IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TITAN CONSORTIUM 1, LLC, Petitioner, v. THE ARGENTINE REPUBLIC, Respondent.	Case No. 1:21-cv-02250 (JMC)

RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY

The Republic of Argentina (the "Republic") respectfully submits the following response to plaintiff Titan Consortium 1, LLC ("Titan")'s Notice of Supplemental Authority dated November 2, 2023, ECF No. 17 (the "Notice"), regarding the Restatement of the U.S. Law of International Commercial and Investor-State Arbitration (the "Restatement") recently published by the American Law Institute. Titan submitted the Notice in further opposition to the Republic's currently pending motion to dismiss this action as untimely. *See* Republic Mot. to Dismiss (Jan. 14, 2022), ECF No. 12 ("Mot.").

According to Titan, the Restatement takes the view that the applicable limitations period for an action in U.S. court to enforce an ICSID Convention award is the limitations period that would apply to "enforcing 'final judgments of a sister-state court.'" Notice at 1–2 (citing Restatement (Third) of U.S. Law of Int'l Comm. Arb. § 5.6 (Reporters' Notes)). But that is not what Titan seeks here—Titan asserts that the 12-year statute of limitations for a *D.D.C. or D.C. court money judgment* should apply in this action. *See* Titan Opposition at 10–11 (Jan. 28,

2022), ECF No. 13 ("Titan Opp.") (citing D.C. Code § 15-101); Republic Reply at 9–10 (Feb. 4, 2022), ECF No. 16 ("Reply").

As set forth in the Republic's prior briefing, it is not possible to apply the limitations period for enforcement of a sister state court judgment here. Reply at 10; Mot. at 8. The provision of D.C. law that applies to enforcement of state court judgments, D.C. Code § 12-307, points to the limitations period of the state that issued the judgment. But because ICSID awards are "rendered by an ICSID tribunal, not any 'State, territory, commonwealth,' or 'foreign country,' 'there is no rendering state's limitations period to which to refer,'" as Titan has acknowledged. Titan Opp. at 10 (Titan stating it is "impossible" and "not a viable option" to apply D.C. Code § 12-307 here). Unlike the New York statute of limitations for judgment enforcement, which provides a fixed period for enforcement of sister state judgments in New York court, the D.C. code provides no such fixed period, and so Titan's citation to *Blue Ridge Invs., LLC v. Republic of Argentina*, 902 F. Supp. 2d 367, 388 (S.D.N.Y. 2012), cited in Notice at 2, is inapposite. *See* Reply at 12-13.

Accordingly, and for the reasons set forth in the Republic's prior briefing, the better approach is to apply the three-year limitations period for the enforcement of foreign arbitral awards found in Chapter 2 of the FAA, 9 U.S.C. § 207, which best serves the important federal interests in the uniformity of ICSID enforcement proceedings. Mot. at 4; Reply at 3.[1] Applying

[1] To the extent this approach is disfavored by the Restatement, that does not override the case law in support of it. *See* Reply at 2–3; Mot. at 6–7; *IMAPizza, LLC v. At Pizza Ltd.*, 334 F. Supp. 3d 95, 124 (D.D.C. 2018) (restatements are not binding but only "persuasive"); Benjamin N. Cardozo, *The Growth of the Law* at 9–10 (1924) ("You must not think of the [restatement] as a code, invested with the binding force of a statute. The only force it will possess, at least at the beginning, will be its inherent power of persuasion.").

that limitations period, Titan's action is one year too late and thus the Republic's Motion to Dismiss should be granted.

Dated: November 16, 2023
New York, New York

Respectfully submitted,

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