FEDERAL COURT OF AUSTRALIA

Blasket Renewable Investments LLC v Kingdom of Spain (relief) [2025] FCA 1469

File numbers: NSD 2169 of 2019
NSD 365 of 2020
NSD 449 of 2020
NSD 415 of 2023

Judgment of: **STEWART J**

Date of judgment: 26 November 2025

Catchwords: **ARBITRATION** – international arbitration – terms of final relief in applications under s 35(4) *International Arbitration Act 1974* (Cth) for recognition and enforcement of arbitral awards under the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (1965) (**ICSID Convention**) – role of the Court under Art 54 of ICSID Convention – whether open to or appropriate for the Court to resolve ambiguity as to whether terms of award of pre-judgment interest by arbitral tribunal referred to monthly or annual rate – where parties may seek clarificatory interpretation from tribunal under Art 50 of the ICSID Convention – whether post-judgment interest should be applied at rate prescribed under domestic legislation or rate applied by tribunal for post-award interest – interest to be calculated at interest rate relevant to the foreign currency of the award sums – to apply a different rate to that in the award would not be to treat the award as if it were a judgment of the court

Legislation: *Consular Privileges and Immunities Act 1972* (Cth)
Federal Court of Australia Act 1976 (Cth) ss 51A, 52
Foreign Judgments Act 1991 (Cth)
Foreign States Immunities Act 1985 (Cth)
International Arbitration Act 1974 (Cth) ss 33(2), 35(4)

Federal Court Rules 2011 (Cth) rr 39.06, 41.01

Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature 18 March 1965, 575 UNTS 159 (entered into force 14 October 1966), Arts 50, 54(1)
Vienna Convention on Consular Relations, opened for

	signature 24 April 1963, 596 UNTS 261 (entered into force 19 March 1967)
Cases cited:	*Blasket Renewable Investments LLC v Kingdom of Spain* [2025] FCA 1028 *Infrastructure Services Luxembourg S.à.r.l. v Kingdom of Spain (security for costs)* [2024] FCA 234 *Kim v Wang* [2025] FCA 1244 *Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l. (Security for Costs)* [2024] FCAFC 113 *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl (No 3)* [2021] FCAFC 112; 392 ALR 443 *Swiss Bank Corporation v New South Wales* (1993) 33 NSWLR 63 *Tianjin Jishengtai Investment Consulting Partnership Enterprise v Huang* [2020] FCA 767 *Traxys Europe SA v Balaji Coke Industry Pvt Ltd (No 5)* [2014] FCA 976; 318 ALR 85 *Traxys Europe SA v Balaji Coke Industry Pvt Ltd (No 2)* [2012] FCA 276; 201 FCR 535
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Sub-area:	International Commercial Arbitration
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Date of hearing:	25 November 2025
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ORDERS

NSD 2169 of 2019

BETWEEN:	**BLASKET RENEWABLE INVESTMENTS LLC** Applicant
AND:	**KINGDOM OF SPAIN** Respondent

ORDER MADE BY: **STEWART J**

DATE OF ORDER: **26 NOVEMBER 2025**

THE COURT ORDERS THAT:

1. The Court hereby and in these orders recognises as binding on the respondent the award of the International Centre for Settlement of Investment Disputes dated 11 December 2019 in *RREEF Infrastructure (G.P.) Ltd and RREEF Pan-European Infrastructure Two Lux S.à.r.l. v. Kingdom of Spain* (ICSID Case No. ARB/13/30) as certified by the Secretary-General on 11 December 2019 (the **Award**), and pursuant to s 35(4) of the *International Arbitration Act 1974* (Cth) judgment be entered in favour of the applicant, Blasket Renewable Investments LLC, against the respondent, the Kingdom of Spain, for the pecuniary obligations imposed by the Award in the sums of:

   (a) EUR 58,500,000.00; and

   (b) Interest on the amount in order 1(a) at the rate of 2.07% per annum, compounded monthly, from 30 June 2014 to the date of payment of the Award.

2. The Court hereby and in these orders also recognises as binding on the respondent the Decision on Annulment Application of the International Centre for Settlement of Investment Disputes dated 10 June 2022 in *RREEF Infrastructure (G.P.) Ltd and RREEF Pan-European Infrastructure Two Lux S.à.r.l. v. Kingdom of Spain* (ICSID Case No. ARB/13/30) as certified by the Secretary-General on 10 June 2022 (the **Annulment Award**), and pursuant to s 35(4) of the *International Arbitration Act 1974* (Cth) judgment be entered in favour of the applicant, Blasket Renewable

Investments LLC, against the respondent, the Kingdom of Spain, for the pecuniary obligations imposed by the Annulment Award in the sum of GBP 791,385.23.

3. Nothing in these orders shall be construed as derogating from the effect of any law relating to immunity of the respondent from execution.

4. Subject to order 5 below, the respondent pay to the applicant the costs of RREEF Infrastructure (G.P.) Ltd and RREEF Pan-European Infrastructure Two Lux S.à.r.l. in this proceeding up to and including 26 June 2023 and the applicant's costs of this proceeding from 26 June 2023.

5. The European Commission's interlocutory application to intervene dated 28 August 2023 be dismissed with costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

ORDERS

NSD 365 of 2020

BETWEEN:	**9REN HOLDING S.À.R.L** Applicant
AND:	**KINGDOM OF SPAIN** Respondent

ORDER MADE BY: **STEWART J**
DATE OF ORDER: **26 NOVEMBER 2025**

THE COURT ORDERS THAT:

1. The Court hereby and in these orders recognises as binding on the respondent the award of the International Centre for Settlement of Investment Disputes dated 31 May 2019 in *9Ren Holding S.a.r.l. v The Kingdom of Spain* (ICSID Case No. ARB/15/15) as certified by the Secretary-General on 31 May 2019 and as rectified by the Decision on Spain's Request for Rectification of the Award dated 6 December 2019 (the **Award**), and pursuant to s 35(4) of the *International Arbitration Act 1974* (Cth) judgment be entered in favour of the applicant, 9Ren Holding S.à.r.l, against the respondent, the Kingdom of Spain, for the pecuniary obligations imposed by the Award in the sums of:
   (a) EUR 41,760,000.00;
   (b) Interest on the amount in order 1(a) at an interest rate equivalent to the 5-year Spanish Government bond yield compounded annually from 30 June 2014 until Spain's full and final satisfaction of the Award; and
   (c) USD 4,814,570.00 and EUR 562,458.00 for costs as awarded to the applicant in the Award;
   (d) USD 299,908.16 in payment of the fees and expenses of the tribunal paid by the applicant, as awarded to the applicant in the Award; and
   (e) USD 6,103.01 in payment of the applicant's costs awarded in the Decision on Spain's Request for Rectification of the Award dated 6 December 2019.
2. The Court hereby and in these orders recognises as binding on the respondent the Decision on Annulment Application of the International Centre for Settlement of

Investment Disputes dated 17 November 2022 in *9Ren Holding S.a.r.l. v Kingdom of Spain* (ICSID Case No. ARB/15/15) as certified by the Secretary-General on 17 November 2022 (the **Annulment Award**), and pursuant to s 35(4) of the *International Arbitration Act 1974* (Cth) judgment be entered in favour of the applicant, 9Ren Holding S.à.r.l, against the respondent, the Kingdom of Spain, for the pecuniary obligations imposed by the Annulment Award in the sum of USD 1,131,803.62 and interest from 17 November 2022 to the date of payment at the rate of 2% compounded annually.

3. Nothing in these orders shall be construed as derogating from the effect of any law relating to immunity of the respondent from execution.
4. Subject to order 5 below, the respondent pay the applicant's costs of this proceeding.
5. The European Commission's interlocutory application to intervene dated 28 August 2023 be dismissed with costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

ORDERS

NSD 449 of 2020

BETWEEN:	**BLASKET RENEWABLE INVESTMENTS LLC** Applicant
AND:	**KINGDOM OF SPAIN** Respondent

ORDER MADE BY: **STEWART J**

DATE OF ORDER: **26 NOVEMBER 2025**

THE COURT ORDERS THAT:

1. The Court hereby and in these orders recognises as binding on the respondent the award of the International Centre for Settlement of Investment Disputes (**ICSID**) dated 21 January 2020 in *Watkins Holdings S.à.r.l, Watkins (NED) BV, Watkins Spain S.L., Redpier S.L., Northsea Spain S.L, Parque Eólico Marmellar S.L., and Parque Eólico La Boga S.L. v The Kingdom of Spain* (ICSID Case No ARB/15/44) as certified by the Secretary-General on 21 January 2020 including the Tribunal's decision on rectification as certified by the Secretary-General on 13 July 2020 (the **Award**), and further recognises as binding on the respondent that, on 21 February 2023, ICSID refused to annul the Award by its Decision on the Annulment Application dated 21 February 2023 in *Watkins Holdings S.à.r.l., Watkins (Ned) BV, Watkins Spain, S.L., Redpier, S.L., Northsea Spain, S.L., Parque Eólico Marmellar, S.L., and Parque Eólico La Boga, S.L. v Kingdom of Spain* (ICSID Case No ARB/15/44) as certified by the Secretary-General on 21 February 2023, and pursuant to s 35(4) of the *International Arbitration Act 1974* (Cth) judgment be entered in favour of the applicant, Blasket Renewable Investments LLC, against the respondent, the Kingdom of Spain, for the pecuniary obligations imposed by the Award in the sum of:

   (a) EUR 77,000,000.00;

   (b) Interest on the amount in order 1(a) from 20 June 2014 to the date of the Award at 1.16% per annum, compounded monthly, being EUR 5,149,503.84;

(c) Post-Award interest at 2.16% per annum, compounded monthly from the date of the Award to the date of payment;

(d) Watkins Holding S.à.r.l. and Watkins (Ned) B.V. (the **Original Applicants**) costs of the Award arbitral proceedings, being EUR 2,515,291.69; and

(e) The Original Applicants' costs of the rectification proceedings, being EUR 63,293.39 for legal costs and USD 36,772.13 for the costs of the rectification.

2. The Court hereby and in these orders recognises as binding on the respondent the Decision on Claimants' Rule 41(5) Application for Dismissal of Respondent's Request for Revision of the Award of the International Centre for Settlement of Investment Disputes dated 22 January 2024 in *Watkins Holdings S.à.r.l. and others v Kingdom of Spain* (ICSID Case No ARB/15/44) as certified by the Secretary-General on 22 January 2024 (the **Revision Award**), and pursuant to s 35(4) of the *International Arbitration Act 1974* (Cth) judgment be entered in favour of the applicant, Blasket Renewable Investments LLC, against the respondent, the Kingdom of Spain, for the pecuniary obligations imposed by the Revision Award in the sums of:

(a) USD 64,783.34 for the fees and expenses of the Revision Tribunal, ICSID's administrative fee, and direct expenses; and

(b) EUR 244,839.70 for the Original Applicants' legal fees and expenses.

3. Nothing in these orders shall be construed as derogating from the effect of any law relating to immunity of the respondent from execution.

4. Subject to order 5 below, the respondent pay to the applicant the Original Applicants' costs of this proceeding up to and including 3 April 2024 and the applicant's costs of this proceeding from 3 April 2024.

5. The European Commission's interlocutory application to intervene dated 28 August 2023 be dismissed with costs, such costs to include those of the Original Applicants and the applicant and be paid to the applicant.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

ORDERS

NSD 415 of 2023

BETWEEN:	**NEXTERA ENERGY GLOBAL HOLDINGS B.V.** First Applicant
	NEXTERA ENERGY SPAIN HOLDINGS B.V. Second Applicant
AND:	**KINGDOM OF SPAIN** Respondent

ORDER MADE BY: **STEWART J**

DATE OF ORDER: **26 NOVEMBER 2025**

THE COURT ORDERS THAT:

1. The Court hereby and in these orders recognises as binding on the respondent the award of the International Centre for Settlement of Investment Disputes dated 31 May 2019 in *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v Kingdom of Spain* (ICSID Case No. ARB/14/11) as certified by the Acting Secretary-General on 14 March 2023 (the **Award**), and pursuant to s 35(4) of the *International Arbitration Act 1974* (Cth) judgment be entered in favour of the applicants, NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V., against the respondent, the Kingdom of Spain, for the pecuniary obligations imposed by the Award in the sums of:

   (a) EUR 290,600,000.00;

   (b) Pre-award interest on the amount in order 1(a) from 30 June 2016 to 31 May 2019 at the rate of 0.234%, compounded monthly;

   (c) USD 132,368.86 in payment of the respondent's share of the costs of the arbitration proceeding;

   (d) USD 4,147,031.81 and EUR 1,042,135.30 in payment of one-third of the applicants' costs of the arbitration proceeding; and

   (e) Post-Award interest on the amounts in orders 1(a)-(d) from 31 May 2019 to the date of payment at the rate of 0.234%, compounded monthly.

2. The Court hereby and in these orders recognises as binding on the respondent the Decision on Annulment of the International Centre for Settlement of Investment Disputes dated 18 March 2022 in *NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. v Kingdom of Spain* (ICSID Case No. ARB/14/11 Annulment Proceeding) as certified by the Acting Secretary-General on 18 March 2022 (the **Annulment Award**), and pursuant to s 35(4) of the *International Arbitration Act 1974* (Cth) judgment be entered in favour of the applicants, NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V., against the respondent, the Kingdom of Spain, for the pecuniary obligations imposed by the Annulment Award in the sum of USD 3,500,000.00 being the applicants' legal fees and expenses for the annulment proceedings as awarded to the applicants in the Annulment Award, and interest on that amount from 17 April 2022 until the date of payment at the rate of 0.234%, compounded monthly.

3. Nothing in these orders shall be construed as derogating from the effect of any law relating to immunity of the respondent from execution.

4. Subject to order 0 below, the respondent pay the applicants' costs of this proceeding.

5. The European Commission's interlocutory application to intervene dated 18 March 2024 be dismissed with costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

STEWART J:

Introduction

1 These reasons for judgment deal with the question of what final relief should be ordered in each of the four proceedings to give effect to my reasons for judgment published as *Blasket Renewable Investments LLC v Kingdom of Spain* [2025] FCA 1028. Familiarity with those reasons is assumed in what follows.

2 Spain continues to appear in the proceedings conditionally, asserting its foreign state immunity. It makes submissions and participated in the hearing, not because it accepts my earlier reasons as correct or by way of making any application for orders, but in aid of ensuring that the terms of orders to be made best give effect to my earlier reasons.

3 Three issues arise for consideration:

(1) The rate of pre-judgment interest to be awarded in the NextEra proceeding (NSD415/2023);

(2) The rate of post-judgment interest to be awarded in each of the proceedings; and

(3) Whether the orders to be made in each of the proceedings should include orders contemplating future execution procedures.

Issue 1: pre-judgment interest in the NextEra proceeding (NSD415/2023)

4 In each of the awards to be recognised and enforced in these proceedings, the tribunal awarded post-award interest in different verbal formulations encompassing the applicable interest rate and how it is to be compounded. Save for the NextEra proceeding, no issue arises about calculating the amount of accrued interest in accordance with those verbal formulations from the time of the awards until the time of judgment.

5 In the NextEra award dated 31 May 2019 there is an ambiguity in the way in which the tribunal dealt with interest on the capital sums that it awarded. In respect of the capital sum of €290.6 million it awarded interest "from 30 June 2016 until the date of this Award at the rate of 0.234%, compounded monthly". In respect of additional sums of US$132,368.86, US$4,147,031.81 and €1,042,135.30 for costs it awarded interest "from the date of the Award until date of payment at the rate of 0.234%, compounded monthly". The ambiguity arises

from the use of the formulation, in each case, of "at the rate of 0.234%, compounded monthly".

6 The same ambiguity arises in the award of the ad hoc committee on annulment which on 18 March 2022 awarded costs against Spain in favour of the NextEra applicants in the sum of US$3,500,000 and interest thereon "at the rate of 0.234% compounded monthly" from 30 days after the date of the decision until the date of payment.

7 The NextEra applicants contend that those awards of interest are to be interpreted as 0.234% per month compounded monthly, whereas Spain contends that they are to be interpreted as 0.234% per annum compounded monthly. The difference between those two approaches in monetary terms just on the initial capital sum and not on the other amounts is more that €50 million.

8 I accept that there is an ambiguity in how to interpret the awards of interest. There are reasonable and even compelling arguments going both ways. They draw on an expansive context and numerous authorities over many jurisdictions. I reject the applicants' submission that "0.234%, compounded monthly" clearly means a monthly rate – it can readily mean an annual rate. Indeed, interest rates are generally, or more commonly, expressed as annual rates. I also reject Spain's submission that there is no ambiguity.

9 It is invidious that this Court should determine the ambiguity in the awards. There are two principal reasons for that. The one is that if a court in more than one of the many different jurisdictions in which enforcement is sought is to determine that question, it could be determined differently in different jurisdictions leading to unseemly conflicts and, more particularly, a lack of clarity as to what Spain is required to pay in order to meet its obligations under the award. Although the common law doctrine of issue estoppel may prevent conflicting outcomes, that doctrine may not apply across all jurisdictions and in any event may be applied differently across common law jurisdictions. The risk therefore remains.

10 The other arises from the nature of the "closed" or "self-contained" system of investment arbitration under the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (1965) (**ICSID Convention**) as discussed in my earlier reasons at [160]-[175]. Disputes between parties about the proper interpretation of an award are generally to be resolved within that system, and not outside it. Article 50 of the ICSID

Convention provides that if any dispute arises between the parties as to the meaning or scope of an award, either party may request an interpretation of the award. Such a request may be decided by the tribunal which rendered the award but, if that is not possible, a new tribunal shall be constituted in order to do so. Neither party to the NextEra proceeding has sought a clarificatory interpretation under Art 50, but it remains open for them to do so. Obviously, any such interpretation produced pursuant to that process would be binding on the parties and applicable to be enforced in all ICSID jurisdictions.

11 This Court is bound to "enforce the pecuniary obligations imposed by the award", as required by Art 54(1). If it were to come to resolve, for itself, the ambiguity in the award it may be that that is "incorrect" in the sense of being inconsistent with the outcome under Art 50. The Court would thus have enforced something other than the pecuniary obligations imposed by the award. Further, this Court determining the "correct" interpretation of the interest award may be characterised as this Court granting "any other remedy" in respect of an award, contrary to s 33(2) of the *International Arbitration Act 1974* (Cth) (**IAA**).

12 Against those considerations, it is nonetheless highly unsatisfactory for the Court to pronounce a judgment that is knowingly ambiguous and which could then give rise to future disputation. Even so, the Court has no role within the ICSID system to give determinative interpretations of ICSID awards. I consider that in the event of some future dispute about the meaning of the relevant interest formulation, proceedings in the Court could be stayed pending the parties obtaining an authoritative determination under Art 50.

13 In those circumstances, and in order to be faithful to the obligations imposed by Art 54(1), I propose to simply use the words of the award in the orders, ie "0.234%, compounded monthly". I appreciate that that will perpetuate the ambiguity, but it will also preserve the parties' positions which they can seek to have vindicated under Art 50 if they should so decide.

Issue 2: post-judgment interest in all the proceedings

14 The applicants submit that in each of the proceedings they should be awarded post-judgment interest under s 52 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) at the rates prescribed under r 39.06 of the *Federal Court Rules 2011* (Cth) (**FCR**). Spain, in contrast, submits that post-judgment interest should be awarded at the rates determined by the respective tribunals in their awards for the period from the award to payment of the award. Needless to say, the former rate is significantly higher than the latter.

15 Notably, although s 52(2)(a) of the FCA Act provides that interest on a judgment of the Court is payable at such rate as is fixed by the Rules of the Court, s 52(2)(b) provides that if the Court, in a particular case, thinks that justice so requires, it can apply such lower rate as it determines. The applicable principle is that if a judgment is given in a foreign currency, compensation to the plaintiff ordinarily calls for interest to be calculated at an interest rate relevant to that currency: *Swiss Bank Corporation v New South Wales* (1993) 33 NSWLR 63 at 64-65 per Giles J; *Kim v Wang* [2025] FCA 1244 at [33] per Owens J.

16 None of the amounts awarded to the applicants is in Australian dollars. They are in foreign currencies. Prima facie, then, an interest rate most appropriate to those currencies should be applied rather than the rate prescribed under r 39.06. No party has adduced evidence as to any such rate. That directs attention to the rates applied by the tribunals, suggesting that those rates may be the most appropriate.

17 In my view, the discretion in respect of post-judgment interest is best exercised in fidelity to the Court's obligation under Art 54(1) of the ICSID Convention. In each case, the Court's obligation is to "enforce the pecuniary obligations imposed by the award within its territories as if it were a final judgment of a court in that State". That is in part reinforced by s 35(4) of the IAA which provides that an award may be enforced in the Court "as if the award were a judgment or order of [the] court".

18 Two points arise here. First, if the Court were to apply the interest rates fixed under the rules it would be doing something in addition to, or other than, enforcing the pecuniary obligations of the award from the time of judgment and thereafter. The awards provide for the payment of interest from the time when they were made until the time of payment. Thus, in the period after judgment until the time of payment, the effect of such an order would be to impose a pecuniary obligation in the form of interest other than that imposed by the awards. It would also create the difficulty that if Spain were to pay an award sometime after judgment in this Court and it paid the whole of the award including interest as provided for in the award, it would still be liable under the judgment for the difference in interest under the award and under the judgment. That illustrates that such an approach would be contrary to what the ICSID Convention and the IAA contemplate, which is that domestic court processes serve to enforce the pecuniary obligations imposed by awards; it is not to create additional obligations.

19 The second point is that the award is to be treated as if it were a judgment of the court. "The phrase 'as if' contains the command to treat the different as real: the award as a judgment, and the incidents and consequences that flow as if the award were a judgment … There is to be no difference in consequence and status between an award and a judgment": *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl (No 3)* [2021] FCAFC 112; 392 ALR 443 at [9] per Allsop CJ, Perram and Moshinsky JJ agreeing. That is to say, the question of post-judgment interest should be approached on the basis that the award is a judgment that has determined the rate of interest to apply from the time that it was made until the time of payment. The enforcing court must then apply that interest rate both before and after its own judgment; to apply a different rate would not be to treat the award as if it were a judgment of the court.

20 I consider that that approach is consistent with *Tianjin Jishengtai Investment Consulting Partnership Enterprise v Huang* [2020] FCA 767 at [24]-[25] where Jagot J declined to award post-award interest where the award did not provide for any interest as "to make an award for interest would be to depart from the award in a material way which is not permitted" (at [25]). Although that discussion was specifically in the context of pre-judgment interest under s 51A of the FCA Act, the dispositive orders that her Honour made on 20 May 2020 did not provide for pre- or post-judgment interest.

21 In *Traxys Europe SA v Balaji Coke Industry Pvt Ltd (No 2)* [2012] FCA 276; 201 FCR 535 at [72], Foster J explained that the judgment or order made by the Court "must reflect the Award and cannot differ in any material way from the terms thereof". I do not consider that the fact that his Honour ultimately ordered post-judgment interest at the Court's applicable rate, as appears in *Traxys Europe SA v Balaji Coke Industry Pvt Ltd (No 5)* [2014] FCA 976; 318 ALR 85 at [7], detracts from that because it was not the subject of consideration by his Honour indicating that the final terms of the orders were likely the subject of agreement between the parties.

22 The applicants advance arguments based on the recognition of foreign judgments, both under the *Foreign Judgments Act 1991* (Cth) and the common law. They submit that the Court's interest rates apply to judgments enforcing foreign judgments and that by analogy those rates should be applied to judgments enforcing foreign arbitral awards. I do not consider those situations to be analogous to the present in view of the particular features of an ICSID arbitral award already referred to.

Issue 3: execution procedures in all the proceedings

23 In each proceeding, Spain seeks orders as follows (extracting here the proposed orders in the RREEF proceeding (NSD2169/2019)):

> 6. Subject to further order, a copy of any application for a step by way of execution of any of these orders including any application for the issue of a subpoena or for an examination order must be provided by email to the solicitors for the Respondent immediately after any such application is made.
>
> 7. An order departing from the notice requirement in the previous order will only be made on good cause being shown.

24 In essence the orders that are sought are directed at overriding or disapplying r 41.01 of the FCR which provides that a party may, without notice, apply to the Court for directions about the enforcement or execution of an order.

25 The justification for such orders is said to be to ensure that Spain's "immunities concerning execution and other relevant immunities are respected". Spain submits that such orders are appropriate in circumstances where the applicants could otherwise proceed ex parte with steps in execution of the judgment where there is a risk that orders might be made that do not respect Spain's immunities. The immunities referred to are those recognised in the *Foreign States Immunities Act 1985* (Cth) and the *Consular Privileges and Immunities Act 1972* (Cth) in giving effect to the *Vienna Convention on Consular Relations* (1963). The difficulties Spain foresees are those that it has previously faced as discussed in *Infrastructure Services Luxembourg S.à.r.l. v Kingdom of Spain (security for costs)* [2024] FCA 234 (application for leave to appeal dismissed in *Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l. (Security for Costs)* [2024] FCAFC 113 per Perram J, Derrington and Feutrill JJ agreeing).

26 Spain further submits that the provision in the rules for applications in aid of execution to be made without notice is not apt in respect of foreign state judgment debtors that enjoy various immunities including under Pt IV of the Foreign States Immunities Act. Spain submits that it should have the opportunity at the stage at which an application in aid of execution is made to raise, and have determined, any issues in relation to immunity in order to avoid the risk of infringement of its immunities by way of ex parte orders.

27 Spain emphasises that it is not making an application for such orders such a way as may be construed as submitting to the jurisdiction of the Court or waiving its immunity, but rather that it is making submissions to the Court as to what orders are appropriate to be made

following the publication of my earlier reasons for judgment and to give effect to those reasons.

28 I am not persuaded to make orders along the lines of those sought by Spain. I accept the applicants' submission that to require notice always to be given to Spain would be to fail to recognise that there are steps in aid of execution that may be taken that do not concern Spain as a respondent. For example, subpoenas and examination summonses could be issued to people to whom no consular immunity could be said to apply. There is no reason why Spain should be given notice of applications for the issue of such processes in advance. Also, a situation might conceivably arise where an ex parte application, for example to attach or freeze monies in an account, is clearly justified and the applicant should not be put to the time, trouble and expense of seeking a variation of or exception from the orders requiring notice in advance.

29 It is also relevant that any ex parte application brought by the applicant would attract the duty of candour. They would be under an obligation to raise with the decision-maker, be it a judicial registrar or a judge, any relevant considerations potentially counting against the orders that they sought or requiring that notice is given to Spain. That would include drawing to the attention of the decision-maker any immunities that Spain enjoys which might be implicated.

30 The applicants can be expected to respect such immunities as Spain enjoys, and in the event that they take a different view as to the existence or reach of such immunities, Spain will in due course have the opportunity to challenge that view in resisting the steps in execution that the applicants take. Those are matters for the future. I see insufficient justification in seeking to pre-empt them now.

Conclusion

31 The terms of the orders that I will make were otherwise agreed by the parties, noting that Spain does not agree that any orders should be made against it both because of the foreign state immunity that it claims and on the merits – the agreement to which I refer is only an acceptance by Spain that those are the terms of the orders that are properly to be made following my earlier reasons for judgment, reasons with which Spain disagrees.

I certify that the preceding thirty-one

(31) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Stewart.

Associate:

Dated: 26 November 2025