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ARBITRATION INSTITUTE OF THE

STOCKHOLM CHAMBER OF COMMERCE

In the Matter of

FORESIGHT LUXEMBOURG SOLAR 1 S.À.R.L., FORESIGHT LUXEMBOURG SOLAR 2 S.À.R.L., GREENTECH ENERGY SYSTEMS A/S, GWM RENEWABLE ENERGY I S.P.A., and GWM RENEWABLE ENERGY II S.P.A.,

Claimants

v.

THE KINGDOM OF SPAIN,

Respondent

REQUEST FOR ARBITRATION

November 2, 2015

KING & SPALDING

12, cours Albert Ier
75008 Paris
France

1100 Louisiana, Suite 4000
Houston, Texas 77002
U.S.A.

GÓMEZ-ACEBO & POMBO

Castellana, 216
28046 Madrid
Spain

Counsel for Claimants

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1. Foresight Luxembourg Solar 1 S.à.r.l. ("**Foresight 1**"), Foresight Luxembourg Solar 2 S.à.r.l. ("**Foresight 2**"), Greentech Energy Systems A/S ("**Greentech A/S**"), GWM Renewable Energy I S.p.A. ("**GWM I S.p.A.**"), and GWM Renewable Energy II S.p.A. ("**GWM II S.p.A.**") (collectively, "**Claimants**") hereby request the initiation of an arbitration proceeding against the Kingdom of Spain ("**Spain**" or "**Respondent**") under the Energy Charter Treaty ("**ECT**" or "**Treaty**").[1]

I. PARTIES TO THE DISPUTE

2. Claimants Foresight 1 and Foresight 2 are Luxembourg private limited liability companies duly incorporated under the laws of Luxembourg and listed in the Luxembourg commercial register under registration numbers B0146200 and B0151603, respectively.[2] Their address is:

2A rue Albert Borschette
1246 Luxembourg
Luxembourg

3. Claimant Greentech A/S is a Danish company duly incorporated under the laws of Denmark and listed in the Danish commercial register under the registration number 36696915.[3] Its address is:

Frederiksborggade 15, 3 Floor
DK-1360 Copenhagen K
Denmark

4. Although originally incorporated in Luxembourg, Claimants GWM I S.p.A. and GWM II S.p.A. are presently Italian public companies duly incorporated under the laws of Italy and listed in the commercial register in Rome under the registration numbers RM – 1305360 and RM – 1305410, respectively.[4] Their address is:

Via XXIV Maggio 43
00187 Rome
Italy

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[1] A copy of the ECT is attached as Claimants' Exhibit ("CEX-") 1.

[2] Copies of Foresight 1's and Foresight 2's registration certificates in the Luxembourg Commercial Register are attached as CEX-2 and CEX-3.

[3] A copy of Greentech A/S's registration certificate in the Danish Commercial Register is attached as CEX-4.

[4] Copies of GWM I S.p.A.'s and GWM II S.p.A.'s registration certificates in the Rome Commercial Register are attached as CEX-5 and CEX-6.

5. Claimants are represented in this proceeding by King & Spalding and Gómez-Acebo & Pombo.[5] All correspondence and communications with Claimants should be directed to Claimants' counsel as follows:

KING & SPALDING

Kenneth R. Fleuriet
Amy Roebuck Frey
12, cours Albert Ier
75008 Paris
France
Tel. +33 1 73 00 39 00
Fax +33 1 73 00 39 59
Email: kfleuriet@kslaw.com
Email: afrey@kslaw.com

Reginald R. Smith
Kevin D. Mohr
1100 Louisiana, Suite 4000
Houston, Texas 77002
U.S.A.
Tel. +1 713 751 3200
Fax +1 713 751 3290
Email: rsmith@kslaw.com
Email: kmohr@kslaw.com

GÓMEZ-ACEBO & POMBO

Verónica Romaní Sancho
Gonzalo Ardila Bermejo
Luis Gil Bueno
Inés Vázquez García
Castellana, 216
28046 Madrid
Spain
Tel. +34 91 582 91 00
Fax +34 91 582 91 14
Email: vromani@gomezacebo-pombo.com
Email: gardila@gomezacebo-pombo.com
Email: lgil@gomezacebo-pombo.com
Email: ivazquez@gomezacebo-pombo.com

6. The Respondent is the Kingdom of Spain. The governmental authority likely to represent Spain in this proceeding is the *Abogacía General del Estado* (Attorney General's Office) of the Ministry of Justice, which is located at the following address:

Calle San Bernardo, 45
28015 Madrid
Spain

[5] Copies of Claimants' powers of attorney to King & Spalding and Gómez-Acebo & Pombo are attached as CEX-7.

II. BRIEF SUMMARY OF THE LEGAL DISPUTE

A. Claimants' Investments in Spain

7. The five Claimants named in this dispute own interests in various photovoltaic plants in Spain, which have been harmed by Spain's retroactive amendments to its feed-in tariff incentive legislation.[6] Claimants' investments relate to three major photovoltaic projects: (i) Madridejos; (ii) La Castilleja; and (iii) Fotocampillos.

Madridejos

8. Claimant Foresight 1 owns an 8.0 MW photovoltaic plant in Madridejos (Toledo), which obtained final registration with the Administrative Registry for Facilities Included in the Special Regime ("RAIPRE") on August 28, 2008. Foresight 1 owns the facility through its wholly-owned Dutch subsidiary Foresight Netherlands Solar 1 B.V., which in turn fully owns the Spanish project company, Acacia Instalaciones Fotovoltaicas S.L.

La Castilleja

9. Claimants Foresight 2 and Greentech A/S jointly own a 9.8 MW photovoltaic plant in La Carlota (Córdoba), through a joint venture called Global Litator S.L. ("Global Litator"). Foresight 2 owns 49.97225% of Global Litator, while Greentech A/S owns the remaining 50.02775%. Global Litator holds the La Castilleja plant through its wholly-owned subsidiary, La Castilleja Energia S.L. The La Castilleja plant obtained its final RAIPRE registration on September 25, 2008.

10. For its part, Claimant GWM II S.p.A. held a 50.02775% interest in Global Litator from 2010 – 2011, and since September 2011, it has held a 35.8% interest in the plant through its 71.49% ownership of Greentech A/S. Further, since July 2011, Claimant GWM I S.p.A. has held a 70.63% shareholding in GWM II S.p.A., and thus a 25.3% interest in La Castilleja.

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[6] For reasons unrelated to the matters at issue in this arbitration, GWM II S.p.A. is likely to be dissolved in the near future. Under Italian law, the rights and duties of a dissolved company are transferred to its shareholder(s). Thus, as a shareholder of GWM II S.p.A., GWM I S.p.A. will pursue this arbitration as successor-in-interest of GWM II S.p.A.'s rights and claims if it is dissolved, in addition to GWM I S.p.A.'s own, existing claims. Claimants will promptly inform Respondent and the tribunal if and when the status of any Claimant changes.

Fotocampillos

11. Additionally, Claimant Greentech A/S owns 100% of a 1.8 MW photovoltaic project that consists of eighteen plants in Campillos (Málaga), which obtained their final RAIPRE registrations on May 14, 2008. Greentech A/S holds the Fotocampillos project through its wholly-owned Italian subsidiary, GWM Renewable Energy S.p.A., which in turn fully owns GWM Renewable Energy Spain S.L. GWM Renewable Energy Spain S.L. is the parent company of eighteen Spanish special purpose companies owning each of the plants comprising Fotocampillos.

12. As of May 2010, Claimants GWM I S.p.A. and GWM II S.p.A. owned 61% of Fotocampillos. By virtue of their current interests in Claimant Greentech A/S, Claimant GWM I S.p.A. currently has a 50.5% interest and Claimant GWM II S.p.A. currently has a 71.49% interest Fotocampillos.

13. Annex A, attached to this Request, demonstrates the current ownership structure of each of the three projects, as well as each Claimant's interests in those projects.

14. The combined capacity of the three projects is approximately 19.6 MW. Claimants acquired their interests in the three renewable energy projects described above with the expectation that those facilities would benefit from the remuneration established in Royal Decree 661/2007 of May 25, 2007, regulating the activity of electrical energy generation by means of renewable facilities, throughout the plants' operating lives.

B. Spain Implemented RD 661 to Induce Investments in Renewable Energy

15. The production of electricity from renewable energy sources is an important policy in Spain. The European Union and numerous other states share these policy interests, and promotion of investment in the renewable energy sector has been embodied in international agreements such as the United Nations Framework Convention on Climate Change.

16. Policies to promote renewable energy investments are generally based on the understanding that the production of electricity from conventional resources such as coal and oil relies on limited resources and imposes substantial externalized costs on society through pollution and contribution to climate change. In contrast, renewable energy such as is produced by photovoltaic plants or wind farms generally avoid these negative externalities.

17. Because the cost of producing electricity from renewable resources is substantially higher than the cost of producing electricity from fossil fuels, however, encouraging private investment in renewable energy projects requires financial incentives to make the industry competitive. Consequently, for more than two decades, Spain has enacted various incentive schemes to promote investment in its renewable energy sector, both to satisfy international commitments regarding environmental protection and to reduce its dependence on nonrenewable energy sources.

18. Starting in 1994, Spain enacted several legislative schemes to encourage investments in renewable energy, although its early programs were insufficient to achieve the results that Spain needed to meet its domestic and international policy goals. The first regime that Spain implemented, through Royal Decree 2366/1994, contained financial incentives for electricity generated from renewable sources.[7] That legislation, however, contained no stability clause or fixed duration and thus was not successful in attracting significant new investment in the sector.

19. In 1997, Spain enacted a new law on electricity, Law 54/1997, which de-regulated the electricity market and regulated the "special regime" governing electricity generating facilities from renewable, cogeneration, and waste sources.[8] To meet its international commitments and its domestic policy goals, however, Spain still needed a significant influx of private investment in facilities covered by the special regime. Thus, in 1998, through Royal Decree 2818/1998 ("**Royal Decree 2818**"), Spain enacted a premium pricing program that applied to electricity generated from facilities in the special regime.[9] However, while Royal Decree 2818 did offer price incentives, those incentives were not adequate to cover the fixed costs of renewable energy production. Moreover, the legislation itself contained no specific duration, and the offered rates were subject to review every four years. The possibility for fluctuation in the incentivized pricing offered by Royal Decree 2818 meant that few investors could rely on it for long-term investments, and few banks were willing to finance investments in costly renewable energy facilities without additional guarantees.

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7 Royal Decree 2366/1994, of December 9, on electricity generation by hydraulic, cogeneration and other facilities fed by renewable sources.

8 Law 54/1997, of the Spanish Electricity Sector.

9 Royal Decree 2818/1998, of 23 December, on electricity generation by renewable facilities, waste and cogeneration.

20. By 2004, Spain was clearly not on track to meet its renewable energy targets. Consequently, it implemented a new feed-in tariff program under Royal Decree 436/2004 ("**Royal Decree 436**").[10] That decree was an improvement on earlier incentives programs, because it offered a choice between a feed-in tariff and an above-market premium price for electricity generated from facilities in the special regime, either of which would apply for a fixed period of time. It also stated that subsequent reviews of the program would not apply retroactively to reduce the rates guaranteed to existing facilities. But while Royal Decree 436 contained the legal guarantees that investors needed to feel secure in their investments, the feed-in tariff and premium pricing rates in Royal Decree 436 were not transparent and, in some cases, not high enough to attract the amount of investment that Spain needed to meet its renewable energy targets.

21. Finally, in 2007, after more than a decade of failed attempts to spawn substantial investment in renewable energy facilities, Spain enacted Royal Decree 661/2007 of May 25, 2007, regulating the activity of electrical energy generation by means of renewable facilities ("**RD 661**"). RD 661 was a critical component of Spain's efforts to reduce its dependence on nonrenewable energy sources, improve its pollution rating, and comply with its obligations under European Union and international law. In particular, Spain had undertaken to ensure that, by 2010, 29.4% of its electricity would be generated from renewable energy sources. To achieve that ambitious goal, Spain needed far more private investment in new renewable energy facilities than previous regulatory schemes had generated. In other words, Spain needed a much more robust incentives program, which it implemented in RD 661.

22. RD 661 included target capacities for different types of renewable technologies that Spain hoped to achieve by 2010. For photovoltaic technology, Spain's capacity target was 371 MW. It was 500 MW for solar-thermal facilities; 20,155 MW for wind facilities; 2,400 MW for so-called "mini"-hydro facilities; and more than 1,300 MW for biomass and biogas facilities. To achieve those ambitious goals, RD 661 contained attractive remuneration schemes that made the development, construction, financing, and operation of renewable energy facilities in Spain worthwhile and economically viable.

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[10] Royal Decree 436/2004, of 12 March, which established the methodology for updating and systematizing the legal and economic regime of the production of electricity in the special regime.

23. Critically, with respect to photovoltaic technology, Spain guaranteed that 100% of the attractive feed-in tariffs offered in RD 661 would remain available to the photovoltaic plants registered under the regime for twenty-five years. Thereafter, photovoltaic plants would be entitled to 80% of the initial feed-in tariff throughout the remainder of their operating lives. In particular, for plants that produced 10 MW or less, RD 661 granted a tariff rate in the range of 41.74 c€/kWh – 44.0381 c€/kWh "for the first 25 years" of the facility's operation and a rate of 33.392 c€/kWh – 35.2305 c€/kWh for the following years of the facility's operation. Plants that produced 100 kW or less benefitted from the highest tariff rates under the regime.

24. To track progress toward its target capacity objectives and to monitor the effectiveness and viability of the incentives regime, RD 661 specified that when installed capacity of a given technology reached 85% of the target objective, Spain would establish a period of time of at least twelve months for final enrollment in the RD 661 program. All projects registered before the end of that period would benefit from the incentives in RD 661. But after that deadline, the regulatory scheme would be "closed" to new entrants. In other words, RD 661 was designed to attract a significant influx of new renewable energy projects to meet certain targets, but growth would be tempered by a cut-off period to be announced at least a year in advance, once the program was found to be achieving its intended result.

25. Investor response to RD 661 was robust, particularly in new photovoltaic projects. By September 27, 2007 — only four months after RD 661 was published in Spain's Official Gazette — investment in photovoltaic facilities had reached 85% of the 371 MW capacity target. Thus, as stated in the legislation, on September 29, 2007, Spain established a one-year, final enrollment period, during which all photovoltaic investors who completed the construction and permitting phases of their plants would benefit from the price guarantees in RD 661.

26. The enrollment period and target capacities were not the only monitoring mechanisms in the RD 661 regime, which also contained provisions for periodic reviews and adjustments to the price incentives. Importantly, however, RD 661 expressly stated that any future revisions that might be made to the legislation would not apply to facilities already commissioned, operating, and benefitting from the feed-in tariffs granted under it. Specifically, RD 661 stated: "The revisions to the regulated tariff … shall not affect facilities for which the deed of commissioning shall have been granted prior to 1 January of the second

year following the year in which the revision shall have been performed." In other words, future changes to RD 661 would not impact already commissioned and operating facilities, or facilities whose construction and commissioning would be completed in the year following the announcement of the revision.

27. To attract the investments it desired in the renewable energy sector, Spain widely promoted the new incentives program in RD 661, both within and outside Spain. Spain regularly highlighted the principal advantages of RD 661, which included the promises that (i) the new legal framework was stable, (ii) future changes would not apply retroactively to existing plants, and (iii) the incentives granted would remain available throughout the operating lives of the facilities enrolled in the program.

28. The official press release from the Ministry of Industry, Tourism and Commerce regarding RD 661 was unequivocal, stating that the regime "provides legal certainty for producers, providing stability to the sector and promoting their development" and confirming that future "new rules will not be retroactive."[11] Spain's General Secretary of Energy echoed those sentiments by stating simply that RD 661 provides "total legal certainty."[12]

29. Spain's efforts to encourage renewable energy investments were particularly successful in the photovoltaic sector. In 2001, before Spain had established any meaningful incentives program, Spain's photovoltaic sector had a total installed capacity of less than 5 MW. By 2006, however, the installed capacity slightly exceeded 100 MW, and the reaction to RD 661 in 2007 spurred projections of more than doubling that figure. As it turned out, by the end of 2007, Spain's installed capacity of photovoltaic facilities had reached 690 MW. By 2008, installed capacity increased to well over 3,000 MW, and even after RD 661 had closed to new entrants, Spain continued to promote investment in photovoltaic facilities.

30. Thus, RD 661 was successful in achieving Spain's goal of encouraging significant new investment in renewable energy projects. Thousands of investors with highly diverse backgrounds — including large utility companies, independent renewable energy

[11] "El Gobierno prima la rentabilidad y la estabilidad en el nuevo Real Decreto de energías renovables y cogeneración. Apuesta gubernamental por las energías limpias y autóctonas," Ministry of Industry, Tourism and Commerce, May 25, 2007, available at http://www.minetur.gob.es/es-ES/GabinetePrensa /NotasPrensa /2007/ Paginas/nprdregimenespecial.aspx.

[12] "Nieto dice que la nueva regulación eólica ofrece 'total seguridad jurídica,'" Cinco Días, May 10, 2007, available at http://cincodias.com/cincodias/2007/05/10/empresas/1178804382_850215.html.

companies, banks, private equity firms, and private investors — invested billions of euros in reliance on Spain's guarantees in RD 661.

C. Claimants Invested in Reliance on Spain's Incentives Regime

31. Foresight Group LLP ("**Foresight**") is a London-based investment manager that manages in excess of twenty funds, one of which owns, *inter alia*, Claimants Foresight 1 and Foresight 2. Foresight administers assets raised from institutional investors, family offices, and private individuals. The group maintains private equity, infrastructure, and environmental investment portfolios. Its infrastructure portfolio contains over £960 million in investments, 97% of which has been invested in the solar sector over the past several years. Following the enactment of renewable energy incentive regimes by several European states in the mid- to late 2000s, Foresight quickly realized the potential for capital growth in this area. In reliance on these incentive regimes, the group began to raise funds to invest in large-scale, ground-mounted solar plants that could generate stable long-term yields. Since 2008, Foresight has acquired 33 ground-mounted photovoltaic plants across southern Europe, the United Kingdom, and the United States.

32. One of those investments was in the Madridejos plant in Spain. Foresight 1 acquired the plant on May 8, 2009, from a Spanish company called Acacia Instalaciones Fotovoltaicas S.L.U. Prior to the acquisition, on August 28, 2008, Madridejos obtained its RAIPRE registration under RD 661, entitling it to feed-in tariffs for its entire operating life. Madridejos's entitlement to those tariffs was a key factor in Foresight 1's decision to acquire it.

33. A second of those investments was a substantial interest in the 9.8 MW La Castilleja plant in Spain. Prior to Foresight 2's acquisition of its interest in that plant, it was owned by Magtel Redes de Telecomunicaciones S.A.U. ("**Magtel Redes**") and, as of September 25, 2008, it was registered in the RAIPRE and entitled to the feed-in tariffs granted in RD 661. At that time, the facility was operated by La Castilleja Energía S.L.U., which had an option right to purchase the project. On March 18, 2010, Foresight 2 obtained a 49.97225% stake in a Spanish company called Global Litator, which purchased La Castilleja Energía S.L.U. on the same day. On March 26, 2010, La Castilleja Energía S.L.U. exercised its option under the lease agreement to purchase the La Castilleja project from Magtel Redes.

34. Thus, as of March 26, 2010, Foresight 2 owned a 49.9% interest in La Castilleja. It acquired that project jointly with the company now called GWM II S.p.A., part of the GWM group and majority owner of Greentech A/S.

35. Global Wealth Management ("**GWM**") is an independent financial services partnership that manages assets globally. Today, GWM maintains its renewable energy investments through Greentech A/S, in which it holds a majority share. Since 1998, Greentech A/S has specialized in developing, constructing, and operating renewable energy facilities. In early years, the company limited its investments to the wind sector, acquiring projects in Denmark, Italy, and Poland by 2003. In more recent years, however, Greentech A/S began developing and operating renewable facilities in the photovoltaic, hydroelectric, biomass and biogas, and water and sludge treatment sectors. Today, GWM and Greentech own investments in Spain, Italy, Germany, Poland, and Denmark.

36. One of those investments is a 50.1% interest in La Castilleja. On March 18, 2010, the same day that Foresight 2 acquired its 49.9% interest in Global Litator, the company now called GWM II S.p.A. purchased 50.02775% of the company.[13] As stated above, Global Litator then purchased La Castilleja Energía S.L.U., which in turn purchased the La Castilleja PV project. Thus, as of March 26, 2010, the company now called Claimant GWM II S.p.A. owned 50.1% of La Castilleja, through Global Litator. The right of La Castilleja to benefit from the feed-in tariffs under RD 661, which La Castilleja achieved in September 2008, was critical to Foresight 2's and GWM's decision to acquire the project.

37. A second of GWM's and Greentech's investments is the 1.8 MW Fotocampillos project in Spain. Prior to their acquisition of the project, Fotocampillos was owned by Abantia Empresarial S.L. and, on May 14, 2008, it was registered in the RAIPRE and granted feed-in tariff rights under RD 661. On May 3, 2010, an Italian company in the GWM group and the subsidiary of what is now Claimant GWM II S.p.A. — GWM Renewable Energy S.p.A. — made a capital contribution to a Spanish company, Lux Energia Solar S.L., acquiring 61.35% ownership. On May 7, 2010, Lux Energia Solar S.L. purchased all of the Fotocampillos SPVs from Abantia Empresarial S.L. Thus, as of May 7, 2010, Claimant GWM II S.p.A. owned 61.35% of Fotocampillos (at that time, Claimant GWM I S.p.A. owned 100% of Claimant GWM II S.p.A. and thus also had a 61.35% interest in

[13] At the time, Claimant GWM II S.p.A. was called GWM Renewable Energy I S.A. and Claimant GWM I S.p.A. was called GWM Renewable Energy S.A. Both were and based in Luxembourg. On June 1, 2011, they were reincorporated in Italy as Claimants GWM II S.p.A. and GWM I S.p.A.

Fotocampillos). Later, on March 18, 2011, Claimant GWM II S.p.A. acquired 100% of Fotocampillos, through Lux Energia Solar S.L.

38. In or around May 2011 through August 2011, a series of transactions took place whereby (i) Claimant GWM I S.p.A.'s ownership interest in Claimant GWM II S.p.A. decreased to 70.63%; (ii) Claimant GWM II S.p.A. obtained a 71.49% shareholding in Greentech A/S; and (iii) Claimant GWM II S.p.A. transferred 100% of GWM Renewable Energy S.p.A.'s shares to Greentech A/S.[14] Greentech A/S also received a 50.02775% interest in Global Litator S.L.

39. As a result of those transactions and since September 14, 2011, GWM I S.p.A. has owned 70. 63% of GWM II S.p.A. and GWM II S.p.A. has owned 71.49% of Greentech A/S, which in turn has owned a 50.1% interest in La Castilleja and a 100% interest in Fotocampillos.

* * *

40. All three of the projects described above held feed-in tariff rights under RD 661 when each of the five Claimants acquired their respective interests in them. Those investments would not have been attractive without those rights. Claimants invested in the three projects with the legitimate expectation that Spain would apply its laws, particularly RD 661, according to the clear terms contained therein. As RD 661 contained provisions guaranteeing specific tariff rates to Madridejos, La Castilleja, and Fotocampillos throughout their operating lives, Claimants expected their plants to generate certain revenues based on those tariffs. Moreover, Claimants fully expected that Spain would abide by the clear provision of RD 661 that stated any future changes to the legislation would not apply to plants already in operation.

41. As Claimants came to discover, however, and as discussed below, Spain has failed to abide by the clear terms of its own laws, first by substantially altering and then by abrogating the feed-in tariff regime that governed Claimants' photovoltaic facilities.

[14] As part of the contribution agreement, GWM II S.p.A. received a 20.21% interest in Greentech A/S from GWM Renewable Energy S.p.A., rising to a 60.4% interest following completion of the contribution agreement with Greentech A/S. This triggered a mandatory tender offer under Danish law. By September 14, when the mandatory tender offer closed, GWM II S.p.A. held 71.49% of Greentech A/S's shares.

D. Spain Wrongfully Altered the Incentives Regime

42. Despite the legal guarantees and economic incentives granted in RD 661, Spain subsequently and retroactively amended that decree, substantially altering the legal and economic regimes applicable to Claimants' investments. Spain's amendments to RD 661 breach the ECT and international law and entitle Claimants to compensation for the damages they have suffered. The measures implemented by Spain and discussed below are illustrative, rather than exhaustive.

43. In 2010, Spain approved at least two pieces of legislation that reduced the remuneration available to photovoltaic facilities operating under RD 661. The first of those amendments was Royal Decree 1565/2010,[15] which cancelled the right of projects operating under RD 661 to receive incentivized pricing after year 25 of their operating lives,[16] despite the assurance in RD 661 that the projects would be entitled to 80% of the incentivized remuneration throughout their operating lives after year 25.

44. Additionally, Royal Decree-Law 14/2010 placed limits on the annual operating hours of photovoltaic facilities that were eligible for incentivized compensation under RD 661. That amendment contained two levels of reductions on operating hours for the plants: a general reduction that applied to all photovoltaic facilities indefinitely and an "extraordinary" reduction that applied to facilities operating under RD 661 for a period of three years. While Royal Decree-Law 14/2010 stated that electricity produced beyond the operating hour thresholds could be sold at market prices, those prices were far below the feed-in tariffs that Spain had originally guaranteed. Thus, Royal Decree-Law 14/2010 arbitrarily reduced the quantity of electricity that qualified for the guaranteed feed-in tariff, which further harmed Claimants' investments.

45. On December 27, 2012, Spain again altered the economic regime established in RD 661. Law 15/2012 reduced the incentives available to Claimants' photovoltaic facilities under RD 661 through the guise of a so-called "tax on the value of electricity generation."[17] That purported "tax" is calculated at a rate of 7% of all revenue received from the production of electricity, including the incentive remuneration established in RD 661.

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[15] Royal Decree 1565/2010, of November 19, regulating and amending certain aspects related to the activity of generating electricity under the special regime.

[16] That amendment was later extended to year 28 by Royal Decree-Law 14/2010, dated December 23, establishing emergency measures for the correction of the tariff deficit in the electricity sector, and finally to year 30 by Law 2/2011, of March 4, on Sustainable Energy.

[17] Law 15/2012, of December 27, on tax measures for energy sustainability.

Thus, the "tax" does not operate as a tax at all, but instead as a direct reduction in the incentive remuneration promised under RD 661. All of Claimants' photovoltaic plants have been wrongly subjected to that reduction since January 1, 2013.

46. Furthermore, in February 2013, Spain enacted Royal Decree-Law 2/2013, which amended the method for updating the incentivized pricing formulas in RD 661 by de-linking it from the general Consumer Price Index and substituting a lower index.[18] This measure further reduced the remuneration to which Claimants' photovoltaic facilities were entitled and that Claimants reasonably expected when deciding to invest in those facilities in Spain.

47. Each of the measures described above constitutes a wrongful repudiation of Spain's guarantees of stable, incentivized pricing in RD 661, which should have applied to Claimants' facilities, unmodified, for the duration of their operating lives. Spain is liable under the ECT and international law for significantly and retroactively altering RD 661 only three to four years after enacting that legislative program, thereby failing to fulfill its commitments to Claimants. As discussed below, however, these were not the only violations of the ECT and international law committed by Spain.[19]

E. Spain Wrongfully Abrogated the Incentives Regime

48. The foregoing material alterations to the legal and economic regimes guaranteed in RD 661 — in reliance on which Claimants made their investments — caused significant damage to Claimants, principally by reducing the revenues that Claimants reasonably expected when they decided to invest in Spain. Some two years following those measures, Spain violated the ECT and international law again through the enactment of Royal Decree-Law 9/2013 on July 12, 2013 ("**RDL 9**")[20] and its subsequent implementing acts.

49. Unlike the measures before it, which reduced the remuneration promised to Claimants' photovoltaic facilities through RD 661, RDL 9 retroactively abolished the incentivized pricing system previously guaranteed to facilities operating under RD 661. Under RDL 9, the attractive price guarantees granted under RD 661, which had induced

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[18] Royal Decree-law 2/2013, of February 1, on urgent measures in the electricity system and in the financial sector.

[19] Such violations include but are not limited to breaches of articles 10 and 13 of the ECT.

[20] Royal Decree-Law 9/2013, of July 12, enacting urgent measures to ensure the financial stability of the electricity system.

Claimants to invest, no longer applied to their facilities. Instead, Spain declared that it would limit any future compensation to remuneration based on the electricity market price, plus payments of "specific remuneration" designed to provide, in Spain's view, a "reasonable return on the investment." RDL 9 did not state exactly how it would calculate those "specific remuneration" payments. Instead, it indicated that it would base the rate of return on the historical yield of ten-year Spanish government bonds and that it would base the amount of investment on its own estimates of the costs and revenues of a "standard" electricity-generating plant built and operated by an "efficient and well-managed company."

50. Some months later, Spain enacted Act 24/2013 of December 26, 2013 on the Electricity Sector ("**Act 24**"), which confirmed the scheme established in RDL 9 and added two significant modifications. First, Act 24 stated that the formula for calculating the specific remuneration payments under RDL 9 would take into account the revenues that a project already had earned when determining whether a given facility had reached Spain's notion of a "reasonable rate of return." Second, Act 24 provided that Spain could further reduce the specific remuneration payments owed under RDL 9 on an annual basis if necessary to balance the electricity system's revenues and expenses.

51. Nearly a full year after first announcing the premature termination of RD 661, Spain finally issued formulas that served as guidance to what, if any, future remuneration would apply to Claimants' facilities. On June 6, 2014, Spain enacted Royal Decree 413/2014, and on June 16, 2014, Spain enacted Ministerial Order IET/1045/2014 to further implement both RDL 9 and Act 24 and establish specific remuneration parameters for existing facilities.[21] Those acts included over 1500 different formulas, based on over 1500 different "standard facilities." To navigate that labyrinth of formulas, Claimants and other investors like them required the assistance of expert legal and economic analysts.

52. Spain's July 2013 announcement of RDL 9 caused a shock-wave in the Spanish renewables market. Existing and would-be investors alike rightly grew concerned about the future stability of the legal and business environment in Spain, as the legislation created uncertainty regarding the future profits of existing facilities and cast doubt on the credibility of any future legislative promises that Spain might make. RDL 9's implementing

[21] Royal Decree 413/2014, of June 6, regulating the activity of electrical power generation by means of renewable energy, cogeneration and waste sources; Order IET/1045/2014, of June 16, approving the remuneration parameters of standard facilities applicable to certain facilities of electrical power generation by means of renewable energy, cogeneration and waste sources.

measures, the final installment of which was announced in June 2014, only exacerbated the situation by confirming the substantially reduced remuneration that would apply to existing facilities effective as of the July 2013 announcement of the end of the RD 661 incentives. The new regime was unacceptable both in terms of the returns it ostensibly offered to investments and in terms of its reliability and legitimacy, as Spain could simply change the rules again the next day. The retroactive application of the new regime, as well as the lack of clarity and utter unfairness of the new legislation, decimated investor confidence in Spain's renewable energy sector.

53. While the new remunerative regime now governed by RDL 9, Act 24, Royal Decree 413/2014, and Ministerial Order IET/1045/2014 is extraordinarily complex and its impact on any given facility is difficult to calculate, all the elements of the regime suggest that it will be devastating for the revenues of existing facilities. Spain's notion of a "reasonable rate of return" is to be determined in relation to the historical yield of ten-year Spanish government bonds. Not only has that rate been well below what most investors expected from investments governed by RD 661, but also as the Spanish economy improves, the yield on ten-year government bonds is decreasing, which will lead to further cuts in remuneration for renewable energy facilities.

54. Further, Spain's "reasonable rate of return" is purely theoretical. When assessing future remuneration, Spain bases its notion of what is reasonable on estimates of the costs and revenues of a "standard" electricity-generating plant built and operated by an "efficient and well-managed company." Those notions are of Spain's own making. In practice, Spain's hypothetical facility is conjured to the detriment of investors.

55. Furthermore, the new remuneration formulas are set for partial review every three years starting in 2016 and full review every six years beginning in 2019,[22] subjecting Claimants' remuneration to further uncertainty despite the original guarantees in RD 661 fixing feed-in tariffs for the lives of qualifying projects. Thus, the new framework is virtually assured to lead to further damage to Claimants' investments.

56. Under Spain's dictate, Claimants' facilities receive remuneration at levels far below what Spain promised in RD 661. Spain's conduct has severely harmed Claimants' investments in photovoltaic facilities. The substantial reduction in remuneration paid to

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[22] The only parameters that are not subject to review are the estimated initial investment and the regulatory lifespan of the facility.

Claimants' facilities continues to cause significant harm to those investments, decreasing their value, jeopardizing their future operation, and leading to cash-flow constraints that will have knock-on effects on Claimants' other business interests.

57. Claimants seek relief through arbitration under the ECT for all injuries caused by Spain's illegal measures.

III. THE PARTIES HAVE AGREED TO SETTLE THIS DISPUTE THROUGH SCC ARBITRATION

58. Article 26 of the ECT grants Claimants the right to submit this dispute to international arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce. Article 26 states:

> (1) Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably.
>
> (2) If such disputes can not be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution:
>
> (a) to the courts or administrative tribunals of the Contracting Party to the dispute;
>
> (b) in accordance with any applicable, previously agreed dispute settlement procedure; or
>
> (c) in accordance with the following paragraphs of this Article.
>
> (3) (a) Subject only to subparagraphs (b) and (c), each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.
>
> (b) (i) The Contracting Parties listed in Annex ID do not give such unconditional consent where the Investor has previously submitted the dispute under subparagraph (2) (a) or (b).[23] …

[23] Spain is listed under Annex ID. However, Claimants have not previously submitted this dispute to the courts or administrative tribunals of Spain or in accordance with any previously agreed dispute settlement procedure. Consequently, Article 26(3)(b)(i) is irrelevant for purposes of this arbitration.

> (c) A Contracting Party listed in Annex IA does not give such unconditional consent with respect to a dispute arising under the last sentence of Article 10(1).[24]
>
> (4) In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2) (c), the Investor shall further provide its consent in writing for the dispute to be submitted to:
>
> (c) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce. …
>
> (6) A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law.

59. The requirements under Article 26 of the ECT may be summarized as follows: a) the dispute must concern a breach of Part III of the ECT; b) the dispute must involve a covered "investment;" c) the Respondent must be a Contracting Party to the ECT; and d) the opposing party must be a covered "investor" that is a national or company of another Contracting Party to the ECT. Each of these requirements is satisfied in the present case.

A. This is a Dispute Concerning a Breach of Part III of the ECT

60. As explained in the previous section, this dispute concerns the failure of Spain to fulfill legislative and regulatory commitments it made relative to Claimants' photovoltaic facilities and related investments. The acts and omissions of Spain described above and to be developed further in the course of this proceeding constitute serious and repeated breaches of the protections accorded to Claimants' investments in Spain under Part III of the ECT. Those protections include, but are not limited to, those found in Articles 10 and 13 of the ECT.

61. Article 10 provides a number of guarantees and protections to Claimants and their investments, including: 1) fair and equitable treatment; 2) a requirement that the host state accord "the most constant protection and security" to investments; 3) a prohibition against unreasonable or discriminatory measures that impair the management, maintenance, use, enjoyment, or disposal of investments; 4) a prohibition against treatment less favorable than that required by international law, including treaty obligations; 5) a requirement to observe any obligations the host state has entered into with an investment or an investor; 6) most-favored nation treatment; and 7) national treatment. By way of example only, Spain treated Claimants' investments unfairly and inequitably by altering, and then abrogating, the

[24] Spain is not listed under Annex IA. Consequently, Claimants are entitled to assert a claim based on the last sentence of Article 10(1), the ECT's "umbrella clause," which they do.

incentives regimes governing those investments, in violation of its commitments and the clear terms of RD 661. Spain's misconduct in that respect also unlawfully impaired Claimants' investments in an unreasonable or discriminatory manner.

62. Additionally, Article 13 of the ECT prohibits Spain from unlawfully expropriating Claimants' investments or subjecting them to measures having an equivalent effect. As Claimants will demonstrate during the course of this proceeding, Spain breached Article 13 of the ECT by abrogating the rights granted to Claimants' investments through RD 661. Since those rights, granted by law, formed part of Claimants' investments in this case, Spain's repudiation of those rights constitutes a measure tantamount to expropriation, if not a direct expropriation, under the ECT and international law.

63. Spain's violations of those provisions of the ECT, as well as its violations of international law, involve Claimants' legal rights and entitle Claimants to legal remedies. This is a classic legal dispute.

B. The ECT Covers Claimants' Investments

64. The ECT provides a broad definition of the term "investment." As stated in ECT Article 1(6):

> "Investment" means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:
>
> (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
>
> (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;
>
> (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
>
> (d) Intellectual Property;
>
> (e) Returns;
>
> (f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

> A change in the form in which assets are invested does not affect their character as investments and the term "Investment" includes all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the "Effective Date") provided that the Treaty shall only apply to matters affecting such investments after the Effective Date.
>
> "Investment" refers to any investment associated with an Economic Activity in the Energy Sector.

65. Under this definition, there are a number of different investments of Claimants involved in this case, including, but not limited to: (i) Claimants' ownership of tangible and intangible property and property rights; (ii) Claimants' ownership of shares and equity participation in Spanish companies and business enterprises as well as debt obligations; (iii) Claimants' right to returns and claims to money; (iv) rights conferred to Claimants by law, specifically, the rights to fixed feed-in tariff pricing conferred through RD 661, and (v) rights conferred by licenses and permits.

66. Claimants thus own several covered "investments" under the ECT.

C. Respondent is a Contracting Party to the ECT

67. Spain is a Contracting Party to the ECT. Spain signed the ECT on December 17, 1994, and ratified it on December 11, 1997. Spain deposited its instrument of ratification on December 16, 1997. The ECT entered into force for Spain on April 16, 1998.[25]

D. Claimants are Covered Investors and Nationals of Contracting Parties to the ECT

68. Article 1(7) of the ECT provides that the term "investor" means "a company or other organization organized in accordance with the law applicable in that Contracting Party."[26]

69. Claimants are business entities duly established in Luxembourg, Italy, and Denmark. They currently own the investments related to their photovoltaic facilities in Spain as described herein, which they also owned on the date of consent to SCC jurisdiction (discussed below) and immediately before the events giving rise to this dispute.

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[25] *See* CEX-8 regarding the date of the ECT's entry into force for Spain.

[26] *See* CEX-1.

70. Luxembourg, Italy, and Denmark are Contracting Parties to the ECT. Luxembourg signed the ECT on December 17, 1994, and ratified it on February 7, 1997. Luxembourg deposited its instrument of ratification on November 27, 1997. The ECT entered into force for Luxembourg on April 16, 1998.[27]

71. Italy signed the ECT on December 17, 1994, and ratified it on December 5, 1997. Italy deposited its instrument of ratification on December 16, 1997. The ECT entered into force for Italy on April 16, 1998.[28]

72. Denmark signed the ECT on December 17, 1994, and ratified it on August 22, 1997. Denmark deposited its instrument of ratification on December 16, 1997. The ECT entered into force for Denmark on April 16, 1998.[29]

73. Thus, Claimants are covered "Investors" and nationals of Contracting Parties to the ECT.

E. The Parties Have Consented to Arbitration

74. Spain consented to arbitration under the ECT by signing and ratifying the treaty. As noted above, the ECT entered into force for Spain on April 16, 1998.[30]

75. Claimants consented to arbitrate this dispute pursuant to Article 26 of the ECT through letters dated June 27, 2014 and March 25, 2015.[31] Claimants hereby confirm their consent to arbitration under the ECT and submit this dispute to the Arbitration Institute of the Stockholm Chamber of Commerce in accordance with Article 26(4)(c) of the ECT.

F. Claimants Attempted to Settle This Dispute Amicably

76. Before submitting a dispute to arbitration, Article 26 of the ECT requires disputing parties to settle their disputes amicably, if possible. Claimants sent letters to Spain on June 27, 2014, and March 25, 2015, which described their various concerns regarding Spain's alterations to the legal and economic regimes applicable to their photovoltaic

[27] *See* CEX-9 regarding the date of the ECT's entry into force for Luxembourg.
[28] *See* CEX-10 regarding the date of the ECT's entry into force for Italy.
[29] *See* CEX-11 regarding the date of the ECT's entry into force for Denmark.
[30] *See* CEX-8 regarding the date of the ECT's entry into force for Spain.
[31] Copies of those letters are attached as CEX-12.

facilities, notified Spain of this dispute, and offered to settle the dispute amicably.[32] Spain has not responded to Claimants' offers to pursue a settlement and no resolution of the present dispute has been achieved.

77. Article 26 of the ECT permits an Investor to submit its dispute to arbitration if the dispute is not settled amicably within a three month period. As more than three months have passed since Claimants attempted to settle this dispute amicably with Spain, Claimants are entitled to submit this Request for Arbitration to the Arbitration Institute of the Stockholm Chamber of Commerce.

IV. PROCEDURAL MATTERS

78. Pursuant to Articles 12 and 13 of the SCC Arbitration Rules, and in view of the size and complexity of this case, the Arbitral Tribunal should consist of three arbitrators.

79. Claimants hereby appoint Dr. Klaus Sachs, a national of Germany, as their party-appointed arbitrator for this proceeding. His contact information is:

CMS Hasche Sigle
Nymphenburger Straße 12
80335 Munich, Germany
T +49 89 23807 109
Email: Klaus.Sachs@cms-hs.com

80. With respect to the selection of the Chairman of the Arbitral Tribunal, in accordance with Article 13(1) of the SCC Arbitration Rules, Claimants propose that the Chairman be selected by the two party-appointed arbitrators, with agreement of the parties. If Spain fails to appoint an arbitrator or if the two party-appointed arbitrators are unable to agree upon a Chairman, the SCC Board should make the necessary appointment(s) as provided in Article 13(3) of the SCC Arbitration Rules.

81. Claimants choose English as the procedural language of the arbitration and propose Geneva, Switzerland, as the seat of arbitration.

82. This Request is submitted by e-mail and is accompanied by proof of payment of the registration fee.

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[32] *Id.*

V. PRELIMINARY REQUEST FOR RELIEF

83. Pursuant to Article 2(iii) of the SCC Arbitration Rules, Claimants request an award granting them the following relief:

- a declaration that the dispute is within the jurisdiction of the ECT;
- a declaration that Spain has violated Part III of the ECT, including but not limited to Article 10 and Article 13, as well as international law with respect to Claimants' investments;
- compensation to Claimants for all damages they have suffered, to be developed and quantified in the course of this proceeding but likely to include, by way of example and without limitation, sums invested by Claimants to acquire and develop the investments, lost profits, and consequential damages flowing from Spain's breaches;
- all costs of this proceeding, including Claimants' attorneys' fees; and
- pre- and post-award compound interest until the date of Spain's final satisfaction of the award.

84. Claimants reserve their rights to modify, amend, or supplement their claims during the course of the arbitration proceeding.

Dated: November 2, 2015

Respectfully submitted,

KING & SPALDING

Kenneth R. Fleuriet
Amy Roebuck Frey
12, cours Albert Ier
75008 Paris
France

Reginald R. Smith
Kevin D. Mohr
1100 Louisiana, Suite 4000
Houston, Texas 77002
U.S.A.

GÓMEZ-ACEBO & POMBO

Verónica Romaní Sancho
Gonzalo Ardila Bermejo
Luis Gil Bueno
Inés Vázquez Garcia
Castellana, 216
28046 Madrid
Spain