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The Evolving Enforcement Landscape in Australia for Arbitral Awards against Sovereigns: An Attractive Route for Award Creditors and an Escalating Risk for Sovereign Debtors


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Introduction

Over recent years, claimant investors with awards of damages won in investment treaty arbitration have increasingly been turning to Australia for recognition and enforcement of their awards against respondent States. This trend has been spearheaded by a series of decisions handed down by Australian courts, which have reinforced Australia's reputation as a pro-arbitration jurisdiction, adopted approaches that streamlined the process for recognition and enforcement, and rejected States' attempt at resisting recognition and enforcement on the basis of foreign state immunity.

As discussed in this chapter, different enforcement frameworks apply with respect to awards governed by the 1966 *Convention on the Settlement of Investment Disputes* (**ICSID Convention**)[1] and awards governed by the 1958 *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (**New York Convention**).[2] ICSID and non-ICSID award creditors alike may confront a taxing path to recognition and enforcement of an award against a recalcitrant State in circumstances where issues of sovereign immunity are left either entirely to the enforcing State's national legislation (in the case of the New York Convention, which is silent on matters of sovereign immunity) or are dealt with only partially in the convention (in the case of the ICSID Convention). Australia is arguably trending as an attractive forum for overcoming these obstacles. By virtue of its local procedures, novel approaches to construing waivers of sovereign immunity by reference to treaty obligations requiring recognition and enforcement, and a general pro-arbitration attitude, investors globally are expected to continue to consider Australian municipal courts as a vehicle for obtaining practical relief against sovereign award debtors. However, investors should be aware that some questions in this area are yet to be authoritatively determined, such as the scope of any waiver of foreign state immunity in respect of recognition and enforcement of awards under the New York Convention.

Defining Recognition, Enforcement and Execution of Arbitral Awards

Before discussing matters further, it is relevant to explain how Australian courts interpret the notions of 'recognition', 'enforcement' and 'execution', as these terms have been given very specific meaning in recent jurisprudence, which is different to some other jurisdictions. Conceptually, Australian courts interpret these as three distinct requirements, which an award creditor must satisfy. This interpretation has been recently confirmed by Australia's highest court, the High Court of Australia, which clarified the meaning of 'recognition', 'enforcement' and 'execution' in the context of an ICSID award in the decision of *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl & Another* (***Kingdom of Spain***)[3] – one of the many investment treaty cases brought by investors in the Spanish solar energy sector after Spain revoked its solar energy subsidy scheme.

In *Kingdom of Spain*, the High Court explained that:

- Recognition, in simple terms, is the court accepting the award as binding. The Court held that the recognition of an international arbitral award constitutes a 'determination that [it] is entitled to be treated as binding' and 'acceptance of the award's binding character and its preclusive effects'.[4]
- In contrast, enforcement refers to the legal formalisation of the award's status. In *Kingdom of Spain*, enforcement was described as 'the legal process by which an international award is reduced to a judgment of a court that enjoys the same status of any judgment of that court'.[5]
- Finally, execution is the process 'by which a judgment enforcing an international award is given effect'.[6] Ordinarily, execution involves a law-enforcement official taking measures against the property of the judgment debtor.[7]

Thus, in the Australian context, the term 'execution' is used to denote what many other jurisdictions refer to as 'enforcement' (being a process where the national courts exercise their coercive powers, for example, through seizure or auction of relevant assets by an officer of the court). In Australia there is no process akin to 'exequatur' or 'homologation' as these exist in some civil law jurisdictions. Instead, 'recognition' usually forms part of 'enforcement', except that when it comes to sovereign debtors, the notions of recognition and enforcement give rise to different issues of state immunity. Recognition and enforcement of an award involve a distinct process and the entry of a judgment or orders recognising and enforcing an award is a pre-requisite to 'execution' against the award debtor's assets.

These notions, and the corresponding obligations of signatory states with respect of foreign arbitral awards, are referred to in varying ways by the ICSID Convention and the New York Convention.

Section 6 of Part IV of the ICSID Convention sets out the obligations governing recognition and enforcement of an ICSID award. In particular, Article 53(1) provides that an award shall be binding and not subject to any appeal or to any other remedy except those provided for in the Convention. Article 54(1) further provides that each Contracting State shall recognise an ICSID award as binding, and enforce the pecuniary

obligations contained within that award as if it were a final judgment of a court in that State. The effect of Articles 53 and 54 is that Contracting States are bound to recognise and enforce an ICSID award in their municipal courts. As discussed further below, this obligation has been an important factor in the Australian courts' findings in respect of the ability of States to rely on foreign state immunity to resist recognition and enforcement.

In terms of execution, Article 54(3) provides that such process is to be governed by the laws concerning the execution of judgments in force in the State in which execution is sought. Article 55 of the ICSID Convention further states that nothing in Article 54 derogates from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution. The High Court in *Kingdom of Spain* interpreted these provisions as a statement of principle that no international obligations change the domestic law of the Contracting State and, therefore, claims of sovereign immunity can and do apply in the context of award execution, if proven in the circumstances.[8]

In a similar vein, Article III of the New York Convention enshrines the core obligation on Contracting States to recognise all arbitral awards within the scheme as binding and to enforce them under the domestic laws. It also removes conditions for recognition and enforcement in domestic laws that are more stringent than the conditions in the New York Convention, and simultaneously allows the continued application of any domestic laws that afford special or favourable rights to a party seeking enforcement.

Section 8 of the *International Arbitration Act 1974* (Cth) (**IAA**) gives effect to the New York Convention and provides that a foreign arbitral award made in a New York Convention country is binding on the parties to the award and can be enforced in an Australian court as if the award were a judgment or order of that court.[9] If a party wishes to object to the enforcement of a New York Convention award in Australia, it can only do so based on the limited grounds in Article V of the New York Convention (as replicated in section 8(5) of the IAA).

Contrary to the ICSID Convention, however, the New York Convention (and section 8 of the IAA) does not speak of execution, and is also silent with respect to the law applicable to, and any claims of, sovereign immunity. How sovereign immunity is considered at the recognition and enforcement stage of an award governed by the New York Convention is a matter for domestic law of the territory where enforcement is sought.

Implied Waiver of Foreign State Immunity in Recent Australian Jurisprudence

A common obstacle faced by investors seeking to recognise and enforce international arbitral awards against a State in any jurisdiction, including Australia, is the defence of sovereign immunity – a principle whose genesis is a rule of customary international law by which a State is immune from the jurisdiction of foreign courts.[10] In Australia, foreign States are immune from the jurisdiction of Australian courts and from the execution of judgments, except as provided for in the *Foreign State Immunities Act 1985* (Cth) (**FSIA**).[11]

The FSIA provides various exceptions to the general immunity from jurisdiction afforded to a foreign State or separate entity.[12] For instance, a foreign State surrenders immunity where the proceeding concerns: a commercial transaction; the employment of a person under a contract of employment made in Australia or to be performed wholly or partly in Australia; personal injury; or loss or damage to tangible property.[13] In addition, where a foreign State is a party to an arbitration agreement, subject to any inconsistent provision in the agreement, the foreign State is not immune in a proceeding for the exercise of the supervisory jurisdiction of an Australian court in respect of the arbitration (such as an application to set aside the award), or in a proceeding concerning the recognition and enforcement of the award (provided the State would not be immune in the proceeding concerning the underlying dispute).[14]

Relevantly for present purposes, a foreign State is also not immune in a proceeding in which it has submitted to the jurisdiction in accordance with section 10 of the FSIA. A State may submit to the jurisdiction by agreement or otherwise, including by instituting, intervening in or taking a step as a party to a proceeding.[15] However, a State will not have submitted to the jurisdiction merely by agreeing that the applicable law is the law of Australia, or where it has made an application for costs, or where it has intervened for the purpose of asserting immunity.[16] This raises a question of whether and how a foreign State can waive immunity – and if immunity can be waived by an agreement expressed in a treaty that provides that foreign awards shall be recognised as binding and enforced as if they were a final judgment of a local court.

Two recent cases before Australian courts have construed waivers of sovereign immunity by reference to treaty obligations arising under the ICSID and New York Conventions requiring recognition and enforcement of foreign awards by national courts: *Kingdom of Spain*; and *CCDM Holdings, LLC v Republic of India (No 3)* (***Devas***).[17] While these cases were brought before the courts in reliance on two distinct treaties and their distinct enforcement regimes (the ICSID Convention in *Kingdom of Spain* and the New York Convention in *Devas*), in both instances, the courts found that the FSIA did not protect a foreign State from the jurisdiction of Australian courts for the purposes of recognition and enforcement of the underlying arbitral awards. However, the *Devas* case was subsequently overturned by the Full Court of the Federal Court in *Republic of India v CCDM Holdings, LLC* [2025] FCAFC 2 (***Devas* appeal**) and leave has been granted for appeal to the High Court. This has created legal uncertainty surrounding waiver of foreign state immunity via ratification of the New York Convention, at least until the *Devas* appeal is heard and determined by the High Court.

Waiver in *Kingdom of Spain*

The *Kingdom of Spain* case followed an award won by investors in Spain's solar power and renewable energy industry, Infrastructure Services Luxembourg Sàrl and Energia Termosolar BV, in an ICSID arbitration under the Energy Charter Treaty (**ECT**). The investors claimed that Spain had failed to afford them fair and equitable treatment, as required under Article 10(1) of the ECT, and were ultimately awarded €101 million in damages.[18] Following this, the investors commenced proceedings in the Federal Court of Australia to have the ICSID awards recognised and enforced, claiming payment of the sums awarded plus interest and costs.[19]

Spain resisted the application for recognition and enforcement, claiming that it was immune from the jurisdiction of Australian courts pursuant to section 9 of the FSIA. The investors contended that Spain had waived its jurisdictional immunity by becoming a party to the ICSID Convention.

Skipping over the procedural history of the decision, the question before the High Court was whether Spain's entry into the ICSID Convention and concomitant agreement to Articles

53–55 constituted a waiver of foreign state immunity from the jurisdiction of the Federal Court pursuant to section 10(2) of the FSIA.[20]

Spain relied on international authorities to argue that section 10 of the FSIA permits an Australian court to recognise a waiver of foreign state immunity from jurisdiction only where the words of a treaty contain an 'express' waiver.[21] Spain argued that this does not extend to circumstances where waiver is derived by implication from a treaty obligation that requires State parties to recognise awards as binding and enforce the pecuniary obligations imposed by an award, as required under Articles 53 and 54 of the ICSID Convention. Spain argued that the mere act of becoming a party to the ICSID Convention does not amount to a waiver of immunity, as it is not a sufficiently clear and unambiguous act.

The High Court found that a waiver of sovereign immunity in an agreement or treaty does not need to be express, meaning that the words 'waiver' and 'immunity' do not need to be used in the relevant instrument. A waiver by agreement for the purposes of section 10(2) of the FSIA can be inferred or arise by implication even if an international agreement does not expressly use the word 'waiver', provided that the implication is clear from the words used and the context.[22] Applying this test, the High Court found that Spain's waiver for the purposes of section 10(2) was 'unmistakable', and arose out of Spain's agreement to Articles 53–55 of the ICSID Convention – that is, its agreement that awards not annulled within the ICSID framework would need to be recognised as binding and enforced by ICSID Convention Contracting States – although this did not extend to a waiver from execution.

Since the High Court's decision, there have been further developments in the case, with the investors filing a request for enforcement of the award as a judgment against Spain in June 2023.

The enforcement orders sought included orders for the examination of named Spanish consular officers in Australia for the purpose of identifying what assets Spain has in Australia, against which execution could potentially be pursued in order to satisfy the judgment.[23] On 28 June 2023, a Judicial Registrar of the Court made examination orders against two Spanish consular officers, which led to Spain filing an interlocutory application for those orders to be set aside, or in the alternative, the examinees to be excused from attendance. Spain's application relied on consular immunity as one of the bases for resistance. In response, the investors filed an interlocutory application seeking security for their costs in opposing the reconsideration application. In *Infrastructure Services Luxembourg S.à.r.l. v Kingdom of Spain (security for costs)* [2024] FCA 234, Stewart J ordered security for costs in favour of the investors but noted that 'the date for the examinees to attend under the examination orders has been put off'.[24] Subsequently, in August 2024, Spain sought leave to appeal Stewart J's security for costs orders. This application was dismissed, and Spain was ordered to pay the investor's costs.[25]

The High Court's rejection of the application of foreign state immunity to the recognition and enforcement of arbitral awards reinforced Australia's reputation as a pro-arbitration jurisdiction. From a practical perspective, the High Court's interpretation of Articles 53 and 54 of the ICSID Convention does not, however, have any bearing on award execution, and questions remain as to whether execution will be successful.[26]

Waiver in *Devas*

The *Devas* dispute came about as a result of the annulment by the Indian Cabinet Committee on Security of an agreement between Devas Multimedia Private Ltd and Antrix Corporation Ltd (an Indian State-owned enterprise) concerning the lease of space segment capacity on two Indian satellites. Arbitration proceedings were commenced by the Devas investors against India pursuant to the India–Mauritius Bilateral Investment Treaty.[27] The arbitration was administered as an *ad hoc* arbitration under the UNCITRAL rules by the Permanent Court of Arbitration. The tribunal ultimately found that the annulment of the agreement constituted unlawful expropriation and ordered the State to compensate Devas for the sum of US$111 million. Proceedings were subsequently commenced by the claimant investors in the Federal Court of Australia under section 8(3) of the IAA seeking recognition and enforcement of the award under the New York Convention. India filed an interlocutory application requesting that the originating application be set aside on the basis of foreign state immunity.

At first instance in *Devas*, Jackman J rejected India's attempt to resist the recognition and enforcement of the award. Jackman J determined that India had waived foreign state immunity by becoming a party to the New York Convention. The waiver arose pursuant to section 10(2) of the FSIA 'by way of clear and unmistakable necessary implication'.

His Honour described the obligation of Contracting States under Article III of the New York Convention to recognise arbitral awards as binding and enforce them, as a promise made by each Contracting State to all other Contracting States. By ratifying the New York Convention, India was agreeing – and moreover, requiring – Australia to recognise and enforce an arbitral award that falls within the scope of the Convention. His Honour observed that:

> *… the purpose and object of the New York Convention was to overcome the perceived difficulties in the enforcement by countries of foreign awards, by creating a convenient mechanism for enforcement no more onerous than the enforcement of domestic awards …*

To oppose recognition and enforcement on the ground of foreign state immunity would be inconsistent with Article III. Or, put another way, the Court found that the purpose and object of the New York Convention is fulfilled by concluding that India had waived sovereign immunity.

Jackman J also rejected India's submission that its commercial reservation to the New York Convention submitted pursuant to Article I(3) of the Convention was relevant in construing the scope of any immunity waiver, observing that India's commercial reservation was 'not directly relevant to the present dispute, in that Australia did not make any such reservation and Australia is the State where recognition and enforcement is presently sought'.[28]

His Honour further held that at the stage of determining whether the sovereign award debtor has waived immunity, it suffices for the award creditor to tender what appears to be on its face an arbitration agreement and a relevant arbitral award. The award creditor does not need to go further and establish that the apparent arbitration agreement is valid or applicable. Any challenges as to the validity or applicability of the arbitration agreement are to be dealt with in a subsequent stage of the proceedings involving consideration of the award debtor's grounds for resisting enforcement under Article V of the New York Convention.

On appeal, the Full Court of the Federal Court overturned the first-instance decision in *Devas*. The Court similarly relied on the reasoning in *Kingdom of Spain* that inference of waiver will only be drawn if the implication is clear from the words

used and the context, and must be 'unmistakeable'.[29] The Full Court seemed to have accepted that agreement to the New York Convention could in principle give rise to a waiver. The difference between the reasoning of Jackman J and that of the Court on appeal turned on the treatment of India's commercial reservation to the New York Convention.

The Court held that India's commercial reservation was expressly authorised by Article I(3) of the New York Convention and had the effect of modifying 'the relationship between the reserving state and other states in the application of the Convention between and amongst them', having a reciprocal effect.[30] On this reasoning, the Court found that India's commercial reservation qualified India and Australia's mutual obligations, resulting in Australia having no obligation to enforce awards that do not arise from differences arising from legal relationships which, in India, would not be considered commercial, and *vice versa*. Consequently, India's ratification of the New York Convention, considered with the commercial reservation, did not give rise to a waiver of foreign state immunity to the 'unmistakable' standard identified in *Kingdom of Spain* in respect of awards that do not determine differences arising out of legal relationships considered commercial under the law of India.

In terms of the present state of the law, the Federal Court's decision in *Devas* retains significant impact insofar as the Full Court accepted that agreement to the New York Convention gives rise to a waiver of jurisdictional immunity, so long as the commercial reservation is not engaged.

Importantly, however, on 12 June 2025, the High Court of Australia granted special leave to hear an appeal of the Full Court's decision in the *Devas* case. The High Court will have the final say on the construction of any waiver that may arise from the New York Convention in the coming months.

Impact of the Recent Decisions in Australia: A Tidal Wave or an Avenue for Creative Claims?

These recent decisions in the Australian courts have potentially significant ramifications for enforcement of arbitral awards in Australia. They have demonstrated Australia's pro-arbitration stance insofar as it relates to the recognition and enforcement of investment treaty awards against recalcitrant States,[31] and potential differences when enforcement is sought under the ICSID and New York Conventions. There are presently several other recognition and enforcement applications on foot against Spain in the Federal Court, brought by different investors to enforce both ICSID and non-ICSID awards made under the ECT. This illustrates that Australia is increasingly being picked as a test jurisdiction for enforcement, which may lend credence to the phenomenon of enforcement shopping or show a trend in favour of pursuing enforcement for commercial and strategic objectives rather than as a step towards debt recovery. However, pending the result in the *Devas* appeal in the High Court, it remains to be seen whether Australia will continue to feature as a creditor-friendly jurisdiction when it comes to the enforcement of awards against sovereigns. Moreover, several important questions remain to be answered.

One such question concerns the relationship between the duty to recognise and enforce an award enshrined in the ICSID and New York Conventions, and the European Union (**EU**) law. One of Spain's arguments in *Kingdom of Spain* was that the award could not be enforced because the underlying agreement to arbitrate was invalid under EU law – and that was pursuant to the decisions of *Republic of Moldova v Komstroy LLC*[32] and *Slovak Republic v Achmea BV*[33] in the Court of Justice of the European Union. These judgments determined that agreements to arbitrate in intra-EU bilateral investment treaties and the ECT are not applicable to intra-EU investor-state disputes, because they are contrary to EU law. The High Court did not engage with this issue in *Kingdom of Spain* because it considered these decisions to be irrelevant, given its finding that the agreement which gave rise to a waiver resulted from Spain's entry into the ICSID Convention, not its entry into the ECT, and there is no exception to the obligation of enforcement under the ICSID Convention.

Further, and as it currently stands according to High Court authority, 'whether or not enforcement against a State party to an award can lead to execution is left entirely to be determined under the domestic law of the Contracting State concerning state immunity or foreign state immunity from execution'.[34] A myriad of questions emerge that remain to be settled – including whether execution may be available against the assets of State entities and State-owned enterprises on the basis that they are functionally an arm of the government or the State's *alter ego*. These questions have not yet been grappled with by the Australian courts, but lessons can be drawn from the English decision in *La Générale des Carrières et des Mines v FG Hemisphere Associates LLC* (***Gécamines***).[35] FG Hemisphere Associates LLC was assigned two awards against the Democratic Republic of the Congo (**DRC**) and later sought to enforce these awards against La Générale des Carrières et des Mines Sarl (i.e., 'Gécamines'), a mining company owned by DRC.[36] The lower courts held that Gécamines was at all material times an organ of, and so to be equated with, the DRC, with its assets answerable for the DRC's debts.[37] However, the Privy Council disagreed, finding that it would take 'quite extreme circumstances to displace' the presumption of a separate corporate status in circumstances where the State-owned entity is a separate juridical entity with its own management and budget, formed for commercial or industrial purposes.[38] It was held that for a State-owned entity to be assimilated with a State, the affairs of the entity and the State would have to be 'so closely intertwined and confused' that the entity could not properly be regarded for any significant purpose as distinct from the State.[39] The various connections and dealings between the DRC government and Gécamines were considered at some length, but the evidence showed that Gécamines was not a 'mere cypher' for the DRC government.[40] Rather, on the evidence, Gécamines was a real and functioning corporate entity, having substantial assets and a substantial business, with its own budget and accounting, borrowings, debts and tax and other liabilities.[41] It was clearly distinct from the executive organs of government – and therefore it could not be held liable for the government's debts.

While the *Gécamines* decision is an important precedent, the matter is by no means settled and the next frontier of judicial innovation will likely lie in the exercise of Australian courts' coercive powers in respect of State assets that may be available for attachment.

Conclusion

Australia's evolving enforcement landscape as it pertains to arbitral awards against sovereigns presents both opportunities and challenges for investors and States alike. As evidenced by recent court decisions, Australia is trending as an attractive jurisdiction for the recognition and enforcement of arbitral awards against foreign States. With that said, there are complexities surrounding sovereign immunity (particularly

waiver via the New York Convention) and the execution of arbitral awards against State assets that remain to be solved. Time will tell whether proceedings in Australia will provide relief for the award creditors in practice.

Endnotes

1 *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) ch IV (**ICSID Convention**).

2 *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, opened for signature 10 June 1958, 330 UNTS 3 (entered into force 7 June 1959) (**New York Convention**).

3 (2023) 275 CLR 292 (*Kingdom of Spain*).

4 *Kingdom of Spain* (2023) 275 CLR 292, 319–20 [45] (Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ).

5 *Ibid.* 320 [45] (Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ).

6 *Ibid.*

7 *Ibid.*

8 *Ibid.* 319 [44] (Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ).

9 IAA sub-ss 8(1)–(3).

10 Reid Mortensen, Richard Garnett and Mary Keyes, *Private International Law in Australia* (LexisNexis Butterworths, 4th ed., 2019) 80.

11 See FSIA ss 9, 30.

12 *Ibid.* ss 10–21.

13 *Ibid.* ss 11–13.

14 *Ibid.* s. 17.

15 *Ibid.* sub-ss 10(2), (6).

16 *Ibid.* sub-ss 10(2), (7).

17 [2023] FCA 1266 (*Devas*).

18 *Kingdom of Spain* (2023) 275 CLR 292, 293, 304 [2] (Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ).

19 *Ibid.*

20 *Ibid.* 305 [7], 306 [10] (Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ).

21 *Ibid.* 307–11 [17]–[26] (Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ).

22 *Ibid.* 312 [27]–[28] (Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ).

23 *Infrastructure Services Luxembourg S.à.r.l. v Kingdom of Spain (security for costs)* [2024] FCA 234 [6].

24 *Infrastructure Services Luxembourg S.à.r.l. v Kingdom of Spain (security for costs)* [2024] FCA 234 [11].

25 *Infrastructure Services Luxembourg S.à.r.l. v Kingdom of Spain (security for costs)* [2024] FCAFC 113.

26 *Ibid.* 305 [6]–[9] (Kiefel CJ, Gageler, Gordon, Edelman, Steward, Gleeson and Jagot JJ).

27 *Agreement between the Government of the Republic of Mauritius and the Government of the Republic of India for the Promotion and Protection of Investments*, signed 4 September 1998 (entered into force 20 June 2000).

28 *Devas (No 3)* [2023] FCA 1266 [58].

29 *Devas* appeal [2025] FCAFC 2 [71].

30 *Devas* appeal [2025] FCAFC 2 [69].

31 Danielle Forrester and Boxun Yin, 'Australia as a Recognition and Enforcement Jurisdiction? The High Court of Australia's Reasoning in Kingdom of Spain v Infrastructure Services Luxembourg Sàrl [2023] HCA 11 and Likely Implications', *Kluwer Arbitration Blog* (Blog Post, 28 August 2023) https://arbitrationblog.kluwerarbitration.com/2023/08/28/australia-as-a-recognition-and-enforcement-jurisdiction-the-high-court-of-australias-reasoning-in-kingdom-of-spain-v-infrastructure-services-luxembourg-s-a-r-l-2023-hca-11-and-likely-impl

32 [2021] 4 WLR 132.

33 [2018] 4 WLR 87.

34 ICSID Convention art 54(3), cited in *Kingdom of Spain* (2023) 275 CLR 292, 319 [44].

35 [2012] UKPC 27.

36 *Ibid.* [1] (Lord Mance).

37 *Ibid.* [2] (Lord Mance).

38 *Ibid* [29] (Lord Mance).

39 *Ibid.*

40 *Ibid.* [61] (Lord Mance).

41 *Ibid.* [70]–[71], [78] (Lord Mance).

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