 2018 WL 6605633, at \*6 (D.D.C. Dec. 17, 2018); *Duke Energy Int'l Peru Invs. No. 1 Ltd. v. Republic of Peru*, 904 F. Supp. 2d 131, 132-34 (D.D.C. 2012); Order, *Republic of Panama v. Jurado*, No. 8:12-cv-1647, Doc. 18 (M.D. Fla. June 13, 2013).

**Cause of Action and Request for Relief**

23. Arbitral awards issued pursuant to the ICSID Convention are subject to mandatory enforcement in the courts of the United States, which must give those awards the same full faith and credit as a final judgment issued by a state court. 22 U.S.C. § 1650a(a).

24. The Award was rendered in accordance with the ICSID Convention against Spain and in JGC's favor. JGC is therefore entitled to enforce the Award's pecuniary obligations against Spain.

25. Accordingly, JGC is entitled to an order (a) enforcing the Award in the same manner as a final judgment issued by a court of one of the several states, and (b) entering judgment in JGC's favor in the amount specified in the Award.

26. JGC requests that the Court enter judgment in euros, dollars, and yen, the currencies specified in the Award. *See* Award ¶¶ 73(ii)-(iv). This Court has authority to enter judgment in a foreign currency when requested by the judgment creditor. *See Cont'l Transfert Technique Ltd. v. Fed. Gov't of Nigeria*, 932 F. Supp. 2d 153, 158 (D.D.C. 2013), *aff'd*, 603 F. App'x 1, 4 (D.C. Cir. 2015); *accord Leidos, Inc. v. Hellenic Republic*, 881 F.3d 213, 220 (D.C. Cir. 2018).

WHEREFORE, JGC requests that the Court enter an order:

(a) enforcing the Award against Spain in the same manner as a final judgment issued by a court of one of the several states; and

(b) entering judgment against Spain and in JGC's favor in the amount of:

(i) €23,510,000 in principal;

(ii) Pre-Award interest on that principal at the rate of 2.748%, compounded monthly, from June 21, 2014 until November 9, 2021;

(iii) €1,579,314.53, \$623,737.08, and ¥25,260,284.40 in arbitration and legal costs;

(iv) Post-Award interest on sums (i)-(iii) at the rate of 1.6%, compounded monthly, from November 9, 2021 until the date of entry of judgment; and

(v) Post-judgment interest at a rate to be determined by the Court.

Dated: September 15, 2023

Respectfully submitted,

/s/Matthew D. McGill

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