

IN THE COURT OF APPEAL

App No: CA-2025-002964

ON APPEAL FROM THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

COMMERCIAL COURT (KBD)

HIS HONOUR JUDGE PELLING KC

IN THE MATTER OF THE ARBITRATION (INTERNATIONAL INVESTMENT
DISPUTES) ACT 1966

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

(1) OPERAFUND ECO-INVEST SICAV PLC
(2) SCHWAB HOLDING AG

Claimants

– and –

THE KINGDOM OF SPAIN

Defendant/Respondent

– and –

BLASKET RENEWABLE INVESTMENTS LLC

Applicant/Appellant

APPELLANT’S REPLACEMENT
APPEAL SKELETON ARGUMENT

*References to the Core Bundle for Appeal are in the form [CB/Tab/Page].
References to the Supplementary Bundle for Appeal are in the form [SB/Tab/Page].
References to the Authorities Bundle for Appeal are in the form [AB/Tab/Page].*

16 February 2026

I. Introduction

1. This appeal is brought by Blasket Renewable Investments LLC (“**Blasket**”) against the order of HHJ Pelling KC sealed on 17 November 2025 (the “**Appealed Order**”),¹ by which the learned Judge dismissed Blasket’s application to be substituted as Claimant in place of OperaFund Eco-Invest SICAV Plc and Schwab Holding AG (together the “**Arbitration Claimants**”) in Claim No. CL-2021-000481. The learned Judge’s reasons are set out in his judgment of 10 November 2025: [2025] EWHC 2874 (Comm) (the “**Judgment**”).²
2. The Judgment came to two relevant findings:
 - 2.1. That arbitration awards rendered within the framework of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (“**ICSID Convention**”³ and “**ICSID awards**”), alternatively ICSID awards which concern disputes under the Energy Charter Treaty (“**ECT**”),⁴ are not assignable.⁵ This is the finding challenged pursuant to Ground 1.
 - 2.2. That upon registration of ICSID awards pursuant to s.2(1) of the Arbitration (International Investment Disputes) Act 1966 (the “**1966 Act**”),⁶ no “*new substantive rights*” are created in English law, meaning there is no self-standing English law enforcement right itself capable of assignment.⁷ This is the finding challenged pursuant to Ground 2.

¹ Order of HHJ Pelling KC, dated 10 November 2025 [CB/5/33].

² OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v The Kingdom of Spain [2025] EWHC 2874 (Comm) [CB/6/37].

³ Convention on the Settlement of Investment Disputes between States and Nationals of Other States (adopted 18 March 1965, entered into force 14 October 1966) 575 UNTS 159 [AB/19/743].

⁴ Energy Charter Treaty (opened for signature 17 December 1994, entered into force 16 April 1998) 2080 UNTS 95 [AB/21/774].

⁵ Judgment, at [71] [CB/6/59-60].

⁶ Arbitration (International Investment Disputes) Act 1966 [AB/18/717].

⁷ Judgment, at [78] [CB/6/62].

3. Those findings put the Judgment (and therefore English law) at odds with two judgments of foreign courts – one from Australia and one from the United States (Southern District of New York) – which have considered the same points and come to the opposite conclusions.⁸ The Australian judgment, of the Federal Court of Australia in Blasket Renewable Investments LLC v Kingdom of Spain⁹ (“**Blasket v Spain (FCA)**”), concerned identical questions to those raised by the two grounds of appeal, in respect of breaches by Spain of the ECT (but concerning different ICSID awards). In his judgment in that case, Stewart J held that a domestic, Australian right to enforce an ICSID award was created on registration of that award and that this right was capable of assignment as a matter of Australian law,¹⁰ and that ICSID awards were in any event assignable, both as a matter of construction of the ICSID Convention and as a matter of public international law generally.¹¹
4. It is no small irony, therefore, that although the learned Judge expressed concern in his Judgment that finding ICSID awards, or the English law right to enforce them, to be assignable “*would give rise to the entirely undesirable possibility that the effect of registration might permit assignment in some jurisdictions but not others*”,¹² in fact it is his Judgment which has achieved precisely that. The position as it now stands is that the same assignee enforcing the same ICSID award in Australia or in New York would be permitted to do so, but were that assignee to bring the award to England, they would be shut out. At an impressionistic level, that disjuncture as between sophisticated jurisdictions itself suggests that the learned Judge’s findings are likely to have been wrong.
5. Although the Appellant’s grounds of appeal begin with the question of treaty interpretation (“*The learned Judge erred in law in concluding that the ICSID Convention*

⁸ Blasket Renewable Investments LLC v Kingdom of Spain [2025] FCA 1028, dated 29 August 2025 [AB/14/560]; Blue Ridge Investments LLC v Republic of Argentina (Memorandum Opinion & Order), 10 Civ. 153 (PGG), dated 30 September 2012 [AB/11/397].

⁹ Blasket Renewable Investments LLC v Kingdom of Spain [2025] FCA 1028, dated 29 August 2025 [AB/14/560].

¹⁰ Blasket v Spain (FCA), at [321] – [326] [AB/14/653-655].

¹¹ Blasket v Spain (FCA), at [310] and [326] [AB/14/650, 655].

¹² Judgment, at [78] [CB/6/62].

and/or the ECT preclude the assignment of ICSID awards” – Ground 1), the logical starting point for the English court’s analysis is the English law right which forms the subject of Ground 2 (“The learned judge erred in law in finding that the ‘registration [of ICSID awards] does not create nor was it intended to create new substantive rights’ pursuant to s.2(1) of the [1966 Act] which are capable of assignment as a matter of English law”).

6. Ground 2 asks this Court to confirm that an English law right to payment – which is what registration of an ICSID award under s.2(1) of the 1966 Act creates – is capable of assignment and that an assignee is entitled to bring an action for its recovery in the ordinary way. As explained below:

- 6.1. On a proper construction of s.2(1) of the 1966 Act, registration of an ICSID award creates a new, English law statutory right to enforce which did not exist prior to registration. That right is itself capable of assignment.

- 6.2. That analysis brings the interpretation of s.2(1) into line with (i) the approach in English law to the assignment of non-ICSID arbitration awards; (ii) the scheme of the ICSID Convention (which devolves questions of enforcement to domestic jurisdictions); and (iii) the treatment in English law of foreign judgments which are subjected to similar recognition processes under s.2(2) of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (the “**1933 Act**”) and under s.9(3) of the Administration of Justice Act 1920.

7. Ground 1 then logically arises following that English law analysis. By that ground, the Appellant asks the Court to confirm that as a matter of treaty interpretation, and as a matter of public international law generally, there is nothing which precludes the Appellant from assigning its rights in an ICSID award. As to that:

- 7.1. The starting point is that, as the learned Judge below rightly accepted, there is no general rule of international law by which, if a “*natural or juridical person is to be given a right to assign... this can only be done by way of a specific grant of right or capacity*”.¹³ On the contrary, the structure of international law is

¹³ Judgment, at [58] – [59] [CB/6/56].

permissive, such that if a lacuna exists, then it ought not to be interpreted as a prohibition.¹⁴

7.2. It is common ground that neither the ICSID Convention nor the ECT contain any express provision prohibiting assignment by award creditors of ICSID or ECT awards. Contrary to Spain's case below, there is no basis for inferring such a prohibition from Article 15 of the ECT; nor from the ICSID Convention.

7.3. Even if matters were left there, the learned Judge's conclusions at [79(b)] of the Judgment would be wrong in the light of the above; and Ground 1 ought to succeed.

7.4. However, a number of additional points militate strongly in favour of granting the appeal:

7.4.1. On a proper construction of the ECT, an award rendered pursuant to its terms is itself an "investment" benefitting from the protections enumerated in the ECT. These protections include the right to sell (or dispose of) an award. As such, the States party to the ECT – including Spain – have expressly guaranteed the Claimant's right to assign an ICSID award rendered under it.

7.4.2. Likewise, on a proper construction of Article 54(2), and in particular when read in line with the "evolutionary" approach endorsed by the Supreme Court in Basfar v Wong,¹⁵ that provision is broad enough to permit assignees to seek recognition and enforcement of an ICSID award. That the ICSID Convention does not purport to regulate the assignability of ICSID awards also makes sense when one considers that Article 54(3) devolves questions of enforcement (and by extension, of enforceability) to domestic jurisdictions.

¹⁴ S.S. Lotus (France v Turkey) 1927 P.C.I.J. (ser. A) No. 10, dated 7 September 1927 at pp. 18 – 19, finding that where international law does not contain any express prohibition, sovereign States generally have broad discretion to act in the manner they see fit [**AB/10/366-368**].

¹⁵ Basfar v Wong [2022] UKSC 20, dated 6 July 2022 at [64] – [67] [**AB/52/1560-1561**].

7.4.3. Again, impressionistically, those are eminently sensible conclusions. The alternative is to find that Spain, having signed treaties by which private investors were given the right to sue it in the event of mistreatment, those private investors having successfully exercised those rights, and Spain having been found to owe them compensation, may nevertheless arbitrarily restrict those investors' proprietary rights in the resultant awards, by both refusing to pay the compensation owed and insisting that it should be allowed to dictate whether and to whom the mistreated investor may sell its debt.

8. In the premises, this Court is respectfully invited to allow the Appellant's appeal on both grounds.

II. **Background**

9. On 31 July 2015 the Arbitration Claimants commenced an arbitration against Spain pursuant to the terms of the ICSID Convention. The arbitration was brought on the basis that Spain had breached its obligations under the ECT by making changes to the legislation governing Spain's renewable energy tariff regime in a manner that wrongfully damaged the Arbitration Claimants' investments in photovoltaic solar installations in Spain.

10. On 6 September 2019, the tribunal handed down an award (the "**Award**"),¹⁶ which upheld the Arbitration Claimants' claims and awarded damages of USD 29.3 million (subsequently corrected to EUR 29.3 million)¹⁷ plus interest and costs. On 25 February 2020, Spain filed an application for the annulment of the Award. On 2 March 2023, this was rejected by an *ad hoc* annulment committee convened under Article 52 of the ICSID Convention.¹⁸

11. To date, Spain has not paid any of the amount awarded to the Arbitration Claimants.

¹⁶ OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v The Kingdom of Spain, ICSID Case No. ARB/15/36, Award, dated 6 September 2019 [SB/2/8].

¹⁷ Rectification Decision dated 28 October 2019, correcting the dispositive section so that damages are stated in euros, not dollars.

¹⁸ OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v The Kingdom of Spain, ICSID Case No. ARB/15/36, Decision on Annulment, dated 2 March 2023.

12. On 9 August 2021, the Arbitration Claimants applied *ex parte* for permission to register and enforce the Award as a judgment in England pursuant to ss.1 and 2 of the 1966 Act.¹⁹ On 14 September 2021, Mrs Justice Cockerill (as she then was) granted that application and issued a Registration Order, sealed on the same date.²⁰ The Arbitration Claimants then served the Registration Order on Spain through the Foreign Process Section, which took several months.
13. On 6 January 2023, following service, Spain applied to set aside the Registration Order (the “**Set Aside Application**”).²¹ That application was dismissed by Mr Justice Fraser insofar as it relied on an alleged failure to satisfy the obligation to give full and frank disclosure; but it survives insofar as it is premised on an assertion of immunity by Spain under the State Immunity Act 1978. The immunity aspect of the Set Aside Application is presently stayed pending judgment of the Supreme Court in another case against Spain, which raises substantially identical issues: Infrastructure Services Luxembourg and Energia Termosolar v Kingdom of Spain (the “**ISL Matter**”).²²
14. On 31 January 2024, the Arbitration Claimants entered into an assignment agreement with Blasket (the “**Assignment Agreement**”),²³ under which they assigned “*all of the rights, interests and benefits of the Assignors [i.e., the Arbitration Claimants] under or in respect of the Award (including the Decision on Rectification and the Annulment Decision) (including in each case, if any, the respective decision on arbitration costs and legal fees therein)*”.²⁴ Following this assignment, on 25 July 2024 Blasket applied for an order, pursuant to CPR 17.1(3) and 19.2(4), that it be substituted for the Arbitration Claimants as sole Claimant in the set aside proceedings, and that Blasket be granted

¹⁹ Claimants’ Application Notice (Registration of Award), dated 9 August 2021.

²⁰ Order of Mrs Justice Cockerill DBE, dated 14 September 2021 [SB/1/3].

²¹ Application Notice dated 6 January 2023.

²² The hearing of which took place before the Supreme Court on 1 and 2 December 2025.

²³ Assignment Agreement between the Claimant and the Appellant, dated 31 January 2024 [SB/3/19].

²⁴ Assignment Agreement, Clause 1.1 [SB/3/22].

permission to make consequential amendments to the Claim Form (the “**Substitution Application**”).²⁵

15. Spain resisted the Substitution Application, asserting (in summary) that the Arbitration Claimants’ rights in the Award are not assignable as a matter of international law and therefore did not pass to Blasket by means of the Assignment Agreement.
16. On 28 and 29 October 2025, the Substitution Application was heard by HHJ Pelling KC. As noted above, HHJ Pelling KC dismissed the Substitution Application in the Appealed Order, which is the subject of this appeal.

III. Ground 2 – “The learned judge erred in law in finding that the ‘registration [of ICSID awards] does not create nor was it intended to create new substantive rights’ pursuant to s.2(1) of the [1966 Act] which are capable of assignment as a matter of English law”

A. Summary of the Appellant’s case in relation to Ground 2

17. Turning first to Ground 2: the learned Judge was wrong to find, at paragraphs [72] – [78] of the Judgment, that “*registration [of an ICSID award] does not create nor was it intended to create new substantive rights*” in English law, capable themselves of assignment. That finding runs contrary to the plain wording of ss.1 and 2 of the 1966 Act; the scheme of the ICSID Convention; the weight of (persuasive) foreign judgments on the issue; and would be inconsistent with the approach in English law to an equivalent situation in circumstances where the instrument sought to be enforced is a foreign judgment.

B. Relevant findings of the Judge below (Ground 2)

18. The relevant parts of the Judgment are paragraphs [72] – [78] and in particular, the learned Judge’s findings:
 - 18.1. At [76] that “*the effect of registration under the Act [is limited] to defining the force and effect of a registered award for the purpose of execution by analogy with a High Court monetary judgment*”.

²⁵ Appellant’s Application Notice dated 25 July 2024 [CB/8/67].

- 18.2. At [78] that “*registration does not create nor was it intended to create new substantive rights. If the award is non-assignable, that cannot be changed by registration.*”

C. Text and purpose of ss.1 and 2 of the 1966 Act

19. Section 1(2) of the 1966 Act provides as follows in respect of ICSID awards:

A person seeking recognition or enforcement of such an award shall be entitled to have the award registered in the High Court subject to proof of the prescribed matters and to the other provisions of this Act.

20. Section 2(1) of the 1966 Act provides as follows:

...an award registered under section 1 above shall, as respects the pecuniary obligations which it imposes, be of the same force and effect for the purposes of execution as if it had been a judgment of the High Court given when the award was rendered pursuant to the Convention and entered on the date of registration under this Act, and, so far as related to such pecuniary obligations—

(a) proceedings may be taken on the award,

(b) the sum for which the award is registered shall carry interest,

(c) the High Court shall have the same control over the execution of the award,

as if the award had been such a judgment of the High Court.

21. By that section, Parliament intended to implement into domestic law the United Kingdom’s international law obligations pursuant to Article 54 of the ICSID Convention.²⁶ That Article reads as follows:

(1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.

²⁶ This was rightly recognised by the learned Judge at [76] of his Judgment [CB/6/61].

(2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.

(3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.

D. Effect of ss.1 and 2 of the 1966 Act

22. On a proper construction, s.2(1) of the 1966 Act creates a new, English law statutory right to enforce. That right is itself capable of assignment. [AB/18/718]
- 22.1. Registration of an ICSID award under s.1 of the 1966 Act gives rise to an automatic statutory right to enforce the pecuniary obligations in that award in England “*as if it had been a judgment of the High Court*”. That is not a right which pre-exists registration of the award – it is a new right, created by the relevant statutory provision, which comes into existence upon registration. [AB/18/717]
- 22.2. Section 2(1)(a) of the 1966 Act also expressly provides that, in respect of the pecuniary obligations in an award, following registration “*proceedings may be taken on the award ... as if the award had been such a judgment of the High Court*”. A right to bring proceedings to recover money owed is a chose in action in English law.²⁷ Choses in action are capable of assignment in equity or at law.²⁸
- 22.3. The starting point is therefore that registration of an award pursuant to the 1966 Act creates an enforcement right which is capable of being assigned.
23. Contrary to the learned Judge’s finding at [76], that analysis is not precluded by the Court of Appeal’s judgments in Micula & Ors v Romania [2018] EWCA Civ 1801 (“*Micula (CA)*”) nor that in Infrastructure Services Luxembourg Sarl v the Kingdom of Spain [2024] EWCA Civ 1257 (the “*ISL Judgment*”): [AB/6/145]

²⁷ Torkington v Magee [1902] 2 KB 427, at p. 430 [AB/39/1081].

²⁸ Subject to the provisions of s.136 of the Law of Property Act 1925 [AB/84/2207].

- 23.1. The learned Judge’s reliance on Leggatt LJ’s findings in Micula (CA) at [257] – [AB/6/200]
[259] proceeded from a misunderstanding of those findings.
- 23.2. Properly understood, Leggatt LJ’s judgment in Micula (CA) is authority for the proposition that the Court does not have the power, under s.2(1) of the 1966 Act, to “*refuse to enforce an award for a reason that would justify staying enforcement of an ordinary domestic judgment*”: Micula (CA), at [259]. As to the implication [AB/6/200]
of the analogy in s.2(1) of the 1966 Act between an award and a judgment of the High Court, Leggatt LJ held that this was “*limited to defining the force and effect of a registered award for the purpose of execution*”: and that “[t]his gives the national court control over the process of execution of the award, which I would interpret as including its manner and timing”: Micula (CA), at [259] and [260]. [AB/6/200]
- 23.3. The Court of Appeal’s judgment in Micula (CA) was not concerned with the question of an applicant’s rights *vis-à-vis* the award sought to be enforced. It is not, therefore, authority for the proposition either that s.2(1) of the 1966 Act creates no independent English law enforcement right, nor that such a right may not be assigned. The judgment does not say anything about either of these points. The discussion was instead concerned with the United Kingdom’s obligations in relation to an award, and the Court’s powers, as an organ of the state, when an award is sought to be enforced.
- 23.4. The learned Judge noted, at [77] of the Judgment, that the subject matter of Micula CA was “*different from that which arises in this case*” but nevertheless concluded that “*the guiding principle remains the same.*” For the reasons explained above, that is not correct.
- 23.5. Insofar as Leggatt LJ’s judgment is relevant to the present case, it supports the analysis advanced by the Appellant. That is because it confirms that s.2(1) limits the Court’s powers only insofar as those powers would conflict with the object and purpose of the ICSID Convention – for example, where they give a right to appeal what the ICSID Convention requires to be an unappealable award. Insofar as they do not so conflict, however, there is no principled reason to find that they are excluded. Thus, when English law would otherwise permit it following a judgment of the High Court, there is no principled reason why an assignment of

domestic enforcement rights should be considered prohibited by s.2(1). Likewise, seeking garnishee orders, attachments of assets, disclosure of information and other measures routinely associated with the execution of arbitration awards or judgments (pecuniary obligations) in England, must be permitted irrespective of whether they are measures known to or accepted by international law.

- 23.6. Neither do the findings of Philips LJ at paragraph [74] of the ISL Judgment [AB/8/283] support the learned Judge’s findings. That part of Philips LJ’s judgment simply endorsed a part of the judgment of the High Court of Australia²⁹ between the same parties which found that:

The obligation to “recognize” is expressed to apply to the entirety of “an award rendered pursuant to this Convention” and to be no more than an obligation to recognise the award “as binding”. The obligation to “enforce” is expressed to apply only to “the pecuniary obligations imposed by [the] award” and to go no further than to oblige the Contracting State to enforce those pecuniary obligations within its territories “as if [the award] were a final judgment of a court in that State”.

- 23.7. That says nothing at all about whether, following recognition, the right to enforce “the pecuniary obligations” in an ICSID award is a right that is assignable under English law (or under Australian law). Certainly, it is not authority for the proposition at which the learned Judge arrived at paragraph [76] of his Judgment, namely that “[t]he obligation to ‘enforce’ is expressed to apply only to the pecuniary obligations imposed by the award and to go no further than to oblige the contracting state to enforce those pecuniary obligations within its territories” – that goes well beyond what Philips LJ held.
24. The construction of ss.1 and 2 advanced above is also consistent with the approach in English law to commercial (non-ICSID) arbitration awards. As to that:
- 24.1. Section 58(1) of the Arbitration Act 1996 provides that “*unless otherwise agreed by the parties, an award made by the tribunal pursuant to an arbitration*

²⁹ Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l. [2023] HCA 11, dated 12 April 2023 at [43] [AB/63/1947].

*agreement is final and binding both on the parties and on any persons claiming through or under them.”*³⁰ The English court recognises the assignment of arbitration awards and permits their enforcement.³¹

- 24.2. That argument was advanced by the Appellant before the learned Judge below. At [74] of the Judgment, the learned Judge dismissed it on the basis that the Arbitration Act 1996 does not apply to proceedings pursuant to the ICSID Convention. That is correct, but it is not an answer to the point which the Appellant was advancing, namely that the approach in English law to the assignment of other arbitral awards ought to be taken into account by the Court when considering whether ICSID awards may be assigned and, in the absence of a substantive reason to depart from that approach, it ought to be replicated.
- 24.3. That is particularly important when one considers that arbitration awards, and the debts arising under them, are protected property rights under Article 1 of the First Protocol to the European Convention on Human Rights (“**A1P1**”).³² That applies equally to assignees of arbitration awards.³³ A1P1 protects the right of the holder of an arbitration award to dispose of it, or indeed to assign it.³⁴ Thus, where that right is interfered with, there is a risk of a breach of the United Kingdom’s obligations under A1P1; certainly, a breach has been found by the ECtHR where the relevant authorities “*have... not taken the necessary measures to fully enforce*

³⁰ See also Roussel-Uclaf v G.D. Searle & Co. Limited [1978] R.P.C., dated 14 October 1977 at p. 755 (interpreting the similar language at s.1 of the Arbitration Act 1975) [AB/40/1095].

³¹ See Gater Assets Limited v Nak Naftogaz Ukrainiy [2007] EWCA Civ 988, dated 17 October 2007 at [6] [AB/45/1292].

³² Stran Greek Refineries and Stratis Andreadis v Greece App No. 13427/87 (ECtHR), dated 9 December 1994 at [62] [AB/78/2137-2138].

³³ Regent Company v Ukraine App No. 773/03 (ECtHR), dated 3 April 2008 at [61] [AB/79/2159-2160]. That case concerned a company (Regent) which had purchased the right to pursue a debt resulting from an arbitration award.

³⁴ Marckx v Belgium App No. 6833/74 (ECtHR), dated 13 June 1979 at [63] [AB/77/2078-2079].

*the arbitration award in question and have not provided any convincing reasons for that failure.”*³⁵

E. Consistency with the scheme of the ICSID Convention

25. The appellant’s reading of s.2(1) is also consonant with the scheme of the ICSID Convention. As to that: [AB/18/718]

25.1. At [42] of the Judgment, the learned Judge held that the phrase “*a Party*” in Article 54 should be read to mean a “*party to the dispute*”; and that non-parties to an award therefore could not “*seek recognition or enforcement*”. The Appellant challenges that finding pursuant to Ground 1, not least because that finding is expressly inconsistent with the views expressed by the Supreme Court as to the scope of the obligations in Article 54 in Micula and others v Romania (“**Micula SC**”),³⁶ as explained below.

25.2. Even were the Appellant wrong about that, however, and it were correct that (i) Article 54 restricts the right to seek recognition or enforcement to the parties to the award; and (ii) ss.1 and 2 of the 1966 Act faithfully implement Article 54, including that restriction, then it remains the case that following the registration of the award by the original award creditor,³⁷ a further, domestic law right to enforce arises.

25.3. Article 54(3) of the ICSID Convention expressly provides that this enforcement right “*shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.*” In other words, once the award has been registered, and proceedings move to the “execution” stage, international law ceases to be the driving applicable legal framework. Rather, rights with respect to the registered award are subject to the domestic law framework, here English law. [AB/19/763-764]

³⁵ Kin-Stib and Mjkic v Serbia App No. 12312/05 (ECtHR), dated 20 April 2010 at [85] [AB/80/2174-2175].

³⁶ Micula and others v Romania [2020] UKSC 5, dated 19 February 2020 at [105] [AB/7/239-240].

³⁷ The only party empowered to “seek” recognition or enforcement on the erroneous Judgment below.

25.4. As a matter of English law, a right to enforce a judgment or award debt is uncontroversially a chose in action capable of assignment.³⁸ It follows that the learned Judge was simply wrong to say that no new rights are created.

F. Persuasive foreign judgment on the point

26. The above reading of s.2(1) of the 1966 Act is consistent with and supported by the analysis of Stewart J in Blasket v Spain (FCA).
27. That judgment considered the question whether s.35(4) of the International Arbitration Act 1974 of Australia (which, like s.2(1) of the 1966 Act, mandates that ICSID awards be enforced “*as if the award were a judgment or order of [the Australian court]*”) gives rise to a domestic, Australian law right independently capable of assignment. [AB/86/2226]
28. Stewart J agreed that it did, holding that (i) “*on the relevant award being made ... there existed rights of enforcement of the award in Australian domestic law*”;³⁹ and (ii) upon registration of the award, an Australian law enforcement right was created; and (iii) “*the rights of enforcement which pertain to an arbitral award are choses of action capable of being assigned*” as a matter of Australian law.⁴⁰ The learned Judge did not engage with Stewart J’s analysis (which is analogous to the English law context), nor explain on what basis he considered it inapposite here.

G. Position in relation to foreign judgments being enforced in England

29. Finally, the construction of ss.1 and 2 of the 1966 Act advanced above is consistent with the approach in English law to the enforcement of foreign judgments:
- 29.1. Section 2(2) of the 1933 Act, which is substantially identical to s.2(1) of the 1966 Act,⁴¹ has been held to give rise to new rights to bring a bankruptcy petition in England that would not exist absent registration (*i.e.*, such a petition could not be

³⁸ See, e.g., Goodman v Robinson, Brown, Janson & Co (1886) 18 Q.B.D. 332, dated 14 December 1886 at p. 334 [AB/38/1075].

³⁹ Blasket v Spain (FCA), at [322] [AB/14/654].

⁴⁰ Blasket v Spain (FCA), at [322] [AB/14/654].

⁴¹ 1933 Act, s.2(2): “*A registered judgment shall, for the purposes of execution, be of the same force and effect... as if the judgment had been a judgment originally given in the registering court and entered on the date of registration*” [AB/17/707].

brought in reliance on the foreign judgment alone). Thus, in Re A Judgment Debtor⁴² the Court was faced with a bankruptcy notice based upon a French judgment which had been registered in England pursuant to the 1933 Act. The Court held it “*must decline to read into that language by implication limiting words which would cut down its effect*” to something narrower; and that “*the effect of the Act of 1933 as I have construed it is to place the foreign judgment, when registered for the purposes of the bankruptcy notice, in the same position as if it was a final judgment of an English Court.*”⁴³

29.2. Likewise, registration of a Cayman Islands judgment under s.9(3) of the Administration of Justice Act 1920, which is also substantially identical to s.2(1) of the 1966 Act,⁴⁴ has been held to create a new, English judgment capable of enforcement in Italy pursuant to the Judgments Regulation (Regulation (EU) No 1215/2012), notwithstanding that the original Cayman Islands judgment could not have been.⁴⁵ There, the Judge drew a distinction between the English judgment resulting from registration and the original Cayman Islands judgment, holding that “*the English judgment is of exactly the same status as another judgment of the High Court.*”⁴⁶

IV. Ground 1 – “The learned Judge erred in law in concluding that the ICSID Convention and/or the ECT preclude the assignment of ICSID awards”

A. Summary of the Appellant’s case in relation to Ground 1

⁴² Re A Judgment Debtor [1939] Ch. 601 [AB/1/12].

⁴³ *Ibid.* pp. 608 – 609 [AB/1/19-20].

⁴⁴ Administration of Justice Act 1920, s.9(3): “[w]here a judgment is registered under this section – (a) the judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered upon the date of registration in the registering court” [AB/16/698].

⁴⁵ Strategic Technologies PTE Ltd v Procurement Bureau of the Republic of China [2016] EWHC 3776 (QB), dated 7 November 2016 at [2] and [8] (“**Strategic Technologies**”) [AB/4/97-98].

⁴⁶ Strategic Technologies, at [8] [AB/4/98].

30. Turning then to Ground 1: the learned Judge was wrong to find, at paragraphs [43] to [53] and [71] of the Judgment, that there is a restriction on the assignment of ICSID awards either at Article 54(2) of the ICSID Convention or otherwise in the ECT.
31. On the contrary, the ICSID Convention does not expressly address assignment: matters related to the enforcement of ICSID awards (including, by necessary implication, questions of assignability) are devolved to domestic jurisdictions by Articles 54(2) and 54(3). Article 54(2), properly interpreted, is broad enough to be read as granting a right to assignees to seek recognition and enforcement of ICSID awards (and certainly there can be no basis for reading it as either an express or implied prohibition on assignment).
32. By contrast, the ECT does contain express protections on the assignability of awards rendered under it, because such an award would itself be a qualifying “investment” attracting the protections enumerated in the ECT, to which Spain and the other States party signed up. Those protections include a guarantee that the owner of an investment would be entitled to sell it. In the light of the ICSID Convention’s neutrality on the topic (as explained above), this positive protection in the ECT must then be treated as controlling for purposes of the assignability analysis.
33. Alternatively, insofar as the learned Judge was right to read the phrase “*a party*” at Article 54(2) as restricted to the parties to the underlying dispute, then he was wrong about its effect: even on the learned Judge’s reading, Article 54(2) is, at most, only a restriction on “*seeking*” recognition or enforcement – it says nothing about assignments which take place (as here) after recognition or enforcement has been sought. Either of these interpretations would reflect the commercial and legal circumstances existing now.⁴⁷

B. Relevant findings of the Judge below (Ground 1)

34. The relevant parts of the Judgment are paragraphs [43] to [53] and, in particular, the learned Judge’s findings:
 - 34.1. at [51] that “*the phrase ‘a party’ in Article 54(2) of the ICSID Convention [does not refer] to anyone other than a party to the arbitration in issue and in*

⁴⁷ A consideration which forms part of the interpretative exercise. See Basfar v Wong [2022] UKSC 20, dated 6 July 2022 at [64] – [67] [AB/52/1560-1561].

consequence only a party to the underlying arbitration can seek recognition or enforcement of a ICSID Convention award”;

34.2. at [53] that “*claims and awards concerning claims under the ECT are not assignable as a matter of construction of the ECT*”; and

34.3. at [79] that “*as a matter of construction of the ICSID Convention and/or ECT, awards made in ICSID Convention arbitrations, alternatively in such arbitrations concerning ECT disputes, are not assignable*”.

C. Approach to interpretation of treaties

35. The present appeal turns on the Court’s interpretation of two international treaties, namely the ICSID Convention and the ECT.

36. Before the learned Judge, Spain argued that “*if an ICSID award creditor that is a natural or juridical person is to be given a right to assign rights arising pursuant to an ICSID award, this can only be done by way of a specific grant of right or capacity*”.⁴⁸ The learned Judge rightly rejected that contention.⁴⁹

37. The true position is the opposite: lacunae in international law must be interpreted permissively, rather than prohibitively.⁵⁰ Thus, in the absence of provisions in the ICSID Convention and in the ECT regulating assignment, it cannot follow that assignment is prohibited.

38. When interpreting the texts of the two treaties at the heart of this appeal, the Court must “*interpret the English text... in a normal manner, appropriate for the interpretation of*

⁴⁸ Judgment, at [58] [CB/6/56].

⁴⁹ Judgment, at [59] [CB/6/56].

⁵⁰ *S.S. Lotus (France v Turkey)* 1927 P.C.I.J. (ser. A) No. 10, dated 7 September 1927 at pp. 18 – 19, finding that where international law does not contain any express prohibition, sovereign States generally have broad discretion to act in the manner they see fit [AB/10/365-368]. *See also*: ICJ Advisory Opinion of 22 July 2010 (Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo), dated 22 July 2010 at [84] [AB/83/2204-2205]; H. Quane, “*Silence in International Law*”, 84(1) BYBIL 240 (2014), pp. 240 – 270 [AB/103/2466-2496]. The requirement under A1P1 that rights to assign or otherwise dispose of property be protected is also inconsistent with any claim that international law contains a general prohibition on assignment of arbitral awards.

an international convention, unconstrained by technical rules of English law, or by English legal precedent, but on broad principles of general acceptance".⁵¹ Those "broad principles of general acceptance" include the provisions of the Vienna Convention on the Law of Treaties 1969 (the "**Vienna Convention**"),⁵² and in particular Articles 31 to 33. In essence, this is the ordinary meaning of the words used, in their context and in the light of the object and purpose of the treaty. Ultimately, the purpose of the exercise is to determine the common intention of the State parties to the treaty.⁵³

39. The interpretative exercise must determine the ordinary meaning of the text as it is understood today, and is not limited to taking account only of circumstances as they existed at the time that the relevant convention was concluded.⁵⁴

D. Absence of prohibition on assignment in the ICSID Convention and the ECT

40. As to the texts of the ICSID Convention and the ECT, neither instrument contains a prohibition on assignment.
41. At [53] of the Judgment, the learned Judge accepted Spain's argument that such a prohibition may, in effect, be inferred from Article 15 of the ECT (which he accepted should be read as an exception to a general rule that claims and awards under the ECT are not assignable).⁵⁵ He was wrong to do so: [AB/21/792]
- 41.1. Article 15 is not in fact concerned with assignment at all, and so cannot be considered as reflecting a need to legislate for an exceptional case when

⁵¹ JTI POLSKA Sp. Z o.o. and others v Jakubowski and others [2023] UKSC 19, at [22] – [25] [AB/53/1604] (referring to James Buchanan & Co. Ltd v Babco Forwarding & Shipping (UK) Ltd. [1978] AC 141, at p. 152 (D–E) [AB/41/1112]).

⁵² *Vienna Convention on the Law of Treaties* (opened for signature 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 [AB/20/770].

⁵³ Royal Bank of Canada v The Commissioners for His Majesty's Revenue and Customs [2023] EWCA Civ 695, dated 21 June 2023, at [26] [AB/54/1643-1644] (referring to Lord Reed's judgment in Anson v HMRC [2015] UKSC 44, at [56]) [AB/49/1413].

⁵⁴ Sometimes referred to as "evolutionary" interpretation: Basfar v Wong [2022] UKSC 20, at [64] – [67] [AB/52/1560-1561].

⁵⁵ Judgment, at [52] – [53] [CB/6/53-54].

assignment may be permitted against a background of general prohibition. It is no such thing.

41.2. Rather, Article 15 regulates a situation in which an investor has entered into a contract of insurance covering the risk that its investment will be harmed by actions of the host State, and the insurer pays out on such policy and seeks to subrogate into the position of the investor. In that situation, Article 15 provides that the host State must recognise the validity of the assignment to the insurer of the investor's claims, and "*the right of the [insurer] to exercise all such rights and enforce such claims by virtue of subrogation*".

[AB/21/792]

41.3. Contrary to the finding of the judge at [53] of the Judgment, and to the conclusion in the article written by Mr Wehland to which the learned Judge referred with approval, the purpose of Article 15 of the ECT was, therefore, not to create a specific exception for insurers from a general prohibition on assignment. Rather, the provision was included to address concerns at the time the ECT was concluded that an insurer providing investment risk insurance would not itself be considered an 'investor' in the host State for the purposes of establishing jurisdiction to bring a subrogated claim under an investment treaty (*i.e.*, because it did not satisfy the definition of 'investor' under the ECT). To address this concern, the ECT provides that an insurer in such circumstances will, through subrogation, be recognised as having the same entitlements as the investor to bring a claim against the host State. That interpretation is confirmed by the leading commentary on the ECT.⁵⁶

41.4. Such provisions are common in investment treaties.⁵⁷ In many cases, the text of such provision is nearly identical to Article 15 of the ECT.⁵⁸

⁵⁶ K. Hober, "*The Energy Charter Treaty: A Commentary*" (2020), at p. 317 [AB/35/969].

⁵⁷ The United Nations Conference on Trade and Development Report on "Bilateral Investment Treaties 1995-2006: Trends in Investment Rulemaking", at pp. 114 – 115 [AB/97/2415-2416].

⁵⁸ See, e.g., Canada-Czech Republic BIT (2009) [AB/89/2239]; Philippines-UAE BIT (2022) [AB/92/2321]; Turkey-Uzbekistan BIT (2017) [AB/91/2297]; China-Japan-Korea Trilateral Investment Agreement (2012) [AB/90/2268].

E. Text in the ECT and in the ICSID Convention contemplating assignment

42. The learned Judge’s conclusion at [53] is also refuted by a proper interpretation of both the ECT and the ICSID Convention.

1. Awards as investments under the ECT

43. Under international law, an arbitration award is the crystallisation of the underlying investment on the basis of which it was given, and is therefore itself an investment.⁵⁹ [AB/21/778]
44. That is reflected in the breadth of the definition of “investment” in Article 1(6) of the ECT: “*claims to money and claims to performance pursuant to contract having an economic value and associated with an investment*”. The definition goes on expressly to provide that “[a] *change in the form in which assets are invested does not affect their character as investments*”. That language brings well within the scope of Article 1(6) an arbitration award (a “*claim[] to money*”) resulting from a state’s mistreatment of an investment of a different form.
45. Under Article 10(1), the states party to the ECT guaranteed that they would not subject investments to unfair or inequitable treatment, that they would accord them “*the most constant protection and security*” and that they would not “*impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal*”. Likewise, Article 13 of the ECT protects investments from expropriation. [AB/21/783] [AB/21/788]
46. On their face, the protections under Articles 10(1) and 13 include a guarantee that an investor will be entitled to sell (dispose of) its investment. That this right is protected, and that its abrogation could give rise to a claim for fair and equitable treatment violation

⁵⁹ See in particular: White Industries Australia Limited v India, UNCITRAL, Final Award, dated 30 November 2011, at [7.6.8] and [7.6.10] [AB/70/2009-2010]; the reasoning of the tribunal in that case was later approved by the Singapore Court of Appeal in Swissbourn Diamond Mines v Lesotho [2019] 1 SLP 263, at [169] – [171] [AB/12/517-518], endorsing in particular, the tribunal’s conclusion that “*there was a ‘developing jurisprudence’... to the effect that awards made by tribunals arising out of disputes concerning ‘investment’ made by ‘investors’ under BITs represent a continuation or transformation of the original investment*” (at [170]) [AB/12/517-518].

or expropriation, has also been recognised by tribunals hearing investment claims subject to similarly worded protections (albeit not under the ECT).⁶⁰

47. Under Article 14(1), the states party to the ECT guaranteed an investor's "*freedom of transfer into and out of its Area*" including in relation to "*proceeds from the sale or liquidation of all or any part of an Investment*". [AB/21/790]
48. Taken together, the above provisions guarantee an investor's right to sell an investment and the investor's right to transfer the proceeds of that sale out of the relevant jurisdiction. Those provisions apply equally to awards for the reasons given above.
49. It follows that rather than prohibiting the assignment of awards, the ECT expressly protects an investor's right to do so.

2. Assignees within the scope of Article 54(2)

50. Unlike the ECT, the ICSID Convention does not contain an express permission to assign ICSID awards. It does, however, support the conclusion that ICSID awards are in principle assignable because properly interpreted, (i) Article 54(2) is broad enough to give standing to assignees to seek recognition or enforcement; and (ii) the scheme of the ICSID Convention devolves questions of enforcement to domestic jurisdictions in any event.
51. Beginning with Article 54(2), contrary to the learned Judge's findings, the phrase "*a party seeking recognition or enforcement...*" does not, either on its face or when read in [AB/19/763]

⁶⁰ See Saipem S.p.A. v Bangladesh, ICSID Case No. Arb/05/7, Award, dated 30 June 2009, at [129]: "*the actions of the Bangladeshi courts [in refusing to enforce an ICC award] do not constitute an instance of direct expropriation, but rather of 'measures having similar effects' within the meaning of Article 5(2) of the BIT. Such actions resulted in substantially depriving Saipem of the benefit of the ICC Award.*" [AB/69/2005]; PL Holdings S.à.r.l. v Republic of Poland (SCC Case no. V 2014/163), Partial Award dated 28 June 2017, at [320]: "*At least technically, Claimant was not deprived of its investment, but rather of certain rights forming part of it, viz, the right to vote its shares in the Bank and the right to dispose of the investment as it saw fit... However, the KNF measures severely restricted these rights, rights that constitute essential elements of the right of ownership. These restrictions thus deprived the Claimant of the full benefit of its rights of ownership to such an extent as to constitute an expropriation.*" [AB/73/2024-2025].

the light of the rest of the ICSID Convention, refer solely to “*a party to the underlying arbitration*”.

52. The more natural reading is broader than that and certainly broad enough to encompass assignees. Considering the text:

52.1. The Vienna Convention requires that the words used in Article 54(2) are interpreted “*in accordance with the ordinary meaning to be given to the terms*” (Article 31.1). The ordinary meaning of “*party*” is “[t]he person concerned or in question.”⁶¹ [AB/20/771]

52.2. No special definition is given to the word “*party*” in the ICSID Convention. Neither is there any usage of that word that would justify a departure from its ordinary meaning for purposes of Article 54(2).

52.3. Looking narrowly at the text of Article 54(2), the natural reading of the phrase “*a party*” as used there is “*any party*” – *i.e.*, any party seeking recognition or enforcement (and by necessary implication, any party which has the right to do so – a matter which Article 54(2) does not regulate). On its face, there is no reason to read that phrase as restricted to parties that happened also to have been a party to the underlying arbitration.

52.4. Looking broadly at the text of the ICSID Convention, in a number of places, it uses words which make clear it is referring to the party in dispute because express qualifying words are used immediately before or after the phrase “*a party*”.⁶² Examples of the convention using “*a party*” to mean only the parties to the dispute are in Articles 32 (“*a party to the dispute...*”), 41 (“[a]ny objection by a party to the dispute”), 52 (“*the State whose national is a party to the dispute...*”) and 57 (“[a] party to arbitration proceedings may...”)^[AB/19/755]^[AB/19/758]^[AB/19/764] and so on.

52.5. In other places, the meaning of the words “*a party*” or “*party*” are very obvious from their context. In some of those instances, it is clear that those words mean

⁶¹ *Oxford English Dictionary* (online edn, December 2025), “*party*”, sense II.8.a. [AB/114/2653].

⁶² *See, e.g.*, ICSID Convention, Articles 38, 39 and 41– all of which refer to “*a party to the dispute*” [AB/19/758-759].

“*a party to the dispute*”. For example, where the drafters of the ICSID Convention wished to indicate that only the parties to a dispute or arbitration or award could take some action, they used the phrase “*either party*”, as for example, in Articles 50, 51 and 52.

[AB/19/761]

52.6. However, in other instances, where the words “*a party*” or “*party*” are used, there is no basis in the text for construing those words narrowly to mean only the parties to the dispute – they clearly designate a broader category of “*parties*”. Thus, for example, Articles 45 and 46 can apply to interveners or to potential additional claimants not yet party to a dispute; Article 49 can apply to an assignee.

[AB/19/759-760]

[AB/19/761]

52.7. As such, there is no special meaning of “*a party*” or “*party*” in the ICSID Convention; one must read the relevant text and deduce the ordinary meaning of those words in their context and in accordance with the object and purpose of the Convention. As noted above, the ordinary, textual meaning of Article 54(2) is plainly not restricted to the parties to the underlying dispute.

53. In the Judgment, the learned Judge below rejected the Appellant’s reading of the phrase “*a party*” at [43] on the basis that in fact “*the authors [of the ICSID Convention] used the phrases ‘the parties’ or ‘a party’ interchangeably with the longer form ‘party’ [or parties] to the dispute... ’*”.⁶³

54. Respectfully, the learned Judge was wrong about that. His analysis took as its starting point the assumption that the phrases “*the parties*” and “*a party*” as used in Article 53 “*plainly refer[s] to the parties or a party to the arbitration in which the award referred to in Article 53(1) has been rendered.*”⁶⁴

⁶³ The learned Judge there referred in particular to these phrases as used in Articles 38, 39, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52 [CB/6/50].

⁶⁴ Judgment, at [43] [CB/6/50].

55. That premise is contrary to authority in that caselaw which confirms that those phrases also refer, at the very least, to the contracting states party to the ICSID Convention, as well as to any other person to whom the relevant obligations are owed.⁶⁵
56. Applying that to the text of Articles 53 and 54, it would be impermissible to read (as the learned Judge did) the phrase “*the parties*” in the first line of Article 53(1); or the phrase “*each party*” in the second line of that provision; or the phrase “*a party*” in Article 54(2), as referring only to the parties to the arbitration, or to the parties named in the award. The Court is bound to read those references as referring also, at the very least, to the other Contracting States to the ICSID Convention who may have had nothing to do with the dispute, nor any interest in the proceeds of any resulting award. It is submitted that the Court ought also to read those phrases as referring to any other parties to whom the relevant obligations are owed. If that is so, then it is difficult to see why the term should not include within it others who do have a close and direct interest therein, including (most obviously) persons to whom enforcement obligations may be owed.
57. It follows from the above that the learned Judge’s interpretation of the ICSID Convention was wrong as a matter of textual analysis.

3. Context, object and purpose

58. The learned Judge’s interpretation was also wrong because it arrived at a conclusion which does not reflect either the context, object and purpose of the ICSID Convention, nor commercial and legal developments concerning the assignability of ICSID awards.
59. Per the Report of the Executive Directors on the ICSID Convention of 18 March 1965, the “*broad objective of the Convention is to encourage a larger flow of private*

⁶⁵ In Micula SC, Lords Lloyd Jones and Sales (with whom Lady Hale, Lord Reed and Lord Hodge agreed) held, at [105] that the “*obligations of Contracting States in articles 53, 54 and 69 are expressed in unqualified terms, without limit as to the persons to whom they are owed*” and later in the same paragraph that “*Article 27(1) confirms that the obligation on a Contracting State against whom an arbitration award is made to comply with the award is not just owed to the other parties to the dispute since it recognises that any Contracting State whose national is involved in the dispute may bring an international claim against the other Contracting State if it fails to comply with the award rendered...*” (emphasis added). At the end of that passage: “*the obligation of compliance under article 53 is in fact owed to every other Contracting Party... [t]he same is true of the obligation under article 54*” [AB/7/239-240].

international investment”,⁶⁶ and to create a “*favorable climate for attractive and sound investments*”.⁶⁷

60. Article 54(2) must be interpreted consistently with that object and purpose, taking “*account of circumstances as they are now*” and not merely of the circumstances as they were when the ICSID Convention was concluded.⁶⁸ In particular, “*where the parties have used generic terms in a treaty, the parties necessarily having been aware that the meaning of the terms was likely to evolve over time, and where the treaty has been entered into for a very long period or is ‘of continuing duration’, the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning.*”⁶⁹
61. Applying that principled approach to the interpretative exercise, the prevailing circumstances militate in favour of reading the generic phrase “*a party*” at Article 54(2) as extending to assignees for four reasons:
- 61.1. First, there is now a significant proportion of ICSID awards that goes unpaid by states.⁷⁰
- 61.2. Secondly, and consequently, it has become common for award creditors to monetise their award by selling or assigning their rights under it to third parties. There is no way of knowing precisely how common a practice this is, but an ICSID publication suggests that it is not infrequent.⁷¹ This is often a consequence

⁶⁶ “*Report of the Executive Directors on the ICSID Convention*”, dated 18 March 1965, ICSID Doc No ARB/65/1 (World Bank), at [13] [AB/93/2360].

⁶⁷ *Ibid.* at [12] [AB/93/2360].

⁶⁸ Basfar v Wong [2022] UKSC 20, at [64] – [67] [AB/52/1560-1561].

⁶⁹ Basfar v Wong [2022] UKSC 20, at [65] [AB/52/1560-1561], citing Dispute regarding Navigational and Related Rights (Costa Rica v Nicaragua) [2009] ICJ Rep 213, at [66] [AB/82/2193].

⁷⁰ ICSID, “Background Paper on Compliance with and Enforcement of ICSID Awards”, June 2024 at [181] [AB/37/1072]. *See also* E. Gaillard and I.M. Penushliski, “State Compliance with Investment Awards”, 35(3) ICSID Review 540 (2020) [AB/109/2589].

⁷¹ ICSID, “Background Paper on Compliance with and Enforcement of ICSID Awards”, June 2024, at [98] [AB/37/1070]. *See also* E. Gaillard and I.M. Penushliski, “State Compliance with Investment Awards”, 35(3) ICSID Review 540 (2020), p. 590 [AB/109/2591].

of the difficult position in which an award creditor is put by the wrongful failure of the debtor State promptly to pay the compensation due under the award. There are also many publicly available decisions of national courts and international tribunals which refer to an assignment having taken place (generally without questioning its legality).⁷²

61.3. Thirdly, the courts of two sophisticated jurisdictions have publicly considered the question of whether the ICSID Convention permits assignment and found that it does:

61.3.1. In Australia, a judgment between the same parties as before this Court considered the point, finding that investor-state awards are assignable. In Blasket v Spain (FCA), Stewart J found that ICSID awards against Spain were assignable to the claimant. Per Stewart J, “*there is no public international law rule prohibiting the assignment of an award between a private party and a state, or the assignment of awards more broadly.*”⁷³

61.3.2. Likewise, the United States District Court for the Southern District New York concluded, in the context of an attempted enforcement of an assigned ICSID award, that “*nothing in the ICSID Convention, in Congress’s legislation implementing ICSID, or in New York law prevents an assignee from seeking recognition and enforcement of an ICSID Convention award*”: Blue Ridge Investments LLC v Republic

⁷² See, e.g., Award in Balkan Energy (Ghana) Limited v Republic of Ghana PCA Case No. 2010-7 was assigned by the claimant, as confirmed by the United States District Court for the District of Columbia in Balkan Energy Limited, et al. v Ghana (Memorandum Opinion & Order), Case No. 17-cv-00584 (APM), dated 22 March 2018, at pp. 17 – 19 [AB/61/1909-1911]. Award in Teinver S.A., Transportes de Cercanías S.A., and Autobuses Urbanos del Sur S.A. v Argentine Republic, ICSID Case No. ARB/09/1 was assigned by the claimant, as confirmed by the United States District Court for the District of Columbia in Titan Consortium LLC v Argentine Republic (Memorandum Opinion), Case No. 21-cv-2250 (JMC), dated 10 December 2024, at p. 5 [AB/62/1921].

⁷³ Blasket v Spain (FCA), at [310] and [326] [AB/14/650, 655].

of Argentina (Memorandum Opinion & Order), 10 Civ. 153 (PGG), 30 September 2012 (“**Blue Ridge v Argentina**”).⁷⁴

61.3.3. Commentary by eminent international lawyers confirms the assignability of ICSID awards,⁷⁵ although it is accepted that there are commentaries which express the opposite view.

62. These are developments which must be taken into account, applying Basfar v Wong. When they are, then any doubt as to whether the ICSID Convention or the ECT ought to be read as accommodating the assignment of awards, and their enforcement by assignees, falls away.

4. **Devolution of enforcement matters to domestic jurisdictions**

63. That conclusion also makes sense in the light of the scheme of the ICSID Convention, Articles 54(2) and 54(3) of which, as already noted, expressly devolve matters concerning the enforceability of ICSID awards to domestic jurisdictions.⁷⁶

F. **Arguable restriction on “seeking” enforcement**

64. In any event, even if the Court were to read Article 54(2) as imposing a restriction on the identity of the party that is able to seek recognition or enforcement of an ICSID award, it says nothing at all about what happens after recognition or enforcement has been sought. In other words, even if Article 54(2) is interpreted as imposing a restriction on who may commence the recognition or enforcement process, it has nothing to say about which party (or parties) may enforce an award thereafter.

⁷⁴ Blue Ridge Investments LLC v Republic of Argentina (Memorandum Opinion & Order), 10 Civ. 153 (PGG), dated 30 September 2012, at p. 20 [AB/11/416].

⁷⁵ E. Gaillard and I.M. Penushliski, “State Compliance with Investment Awards”, 35(3) ICSID Review 540 (2020), p. 590 (“[a]n investor may also seek to monetize its award by selling or assigning the right to compensation to third parties”) [AB/109/2591]. See also ICSID, “Background Paper on Compliance with and Enforcement of ICSID Awards”, June 2024, at [98] [AB/37/1070].

⁷⁶ See also CC/Devas (Mauritius) Ltd. v Republic of India (No 2) [2023] FCA 527, at [33]: “there are no rules of international law on the assignability or assignment of awards or other choses in action; it is the role of municipal law to fill this gap as a general principal [sic] of law widely accepted across different municipal systems.” [AB/64/1977].

65. In the present case, the parties to the dispute (the Arbitration Claimants) commenced the recognition and enforcement proceedings by their application dated 9 August 2021, presenting the Court with a certified copy of the Award as required by Article 54(2) of the ICSID Convention. The Award was assigned after the application was granted and the Registration Order made.

G. Commentaries to which the learned Judge made reference

66. At [46] to [48] of the Judgment, the learned Judge referred to a number of academic commentaries and practitioners' texts on the ICSID Convention in support of his conclusion. Only two of those addressed Article 54(2) squarely:

66.1. The first is "Schreuer's Commentary on the ICSID Convention". The part on which the learned Judge relied provides academic support for the proposition that only a party to the original arbitration proceeding may initiate the procedure under Article 54(2). However, it goes no further than that (and indeed says nothing expressly about assignment). In fact, the authors implicitly recognise, later in the same passage, that awards may be assigned to parties other than the parties to the arbitration because they go on to refer to the "*requirement that only one of the original parties may initiate a proceeding for the recognition and enforcement of an award...*".⁷⁷ Implicit in that language is that an award could be held by a party which is not the "*original*".

66.2. The second is the passage quoted at [48] from "The ICSID Convention, Regulation and Rules – a Practical Commentary".⁷⁸ This, however, is simply academic support for reading Article 54(2) as restricting the ability to "*commence*" recognition and enforcement proceedings to "*a 'party' to the award*". It says nothing at all about the possibility of such a party being an assignee, nor indeed anything about assignment of ICSID awards generally.

⁷⁷ S. W. Schill, L. Malintoppi, A. Reinisch, C. H. Schreuer, and A. Sinclair (eds), *Schreuer's Commentary on the ICSID Convention* (3rd edn, 2022), at p. 1511 (emphasis added) [AB/36/1060].

⁷⁸ C. H. Schreuer and others, "*The ICSID Convention, Regulations and Rules – A Practical Commentary*" (2nd edn, 2009) [AB/105/2505].

- 66.3. The remainder of the academic commentaries and scholarly writings relied upon by the learned Judge are of limited assistance because (i) they concern the assignment of claims and not of ICSID awards – that being a conceptually distinct proposition;⁷⁹ and (ii) they contain no analysis of the relevant treaty provisions at issue.
67. Academic writings are not themselves a source of law and their persuasive weight depends on the cogency of the reasoning they advance.⁸⁰ Where, as here, the passages relied upon in the Judgment offered only unsupported opinion, they are of limited, if any, use to the Court.

V. Conclusion

68. In the premises, the Court of Appeal is respectfully invited to allow the Appellant’s appeal on both grounds.

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16 February 2026

⁷⁹ The same concerns do not apply to the rights and interests stemming from ownership of the award, which is widely regarded as a chose in action. *See, e.g.,* Z. Douglas, “*International Responsibility For Domestic Adjudication: Denial of Justice Deconstructed*”, 63 Int’l & Comp. L.Q. 867 (2014), at p. 884 [AB/104/2504]; B. Tompkins, “*The LMA sovereign immunity clause and enforcement proceedings*”, Essex Court Chambers, at p. 2 [AB/115/2656].

⁸⁰ In the matter of an application by JR222 for Judicial Review (Appellant) (Northern Ireland) [2024] UKSC 35, at [79] [AB/56/1712]; Ben Nevis (Holdings) Limited v HMRC [2013] EWCA Civ 578, at [16] [AB/48/1377-1379]; Revenue and Customs Commissioners v GE Financial Investments [2024] EWCA Civ 797, at [39] – [44] [AB/55/1667-1669].