IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC 43

Originating Application No 1283 of 2023 (Summons 1371 of 2025)

Between

1. NextEra Energy Global Holdings B.V.
2. NextEra Energy Spain Holdings B.V.

… *Applicants*

And

Kingdom of Spain

… *Respondent*

JUDGMENT

[International Law — Sovereign immunity — Sections 3(1), 4(1), and 11(1) State Immunity Act 1979 (2020 Rev Ed)]
[International Law – Convention on the Settlement of Investment Disputes between States and Nationals of other States]
[Arbitration — Sections 4 and 5 Arbitration (International Investment Disputes) Act 1968]
[Arbitration – Recognition and enforcement — Award under the Convention on the Settlement of Investment Disputes between States and Nationals of other States]

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v
Kingdom of Spain

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23, 25 September, 14 October 2025

24 February 2026

Andre Maniam J:

Introduction

1 The respondent, Spain, asserts that it had state immunity under s 3 of the State Immunity Act 1979 ("SIA") in relation to proceedings for the registration/enforcement of an International Centre for Settlement of Investments Disputes ("ICSID") arbitration award (the "Award") in favour of the applicants (the "Dutch Investors"). Those proceedings resulted in the Singapore court making the Registration Order for the Award and the corresponding Decision on Annulment (rejecting Spain's application to annul the Award) to be registered as if they had been judgments of the General Division of the High Court

2 Spain seeks to set aside the Registration Order based on state immunity. In the alternative, Spain says that even if it did not have state immunity, the Registration Order should be set aside in the interests of justice.

3 The Dutch Investors contend that Spain did not have state immunity in relation to the registration/enforcement proceedings, for the exceptions to immunity in ss 4 and 11 of the SIA apply:

(a) under s 4 of the SIA ("Submission Exception"), because Spain "submitted to the jurisdiction of the courts of Singapore" by acceding to the Convention on the Settlement of Investment Disputes between States and Nationals of other States ("ICSID Convention"), which is implemented in Singapore by the Arbitration (International Investment Disputes) Act 1968 ("AIIDA")); and

(b) under s 11 of the SIA ("Arbitrations Exception"), because Spain had "agreed in writing to submit a dispute which has arisen, or may arise, to arbitration", *ie*, Spain had agreed to arbitrate the disputes with the Dutch Investors, which resulted in the Award.

4 The Dutch Investors also say that it would not be in the interests of justice to set aside the Registration Order.

Background

5 The Dutch Investors commenced ICSID arbitration (ICSID Case No. ARB/14/11) against Spain pursuant to the Energy Charter Treaty ("ECT"), which both Spain and the Netherlands were Contracting Parties to.

6 Art 26 of the ECT – on its face – contains an offer to arbitrate disputes (including by ICSID arbitration) with those who are "Investors" under the ECT. Art 26 is discussed in greater detail at [81] below.

7 The ICSID arbitration in the present case resulted in the Award against Spain. Within the ICSID framework, Spain applied to annul the Award before an *ad hoc* committee ("annulment committee"), but that annulment proceeding was unsuccessful (the "Decision on Annulment"). As stipulated in Art 53 of the ICSID Convention, the Award was and is "binding" on Spain. This is discussed further at [50] below.

8 In December 2023, the Dutch Investors applied in Singapore to register the Award and the Decision on Annulment in the General Division of the High Court. The Registration Order was granted in January 2024, with the court ordering (among other things) that the Award and the Decision on Annulment be registered as if they had been judgments of the General Division of the High Court.

9 In May 2025, Spain applied by HC/SUM 1371/2025 to set aside the Registration Order, contending that it had state immunity under the SIA in relation to the registration/enforcement proceedings, and that in any event registration of the Award should be set aside in the interests of justice.

Legislative and treaty provisions

SIA

10 Sections 3, 4 and 11 of the SIA provide as follows:

General immunity from jurisdiction

3.—(1) A State is immune from the jurisdiction of the courts of Singapore except as provided in the following provisions of this Part.

(2) A court is to give effect to the immunity conferred by this section even though the State does not file and serve a notice of intention to contest or not contest in the proceedings in question.

Submission to jurisdiction

4.—(1) A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of Singapore.

(2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; but a provision in any agreement that it is to be governed by the law of Singapore is not to be regarded as a submission.

(3) A State is deemed to have submitted —

(a) if it has instituted the proceedings; or

(b) subject to subsections (4) and (5), if it has intervened or taken any step in the proceedings.

(4) Subsection (3)(b) does not apply to intervention or any step taken for the purpose only of —

(a) claiming immunity; or

(b) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it.

(5) Subsection (3)(b) does not apply to any step taken by the State in ignorance of facts entitling it to immunity if those facts could not reasonably have been ascertained and immunity is claimed as soon as reasonably practicable.

(6) A submission in respect of any proceedings extends to any appeal but not to any counterclaim unless it arises out of the same legal relationship or facts as the claim.

(7) The head of a State's diplomatic mission in Singapore, or the person for the time being performing his or her functions, is deemed to have authority to submit on behalf of the State in respect of any proceedings; and any person who has entered into a contract on behalf of and with the authority of a State is deemed to have authority to submit on its behalf in respect of proceedings arising out of the contract.

Arbitrations

11.—(1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts in Singapore which relate to the arbitration.

(2) This section has effect subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between States.

ICSID Convention

11 Articles 52 to 55 of the ICSID Convention provide as follows.

SECTION 5

Interpretation, Revision and Annulment of the Award

……

Article 52

(1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds:

(a) that the Tribunal was not properly constituted;

(b) that the Tribunal has manifestly exceeded its powers;

(c) that there was corruption on the part of a member of the Tribunal;

(d) that there has been a serious departure from a fundamental rule of procedure; or

(e) that the award has failed to state the reasons on which it is based.

SECTION 6

Recognition and Enforcement of the Award

Article 53

(1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that

> enforcement shall have been stayed pursuant to the relevant provisions of this Convention.
>
> (2) For the purposes of this Section, "award" shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.
>
> *Article 54*
>
> (1) Each Contracting State shall recognise 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.
>
> (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.
>
> *Article 55*
>
> Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

AIIDA

12 The text of the ICSID Convention is set out in the Schedule to the AIIDA, which implements the ICSID Convention in Singapore.

13 Section 4 of the AIIDA makes provision for ICSID awards to be registered in the Singapore High Court, and s 5 stipulates the effect of such registration:

> **Registration of Convention awards**

> **4.**—(1) Any person seeking recognition or enforcement of an award rendered pursuant to the Convention shall be entitled to have the award registered in the General Division of the High Court subject to proof of any matters that may be prescribed and to the other provisions of this Act.
>
> (2) In addition to the pecuniary obligations imposed by the award, the award shall be registered for the reasonable costs of and incidental to registration.
>
> (3) If at the date of the application for registration the pecuniary obligations imposed by the award have been partly satisfied, the award shall be registered only in respect of the balance, and accordingly if those obligations have been wholly satisfied, the award shall not be registered.
>
> **Effect of registration**
>
> **5.** Subject to the provisions of this Act, an award registered under section 4 shall, as respects the pecuniary obligations which it imposes, be of the same force and effect for the purposes of enforcement as if it had been a judgment of the General Division 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 relates to such pecuniary obligations —
>
> (a) proceedings may be taken on the award;
>
> (b) the sum for which the award is registered shall carry interest; and
>
> (c) the General Division of the High Court shall have the same control over the enforcement of the award,
>
> as if the award had been such a judgment of the General Division of the High Court.

Issues

14 The following main issues arise for decision:

(a) Did the exception to state immunity in s 4 of the SIA ("the Submission Exception") apply to the registration and enforcement proceedings?

(b) Did the exception to state immunity in s 11 of the SIA ("the Arbitrations Exception") apply to the registration and enforcement proceedings?

(c) Should registration of the Award be set aside in the interests of justice?

Analysis and Disposition

15 I consider first the issue of state immunity, and in particular whether the exceptions to immunity under ss 4 or 11 of the SIA apply (as the Dutch Investors contend), before addressing Spain's fallback position that it would be in the interests of justice to set aside registration of the Award even if it did not have state immunity.

The Submission Exception: does the exception to state immunity in s 4 of the SIA apply?

The relationship (if any) between the exceptions in s 4 and s 11 of the SIA

16 It is common ground that the exceptions in s 4 and s 11 of the SIA are independent, in the sense that if either of them is satisfied, a state would not have state immunity for the matter in question.

17 Spain, however, contends that in *this particular case*, the exception in s 4 would only apply if the exception in s 11 applies. Spain says that any submission by it to jurisdiction for the purposes of s 4, is dependent on the court finding that it had agreed to arbitrate for the purposes of s 11, because any submission to jurisdiction is premised on there being an arbitration agreement in the first place. Spain's contention is that if it is successful (in these proceedings) in disputing the arbitration agreement, that would undermine the

Award such that was not registrable in court, and Spain would not have submitted to the jurisdiction of the Singapore court in relation to recognition or enforcement.

18 This contention of Spain's has been rejected by the English and Australian courts, and I reject it too, as I explain below.

By acceding to the ICSID Convention, have Contracting States waived adjudicative immunity and submitted to jurisdiction, in respect of applications to recognise or enforce an ICSID award?

19 The weight of authority on the Submission Exception is against Spain. The courts of various jurisdictions have held that accession to the ICSID Convention is a submission to jurisdiction, in respect of applications to recognise or enforce an ICSID award.

20 I address the following four cases, before summing up my conclusion on the Submission Exception:

(a) two cases which concern another ICSID award against Spain, which was accorded recognition/enforcement:

(i) *Kingdom of Spain v Infrastructure Services Luxembourg Sarl* [2023] HCA 11; 275 CLR 292 ("*Spain HCA*"), a decision of the High Court of Australia ("HCA");

(ii) *Infrastructure Services Luxembourg SARL v Spain* [2024] EWCA Civ 1257 ("*Spain EWCA*"), a decision of the English Court of Appeal ("EWCA"); and

(b) two cases which concern the same Award that is the subject of the present proceedings:

(i) *Blasket Renewable Investments LLC v Spain* [2025] FCA 1028 ("*Blasket*"), a decision of the Federal Court of Australia ("FCA"); and

(ii) *NextEra Energy Global Holdings B.V., et al. v. Kingdom of Spain* – Civil Action No. 19-cv-01618 ("*NextEra USDC*") a decision of the United States District Court for the District of Columbia ("USDC").

(1) Spain HCA

21 In proceedings involving the registration and enforcement of another ICSID award against Spain, Australia's highest court – the HCA held that (*Spain HCA* at [8]; see also [75]):

> … given that Spain was the subject of a binding ICSID arbitral award, the effect of Spain's agreement to Arts 53-55 amounted to a waiver of foreign State immunity from the jurisdiction of the courts of Australia to recognise and enforce, but not to execute, the award.

22 The matter was decided at first instance by the FCA: *Eiser Infrastructure Ltd v Kingdom of Spain* [2020] FCA 157, 142 ACSR 616, in which the FCA made orders for recognition and enforcement of the award against Spain. Spain's appeal to the FCA's Full Court ("FCAFC") failed: *Kingdom of Spain v Infrastructure Services Luxembourg Sarl* (2021) 284 FCR 319, although the FCAFC varied the orders made at first instance. Spain's appeal to the HCA then failed as well, with the HCA upholding the orders made by the FCAFC.

23 *Spain HCA* concerned s 10(2) of the (Australian) Foreign States Immunities Act:

> A foreign State may submit to the jurisdiction at any time, whether by agreement or otherwise, but a foreign State shall

> not be taken to have so submitted by reason only that it is a party to an agreement the proper law of which is the law of Australia.

24 As stated in *Spain HCA* at [10], the HCA in arriving at its conclusion on whether "Spain, as the subject of a binding ICSID arbitral award, waived its foreign State immunity under the Foreign States Immunities Act by entry into the ICSID Convention" considered: "(i) the background, purpose, and general operation of the ICSID Convention [at [30]–[37]]; (ii) the meaning of each of the concepts of recognition, enforcement, and execution in Arts 53-55 [at [38]–[66]]; and (iii) the extent to which the words of Arts 53-55 of the ICSID Convention constitute 'express' agreement by a foreign State party to waive its immunity from the jurisdiction of the courts of Australia [at [16]–[29]; [67]–[77]]."

25 On point (i) above – the background, purpose, and general operation of the ICSID Convention) – the HCA held at [34]:

> The primary purpose of the ICSID Convention was, and remains, to promote the flow of private capital to sovereign nations, especially developing countries, by the mitigation of sovereign risk. The ICSID Convention mitigates risk by giving private investors, upon default by a country, an arbitral remedy which is intended to provide certainty.

26 On point (ii) above – the meaning of the concepts of recognition, enforcement, and execution in the ICSID Convention – the HCA held at [40]:

> Articles 53-55 of the ICSID Convention, which have the force of law in Australia, are a central plank in giving effect to the primary object of the ICSID Convention: to encourage private international investment including by mitigating sovereign risk and providing an investor with the "legal security required for an investment decision".

27 The HCA further held (at [43]) 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".

28 On point (iii) above – whether Arts 53-55 of the ICSID Convention constituted "express" agreement by a foreign State to waive immunity – the HCA held at [23] that an "express" waiver can include "implications, which constitute the unexpressed content of a statement or term and which are identified by inference", and at [25] that "[t]he insistence that the waiver be "express" should be understood as requiring only that the expression of waiver be derived from the express words of the international agreement, whether as an express term or as a term implied for reasons including necessity.

(2) Spain EWCA

29 The EWCA, dealing with the same award, reached the same conclusion in *Spain EWCA*.

30 *Spain EWCA* concerned ss 2 and 9 of the UK State Immunity Act (referred to in the EWCA judgment as the "SIA", as set out at [30]).

> **2. Submission to jurisdiction.**
>
> (1) A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of the United Kingdom.
>
> (2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; but a provision in any agreement that it is to be governed by the law of the United Kingdom is not to be regarded as a submission…
>
> …
>
> **9. Arbitrations.**

> (1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts of the United Kingdom which relate to the arbitration.
>
> (2) This section has effect subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between States.

31 Those provisions of the UK SIA are the equivalent of ss 4 and 11 of Singapore's SIA (set out at [10] above).

32 The EWCA agreed with the decision in *Spain HCA* that by virtue of Art 54 of the ICSID Convention, Contracting States had submitted to the jurisdiction of the courts of other Contracting States for the purpose of recognition and enforcement of ICSID awards against them (at [59]–[103]).

33 Section 10(2) of the (Australian) Foreign States Immunities Act is the equivalent of s 2 of the UK SIA (and s 4 of Singapore's SIA). The EWCA held at [91] of *Spain EWCA* that *Spain HCA* could not be distinguished on the basis of differences in the relevant statutory regime between Australia and the UK – specifically, that the Arbitrations Exception in the Australian Act was more narrowly confined to arbitrations in relation to commercial disputes (as compared to s 9 of the English SIA) [and s 11 of Singapore's SIA].

34 The EWCA stated that it was appropriate to follow the HCA's reasoning and conclusion on the issue of submission to jurisdiction, not merely because it was the highly persuasive opinion of the highest court in Australia considering the very same award between the same parties, but because it was "plainly right" (at [77]).

35 The EWCA noted that the courts of Australia, New Zealand, the United States, France and Malaysia had all interpreted Art 54 of the ICSID Convention

as a waiver of adjudicative immunity by each Contracting State and, where domestically relevant, a submission to jurisdiction (at [60]). In this regard, the court cited Lord Hope's observation in *Islam v Secretary of State for the Home Department* [1999] 2 AC 629, 657A-B that:

> "As a general rule it is desirable that international treaties should be interpreted by the courts of all the states uniformly. So, if it could be said that a uniform interpretation of this phrase was to be found in the authorities, I would regard it as appropriate that we should follow it."

36 This view was also expressed in *Spain HCA* at [38]:[1]

> The text of an international agreement or treaty is not interpreted according to particular domestic rules of interpretation, which might have slight variations from country to country. Rather, as is reflected by the approach taken in Australia, a treaty should have the same meaning for all of the States which are party to it. The general principles of treaty interpretation are contained in the Vienna Convention on the Law of Treaties (1969). Although the Vienna Convention on the Law of Treaties post-dates the ICSID Convention, it is widely accepted that, in the respects relevant to this appeal, the Vienna Convention was declaratory of customary international law.

37 Regarding the other jurisdictions mentioned at [60] of *Spain EWCA*:

(a) *Sodexo Pass International SAS v Hungary* [2021] NZHC 371 at [55] represents the New Zealand position.

(b) The position in the United States ("US") was summarised in *Spain HCA* at [74] (citing five US cases at footnotes 117 and 118) as follows:

> … there is no real distinction between the United States provision permitting a waiver of immunity to be identified "either explicitly or by implication" and s 10(2)

[1] See Also *Blasket*, at [169].

> of the Foreign States Immunities Act permitting a waiver of immunity "by agreement". And, consistently with the caution that is required before drawing inferences of a waiver of immunity, United States courts have concluded, sometimes saying that they had little or no doubt, that entry into the ICSID Convention involves a waiver of immunity from jurisdiction.

(c) *SOABI v Senegal,* judgment of the French Court of Cassation (First Civil Chamber) 90-11.282 dated 11 June 1991, represents the French position.

(d) *Von Pezold v Republic of Zimbabwe,* Judgment of the High Court of Malaya at Kuala Lumpur for Originating Summons No. WA-24NCC-323-07/2021, at [64] represents the Malaysian position.

38 The EWCA then analysed registration and enforcement of ICSID Convention awards as follows:

(a) "…the text of Article 54 refers to awards being recognised and enforced, without qualification. It is impossible to read those words as referring only to awards against investors and excluding all awards against states." (At [78].)

(b) "It is also clear, as a matter of language, that a Contracting State does not merely agree, by article 54, that it will recognise and enforce awards in its own jurisdiction, but also that awards to which it is party will be recognised and enforced in other Contracting States as though a final judgment…" (At 79].)

(c) "The above straightforward reading of the text is supported, rather than undermined, by the clear object and purpose of the Convention, as evidenced by the Preamble." (At [80].)

(d) As there is "no ambiguity or absurdity in the above interpretation, the travaux can only be used to confirm that meaning… such confirmation is readily to be found. … throughout the preparatory stages the overarching intention was that awards (including awards against states) would be treated in each Contracting State as final judgments and enforced as such." (At [82].)

(e) Both Spain and Zimbabwe "accept that an ICSID award against a Contracting State, based on a valid reference to arbitration, can be registered in this jurisdiction by reason of section 9 of the SIA. That acceptance seems difficult to reconcile with the contention that ICSID awards against states are not registerable at all…" (At [83].)

39 The EWCA held that Art 54 contained an express and sufficiently clear submission to the jurisdiction (at [84]–[98]). In particular, the EWCA held at [92] that "[i]f the express words used amount, on their proper construction, to an unequivocal agreement by the state to submit to the jurisdiction, that is sufficient to satisfy section 2(2) of the SIA, even if the words 'submit' and 'waiver' are not used", and at [96] that the wording of Art 54 was "clearly an agreement by Contracting States, including Spain and Zimbabwe, to waive immunity and submit to the jurisdiction of the courts of the United Kingdom (being those of another Contracting State), sufficient for section 2(2) of the SIA."

40 The EWCA thus concluded that "Contracting States have submitted to the jurisdiction by virtue of article 54 of the Convention and therefore may not oppose the registration of ICSID awards against them on the grounds of state immunity." (*Spain EWCA* at [103].)

41 Having reached that conclusion in relation to s 2 of the English SIA (*ie*, the Submission Exception), the EWCA went on to say at [104] that it was unnecessary to consider whether the exception to general adjudicative state immunity in s 9 (*ie*, the Arbitrations Exception) was also engaged automatically in the case of ICSID awards, or specifically in the case of Spain and Zimbabwe (who were before the court then).

42 Put another way, the EWCA was able to, and did, conclude that (as Contracting States) Zimbabwe and Spain had submitted to jurisdiction by virtue of Art 54 of the ICSID Convention, without having first to decide whether the arbitration agreements in question were valid (which both Zimbabwe and Spain had disputed); moreover, the arbitration agreement in relation to Spain was based on Art 26 of the ECT, like that in the present case.

(3) Blasket

43 In *Blasket*, the same Award that is the subject of the present proceedings was recognised and enforced in Australia.

44 *Blasket* followed the decision in *Spain HCA* as authority binding on it, and that was decisive on the issue that as an ICSID Contracting State, Spain had submitted to jurisdiction in recognition/enforcement proceedings, and so did not have state immunity in those proceedings: *Blasket* at [148]–[176].

45 The court noted that in *Spain HCA*, Spain had not contended that the award could not be recognised or enforced in Australia because the award was not valid and binding, on the basis that the ICSID tribunal lacked jurisdiction (*Blasket* at [178]), but Spain did advance that contention in *Blasket*: at [160].

46 However, Spain acknowledged that the decision in *Spain HCA* "is not expressly stated to be limited to a case in which it is common ground that a binding ICSID arbitral award relevantly exists", and that the decision could apply more broadly: *Blasket* at [179]. Indeed, Spain invited the FCA in *Blasket* to assume the holding in *Spain HCA* operated "at large" and to reject the assertion of immunity on this ground: [179].

47 In the event, the FCA decided not only that it was bound by *Spain HCA*, but also that Spain's contention that the awards were invalid or not "binding" could not be sustained in view of the self-contained nature of the ICSID dispute resolution system: *Blasket* at [160]–[175], [180].

48 It has consistently been recognised that the ICSID system is a "self-contained" one. In *The Republic of India v Deutsche Telekom AG* [2024] 1 SLR 56 ("*Deutsche Telekom*"), the Court of Appeal described ICSID awards as a special category of awards existing "within a self-contained system that is not subject to review by national courts" (at [123]):

> 122 It seems to us that the doctrinal basis for the Primacy Principle may be found in the rule that the Singapore courts are duty-bound to interpret our domestic legislation and hence, develop our common law, as far as permissible, in a way that advances Singapore's international law obligations (see Yong Vui Kong v Public Prosecutor and another matter [2010] 3 SLR 489 at [59]), and in line with the observations we have made at [66] above citing Merck Sharp ([64] supra) at [37], that the common law should as far as possible be developed in a way that coheres with relevant legislation. In the present context, the New York Convention read with the Model Law and the IAA, which recognise the special role and function of the seat court, provide the basis for the Primacy Principle. It seems to us then that the starting position in Singapore should be that where transnational issue estoppel does not apply for some reason, or where a party wishes or chooses to invoke the Primacy Principle for any reason, including to avoid the time and expense that may sometimes be entailed in having to establish the technical requirements for invoking the doctrine of transnational issue estoppel, it may instead rely on a prior decision of the seat

> court, and an enforcement court in Singapore should accord primacy to that prior decision of the seat court by treating it as presumptively determinative of the matters dealt with in the judgment pertaining to the validity of the award. Being presumptively determinative, the onus then shifts to the party seeking to persuade the enforcement court to come to a different view to establish a sufficient basis for doing so.
>
> 123 This would not be an absolute principle and the court would need to resolve the further question of what weight should be placed on the seat court's decision and what the limits of the principle are. It would not be absolute or completely preclusive doctrine precisely because of the instruments that underpin the Primacy Principle, namely, the Model Law, the IAA and the New York Convention. The effect of those instruments is that unlike the position with respect to special categories of awards, such as those issued under the auspices of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (18 March 1965) 575 UNTS 159 (entered into force 14 October 1966), and which exist within a self-contained system that is not subject to review by national courts, most arbitration awards are subject to the rules for enforcement and challenge in the courts of the country in which enforcement is sought (James Crawford, Brownlie's Principles of Public International Law (Oxford University Press, 9th Ed, 2019) at pp 714–715). And in line with the principle of double-control, it is generally for each enforcing court to determine what weight and significance should be ascribed to challenges before the seat court (Astro ([3] supra) at [75]).

49 *Blasket* at [165]–[168] reviewed various other authorities which have recognised the "self-contained" nature of the ICSID system. Of these, I would highlight the decision of the UK Supreme Court in *Micula v Romania* [2020] UKSC 5; [2020] 1 WLR 1033 ("*Micula*") at [68]–[69] (cited in *Blasket* at [167]):

> [68] … It is a notable feature of the scheme of the ICSID Convention that once the authenticity of an award is established, a domestic court before which recognition is sought may not re-examine the award on its merits. Similarly, a domestic court may not refuse to enforce an authenticated ICSID award on grounds of national or international public policy. In this respect, the ICSID Convention differs significantly from the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. The position is

> stated in this way by Professor Schreuer in his commentary on article 54(1):
>
> > "The system of review under the Convention is self-contained and does not permit any external review. This principle also extends to the stage of recognition and enforcement of ICSID awards. A domestic court or authority before which recognition and enforcement is sought is restricted to ascertaining the award's authenticity. It may not re-examine the ICSID tribunal's jurisdiction. It may not re-examine the award on the merits. Nor may it examine the fairness and propriety of the proceedings before the ICSID tribunal. This is in contrast to non-ICSID awards, including Additional Facility awards, which may be reviewed under domestic law and applicable treaties. In particular, the New York Convention gives a detailed list of grounds on which recognition and enforcement may be refused …"
>
> …
>
> [69] Contracting states may not refuse recognition or enforcement of an award on grounds covered by the challenge provisions in the Convention itself (articles 50-52). Nor may they do so on grounds based on any general doctrine of ordre public, since in the drafting process the decision was taken not to follow the model of the New York Convention.

50 On the terms of the ICSID Convention, "the award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention" (Art 53(1)) and "[e]ach Contracting State shall recognise 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" (Art 54(1)).

51 The ICSID Convention does not provide for "any appeal or other remedy" as regards challenging the tribunal's jurisdiction before a recognition/enforcement court. It follows that a recognition/enforcement court "may not re-examine the ICSID tribunal's jurisdiction" (*Micula* at [68], quoted at [49] above); or, as the FCAFC put it in *Spain FCAFC* at [114]: "the jurisdiction [of the ICSID tribunal] (or perhaps more precisely the absence of

its jurisdiction) is not a matter which the [recognising/enforcing court] can consider" (quoted in *Blasket* at [166]). Thus, the award remains binding notwithstanding that the dissatisfied party persists in saying that the tribunal had no jurisdiction (see further *Blasket* at [171]–[173]).

52 On the matter of the ICSID system being "self-contained", *Blasket* at [168] also cited *Spain EWCA* and the first instance decision by the English High Court ("EWHC"), *Infrastructure Services Luxembourg SARL v Kingdom of Spain* [2023] EWHC 1226 (Comm) ("*Spain EWHC*").

53 I would add the observation that in *Spain EWHC* and *Spain EWCA*, Spain advanced the same contention that it did in *Blasket*, that the tribunal had no jurisdiction, and so the award was not binding and could not be recognised/enforced. Notwithstanding Spain disputing the jurisdiction of the tribunal, the English courts recognised and enforced the award against Spain, without re-determining the issue of jurisdiction: see *Spain EWHC* at [4], [79], [88], *Spain EWCA* at [8], [103]–[106].

54 The court in *Blasket* went on, in any event, to consider and dismiss Spain's contention that the tribunal had no jurisdiction because of the Intra-EU Objection (which it also raises in the present proceedings): *Blasket* at [185]–[286]. I will revisit this when I discuss the Arbitrations Exception below at [75].

(4) NextEra USDC

55 In *NextEra USDC*, the same Award that is the subject of the present proceedings was recognised and enforced in the US.

56 The court noted at p 2 that:

> In the United States, the obligation to enforce ICSID awards is codified at 22 U.S.C. § 1650a, which provides that "pecuniary obligations imposed by [an ICSID] award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States." "Confirmation is the process by which an arbitration award is converted to a legal judgment."

57 Spain argued that the ICSID award was not entitled to "full faith and credit because the arbitrators themselves lacked jurisdiction, given that Spain 'never agreed to arbitrate anything with Petitioners'", and that "the foreign sovereign compulsion doctrine independently bars enforcement of the ICSID award and annulment decision." (At p 4.)

58 The court held at p 6 that

> Although Spain believes that the ICSID arbitrators lacked jurisdiction, it cannot succeed on the merits by "recycl[ing] a losing jurisdictional argument" that ICSID considered and rejected before. *Tethyan*, 590 F. Supp. 3d at 276. The terms of the ICSID Convention bar United States courts from examining "the ICSID tribunal's jurisdiction to render the award." *Mobil Cerro Negro v. Bolivarian Republic of Venezuela*, 863 F.3d 96, 102 (2d Cir. 2017).

59 Further, the court held, in line with a series of similar cases, that the foreign sovereign compulsion doctrine was inapplicable to the ICSID awards before those courts (at p 7).

60 Spain contended[2] that *NextEra USDC* is distinguishable in that:

(a) the statutory provision in the US is materially different from that in Singapore; and

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[2] Spain's lawyers' letter dated 14 October 2025, [5]–[7].

(b) US law in respect of the Foreign Sovereign Immunities Act of 1976 is irrelevant to this court's decision in relation to Singapore's SIA.

61 I do not accept either contention.

62 Spain's argument is that the US statute (see [56] above) provides that *an ICSID award* creates a right arising under a treaty, and that the pecuniary obligations imposed under the award shall be enforced and given the same full faith and credit as if the award were a final judgment of a US court, whereas under s 5 of the AIIDA, is the only when the award is *registered* under s 4 that its pecuniary obligations have the same force and effect as if the award had been a Singapore judgment.

63 I do not accept the distinction Spain draws between an award under the US regime, and a registered award under the Singapore regime. As discussed above, Art 54 of the ICSID imposes on each Contracting State the obligation to "recognise 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". In line with this, s 4 of the AIIDA provides that any person seeking recognition or enforcement of an ICSID award "shall be entitled to have the award registered". Under the AIIDA read with the ICSID Convention, an ICSID award gives a person seeking recognition or enforcement of it a right arising under a treaty, to have that award registered in Singapore.

64 Further, the process for registering an ICSID award in Singapore is analogous to the confirmation process in the US, as described in *NextEra USDC* at p 2: "Confirmation is the process by which an arbitration award is converted to a legal judgment." In other words, although an ICSID award gives the

successful party certain rights, there is still a judicial process for the award to be recognised and enforced within a Contracting State, as indeed is recognised in Art 54(2) of the ICSID Convention.

65 In relation to state immunity, I see no distinction merely because the *NextEra USDC* dealt with the Foreign Sovereign Immunities Act of 1976, whereas the present case concerns Singapore's SIA.

66 In *Spain HCA* at [29], the HCA held that "s 10(2) of the [Australian] Foreign States Immunities Act aligns with the approach taken to waiver of immunity in the United States, where the general immunity of a foreign State from jurisdiction [under the US Foreign Sovereign Immunities Act of 1976, 28 USC §1604] does not apply if the foreign State 'waived its immunity either explicitly or by implication'" [under the US Foreign Sovereign Immunities Act of 1976, 28 USC §1605(a)(1)]. The HCA went on to say at [74], "…there is no real distinction between the United States provision permitting a waiver of immunity to be identified 'either explicitly or by implication' and s 10(2) of the Foreign States Immunities Act permitting a waiver of immunity 'by agreement'".

67 As noted above at [37(b)], the HCA cited 5 US cases and summarised the US position as being: "that entry into the ICSID Convention involves a waiver of immunity from jurisdiction." Each of those US cases concerned the US Foreign Sovereign Immunities Act, and the codified obligation to enforce ICSID awards. One of those five US cases was *Mobil Cerro Negro Ltd v Bolivarian Republic of Venezuela* (2017) 863 F 3d 96, which was cited in *NextEra USDC* at p 6 for the proposition that "[t]he terms of the ICSID Convention bar United States courts from examining 'the ICSID tribunal's jurisdiction to render the award.'"

68 For ease of comparison, s 4 of Singapore's SIA provides, in material part that "[a] State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of Singapore" (s 4(1)), and "[a] State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement…" (s 4(2)).

69 In considering whether, by entering into the ICSID Convention, Spain submitted to jurisdiction for ICSID registration/enforcement proceedings, there is no distinction between the Singapore provision that recognises submission to jurisdiction by "written agreement", the Australian provision on waiver of immunity "by agreement", and the US provision waiver of immunity "either explicitly or by implication".

Conclusion on the Submission Exception

70 Having regard to the provisions of the ICSID Convention, the AIIDA, and the authorities reviewed above, I now summarise my conclusion on whether the Submission Exception (s 4 of the SIA) applies in the present case.

71 First, by entering into the ICSID Convention, Spain submitted to the jurisdiction of the courts of other Contracting Parties, for ICSID recognition/enforcement proceedings. The ICSID Convention bound each Contracting Party to recognise and enforce ICSID awards, and it follows that each Contracting Party submitted to the jurisdiction of the courts of the other Contracting Parties for that purpose. The ICSID Convention was an agreement in writing, an express submission to jurisdiction.

72 Second, ICSID awards are "binding" on the terms of the ICSID Convention. A dissatisfied party may apply for annulment to an annulment committee, but may not challenge ICSID awards in national courts: the ICSID

Convention creates "a self-contained system that is not subject to review by national courts": *Deutsche Telekom* at [123]. In particular, if a dissatisfied party has failed to annul an ICSID award, it cannot challenge the "binding" nature of the award by disputing the jurisdiction of the ICSID tribunal before a national court.

73 Third, in concluding that the Submission Exception applies, it is not necessary for a registering/enforcing court first to find that the Arbitrations Exception applies, *ie*, a registering/enforcing court need not satisfy itself as to the ICSID tribunal's jurisdiction, in order to find that Contracting Parties have, by entering into the ICSID Convention, submitted to jurisdiction in relation to recognition/enforcement proceedings.

74 I thus find that the Submission Exception to state immunity in s 4 of the applies, and that Spain did not have state immunity in the proceedings for the recognition/enforcement of the Award against Spain, which culminated in the Registration Order. It follows that Spain's application to set aside the Registration Order fails, unless it is nevertheless in the interests of justice to set aside the registration of the Award (which I address below at [124]).

The Arbitrations Exception: does the exception to state immunity in s 11 of the SIA apply?

75 My conclusion above that the Submission Exception in s 4 of the SIA applies is sufficient to dispose of the issue of state immunity.

76 Nevertheless, I also find that the Arbitrations Exception in s 11 of the SIA applies, for I reject Spain's challenge to the arbitration agreement that resulted in the Award, as I elaborate below.

77 The Dutch Investors contend that Spain cannot dispute the application of s 11 of the SIA by challenging the arbitration agreement (which is not a ground on which Spain can now challenge the Award, and so resist recognition/enforcement).

78 More specifically, the Dutch Investors contend (at [55]–[99] of their submissions) as follows:

(a) Pursuant to Art 26 of the ECT, Spain agreed in writing to submit the dispute(s) with the Dutch Investors to arbitration, which resulted in the Award.

(b) Recognition/enforcement courts cannot reopen the tribunal's decision that there is an arbitration agreement (since ICSID arbitration is a self-contained system); accordingly, for the purpose of the Arbitrations Exception, Spain cannot dispute this.

(c) Transnational issue estoppel precludes Spain from disputing that there is an arbitration agreement, for the purpose of the Arbitrations Exception.

(d) Alternatively, under the Primacy Principle, primacy should be given to the decision of the annulment committee, as if it were a seat court.

(e) In any event, the court should reject the Intra-EU Objection relied upon by Spain to dispute the arbitration agreement.

79 As I explain below, I find on point (a) above that, pursuant to Art 26 of the ECT, Spain had agreed in writing to arbitrate with the Dutch Investors; and on point (e) above that the Intra-Eu Objection is not a valid basis for Spain to

dispute the arbitration agreement. It follows that the Arbitrations Exception in s 11 of the SIA applies.

80 In the circumstances, I do not need to decide on points (b), (c), and (d) above, for even if Spain were not precluded from disputing the Art 26 arbitration agreement by the self-contained system of ICSID dispute resolution, transnational issue estoppel, or the Primacy Principle, I would reject Spain's challenge to the arbitration agreement by the Intra-EU Objection. Nevertheless, I offer some observations on these other issues, which may be of assistance in future.

(a) Was there prima facie an Art 26, ECT, arbitration agreement?

81 Art 26(1)–(5)(a) of the ECT provide as follows:

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

Investor has previously submitted the dispute under subparagraph (2)(a) or (b).

(ii) For the sake of transparency, each Contracting Party that is listed in Annex ID shall provide a written statement of its policies, practices and conditions in this regard to the Secretariat no later than the date of the deposit of its instrument of ratification, acceptance or approval in accordance with Article 39 or the deposit of its instrument of accession in accordance with Article 41.

(c) A Contracting Party listed in Annex IA does not give such unconditional consent with respect to a dispute arising under the last sentence of Article 10(1).

(4) In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2)(c), the Investor shall further provide its consent in writing for the dispute to be submitted to:

(a) (i) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (hereinafter referred to as the "ICSID Convention"), if the Contracting Party of the Investor and the Contracting Party party to the dispute are both parties to the ICSID Convention; or

(ii) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention referred to in subparagraph (a)(i), under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (hereinafter referred to as the "Additional Facility Rules"), if the Contracting Party of the Investor or the Contracting Party party to the dispute, but not both, is a party to the ICSID Convention;

(b) a sole arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (hereinafter referred to as "UNCITRAL"); or

> (c) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce.
>
> (5) (a) The consent given in paragraph (3) together with the written consent of the Investor given pursuant to paragraph (4) shall be considered to satisfy the requirement for:
>
> (i) written consent of the parties to a dispute for purposes of Chapter II of the ICSID Convention and for purposes of the Additional Facility Rules;
>
> (ii) an "agreement in writing" for purposes of article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958 (hereinafter referred to as the "New York Convention"); and
>
> (iii) "the parties to a contract [to] have agreed in writing" for the purposes of article 1 of the UNCITRAL Arbitration Rules.

82 On the terms of Art 26(1), (2)(c), and (3), ECT, Spain offered to arbitrate disputes with any investors of another Contracting Party (such as the Dutch Investors) relating to an investment of the latter in the area of the former, which concern an alleged breach of an obligation of the former under Part III, ECT. Under Art 26(4)(a), ICSID arbitration was one type of arbitration that the Dutch Investors could elect for, as they did. Having done so, a written arbitration agreement was formed between the Dutch Investors and Spain, for the resolution of their disputes by ICSID arbitration (see Art 26(5)).

83 Art 26, ECT, has been found to contain an offer by states to arbitrate, giving rise to a written investor-state arbitration agreement, in numerous cases, including *Spain HCA*, *Spain EWCA*, *Blasket* (all ICSID cases), and *DNZ v DOA* [2026] SGHC(I) 1 (a non-ICSID case).

84 Spain disputes this conclusion by the Intra-EU Objection, which I discuss below at [103].

(b) Does ICSID's self-contained system preclude Spain from disputing the arbitration agreement, in the context of state immunity?

85 As noted above (at [48]), it is well recognised that the ICSID Convention establishes a self-contained system which precludes dissatisfied parties from challenging awards other than as provided for in the Convention, and in particular ICSID awards cannot be challenged by disputing the tribunal's jurisdiction before a national court.

86 That is, however, in the context of challenging an ICSID award as being valid and binding, and so seeking to resist its recognition and enforcement. In relation to state immunity however, the general rule stated in s 3 of the SIA is that "[a] State is immune from the jurisdiction of the courts of Singapore except as provided in the following provisions of this Part." It is then for the party contending that the State in question does not have immunity (in this case, the Dutch Investors) to establish that one of the exceptions to state immunity apply (in the present case, the exceptions in s 4 or s 11).

87 In relation to the Arbitrations Exception in s 11, it is for the Dutch Investors to establish that Spain had agreed in writing to submit a dispute in question to arbitration. The question is whether it is sufficient for the Dutch Investors to establish that in view of Art 26, ECT, there is a *prima facie* arbitration agreement, because Spain is precluded by ICSID's self-contained system from contending otherwise.

88 The observations of the EWCA in *Spain EWCA* at [104]–[106] (set out below) go against the Dutch Investors on this:

> 104. If I am right in reaching the above conclusion, it is unnecessary to consider whether the exception to general adjudicative state immunity in section 9 of the SIA is also engaged automatically in the case of ICSID awards, or specifically in the case of Spain and Zimbabwe.
>
> 105. In my judgment, however, it is difficult to interpret section 9 of the SIA other than as imposing a duty on the court to satisfy itself that the state in question has in fact agreed in writing to submit the dispute in question to arbitration. I do not see a legal basis, whether issue estoppel (as suggested by the Border claimants) or statutory interpretation (as suggested by the ISL claimants) which would justify the court in abrogating that duty and considering itself bound by the determination of the ICSID tribunal as to its own jurisdiction in that regard. Whereas the Convention, through article 54, supplies the prior written agreement to submit to the jurisdiction for the purposes of section 2(2), the Convention does not contain the relevant arbitration agreement and its processes cannot give rise to a valid arbitration agreement for the purposes of section 9 if none exists.
>
> 106. That leaves the question of the validity of the respective arbitration agreements, a particularly complex issue in the case of Spain and its challenge to the validity of article 26 of the ECT as a matter of international law, an issue I do not propose to embark upon in this judgment, since in the light of my conclusion in relation to section 2(2) it is unnecessary to decide whether the exception in section 9 applies and anything this Court said would be obiter. I did not understand the Border claimants to have put in issue Zimbabwe's challenge to the validity of the reference under the relevant BIT by way of its Respondent's Notice.

89 The court expressly stated that it was unnecessary to consider whether the Arbitrations Exception under the UK SIA applied, and so anything it said on the point would be *obiter*. Nevertheless, the court did not incline towards the investors' argument that the Arbitrations Exception was "engaged automatically" in the case of ICSID awards. More specifically, the court was not inclined to accept that the states would be precluded by the terms of the statute/Convention, or issue estoppel, from disputing the existence of a valid arbitration agreement. The court preferred the view that it would have to satisfy itself that there was a valid arbitration agreement, rather than to consider itself

bound by the determination of the ICSID tribunal as to its own jurisdiction. The court was not inclined to accept that – in relation to state immunity – Spain was precluded from challenging the validity of Art 26, ECT, as a matter of international law, describing the question of the validity of the Art 26, ECT, arbitration agreement as particularly complex.

90 I prefer not to weigh in on this, as it is unnecessary for me to decide whether ICSID's self-contained system precludes Spain from disputing whether the Arbitrations Exception applies.

(b) Does issue estoppel preclude Spain from disputing the arbitration agreement, in the context of state immunity?

91 In *Deutsche Telekom*, the Court of Appeal held that India was precluded by transnational issue estoppel from raising jurisdictional objections that the Swiss Federal Supreme Court (the seat court) had rejected, and accordingly the "exception from state immunity in s 11(1) of the SIA applie[d]": *Deutsche Telekom* at [42], [152]–[153], [172]; see further [155]–[178]. *Deutsche Telekom* was followed on this point by the SICC in *Hulley Enterprises Ltd v The Russian Federation* [2025] SGHC(I) 19 at [63]–[120]; [160]–[170].

92 *Deutsche Telekom* was, however, not an ICSID case: it concerned an award under the New York Convention, and the discussion of transnational issue estoppel was directed to a decision of a national court – in particular, the seat court – and whether that might have preclusive effect on the issues decided by the court.

93 The Court of Appeal in *Deutsche Telekom* did not seek to analogise the decision of an ICSID tribunal or an ICSID annulment committee, with the decisions of national courts in the New York Convention context.

94 Instead, in the context of its discussion of the Primacy Principle, ICSID awards were seen as a "special category[y]", "exist[ing] within a self-contained system that is not subject to review by national courts", in contrast with New York Convention awards that are "subject to the rules for enforcement and challenge in the courts of the country in which enforcement is sought."

95 In so far as the Dutch Investors seek to analogise the decision of the ICSID tribunal with that of a national court in relation to a New York Convention award, under the ICSID Convention an ICSID award is susceptible of being annulled by an annulment committee, and when that avenue remains open it might be said that the ICSID tribunal's decision cannot give rise to issue estoppel – see *Deutsche Telekom* at [88] on it being a requirement that the earlier decision must be a final and binding one, in the sense that the issues decided "cannot be raised against in the foreign country". It might also be said that the decision of the ICSID tribunal is a *first instance* decision by a *tribunal*, whereas the decision of a national court in the New York Convention context is a *second instance* decision by a *court*.

96 If, instead, the Dutch Investors seek to analogise the decision of the ICSID annulment committee with that of a national court in relation to a New York Convention award, it might be said that an annulment committee can only interfere in limited instances as prescribed in Art 52 of the ICSID tribunal, which do not include a *de novo* review of the issue of jurisdiction, like that which a seat court could undertake in an application to set aside the award.

97 Further, as I noted at [89] above, the contention that the ICSID process would give rise to issue estoppel precluding a state from disputing the application of the Arbitrations Exception, did not find favour with the EWCA in *Spain EWCA*.

98 I will not go further than this, as it is unnecessary for me to decide whether issue estoppel precludes Spain from disputing whether the Arbitrations Exception applies.

(c) Does the Primacy Principle preclude Spain from disputing the arbitration agreement, in the context of state immunity?

99 In *Deutsche Telekom*, the Court of Appeal did not find it necessary to resort to the Primacy Principle, but made some brief observations to inform the analysis on a future occasion when it might be necessary to rule on the point (at [120], [121]). In *Hulley*, the court likewise found it unnecessary to consider the application of the Primacy Principle (at [146(b)]).

100 The Dutch Investors submit that Spain's objection to the Arbitrations Exception can be met by applying the Primacy Principle to the decision of the annulment committee, treating the annulment committee's decision as presumptively determinative, like the decision of a seat court might be in the New York Convention context.

101 The observations I have already made in relation to issue estoppel in the previous section, apply likewise to the Dutch Investors' invocation on the Primacy Principle. Again, the ICSID Convention does not provide for an annulment committee to conduct a *de novo* review of the issue of jurisdiction like that which a New York Convention seat court could undertake, and the EWCA in *Spain EWCA* was not inclined to find that the ICSID process would be determinative of whether the Arbitrations Exception would apply.

102 I will not go further, as it is not necessary for me to decide whether the Primacy Principle applies to make the result of the ICSID process presumptively determinative of the Arbitrations Exception.

(d) The Intra-EU Objection

103 The Intra-EU Objection is the contention that there cannot be a valid arbitration agreement between an EU Member State, and the national of another EU Member State (or, in the case of the UK, a former EU Member State to which EU law continued to apply for a transition period).

104 There are two aspects to the Intra-EU Objection as advanced by Spain in these proceedings (Spain's submissions at [24]):

(a) first, no valid agreement to arbitrate the dispute which is the subject of the Award exists because there can be no valid agreement under EU law to arbitrate Intra-Eu disputes; and

(b) second, even if this court does not take reference to EU law, Spain did not make any offer to arbitrate Intra-EU disputes.

105 The Intra-EU Objection has been considered in numerous decisions of courts and tribunals. It has been accepted by EU courts, but it has generally been rejected by non-EU courts and by investment tribunals: see *DNZ v DOA* [2026] SGHC(I) 1 at [31]. The Intra-EU Objection was rejected in *DNZ v DOA*, a unanimous decision of the SICC, for which I was a member of the *coram*. Moreover, Spain's Intra-EU Objection in relation to the same Award was rejected in *Blasket* at [185]–[198]; [204]–[222], and *Blasket* was in turn cited with approval in *DNZ v DOA* at [36].

106 I now address the two aspects of Spain's case on the Intra-EU Objection: (1) the effect of EU law, and (2) the terms of Art 26, ECT.

107 Spain's first argument – that EU law prohibits a valid arbitration agreement for Intra-EU disputes –is that even if Spain purportedly offered to arbitrate Intra-EU disputes, EU law operates to prevent any valid arbitration agreement from arising. Spain's second argument – that on the terms of the ECT it had never offered to arbitrate Intra-EU disputes – is that Spain never made any offer to arbitrate in the first place. I consider them in turn.

(1) The effect of EU law

108 The Netherlands was a founding member of the EU (then known as the European Economic Community ("EEC")) from its inception on 1 January 1958. Spain joined the EU (then still known as the EEC) on 1 January 1986.

109 Spain and the Netherlands both ratified the ECT in 1997, and the ECT came into force for them on 16 April 1998, when it became effective for all of those who were then Contracting Parties to the ECT. The EU was also a Contracting Party to the ECT.

110 Both Spain and the Netherlands were thus members of the EU prior to the ECT applying to them as Contracting Parties.

111 Before the ICSID tribunal, Spain contended that there was a *subsequent* overlap between the ECT and EU law.[3] That subsequent overlap was said to arise from Articles 267 and 344 of the Treaty on the Functioning of the European Union ("TFEU"). The Treaty of Lisbon, which was signed in December 2007 and came into force after ratification on 1 December 2009, amended and renamed the two constituent treaties of the EU, which became the Treaty on European Union and the TFEU.

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[3] Award, at [338], [348]–[357].

112 As Spain's contention before the tribunal was that there was a subsequent overlap between the earlier ECT (in force from 1998) and the later TFEU (in force from 2009), Spain argued (among other things) that Art 41 of the VCLT on the amendment of a prior treaty by a later treaty applied, and also that Article 30(4)(a) of the VCLT on the application of successive treaties relating to the same subject matter applied on the basis that the ECT was the earlier treaty, and the TFEU the later treaty. The ICSID tribunal rejected these arguments at [352]–[353] of the Award in particular.

113 In *DNZ v DOA*, the State in question too made these arguments, which were rejected by the court: at [53] in relation to Art 41 of the VCLT, and at [54]–[60] in relation to Art 31 of the VCLT.

114 In these court proceedings, Spain's EU law argument is now not that there was a *subsequent* overlap between the earlier ECT and the later TFEU, but that there was a *pre-existing* overlap between EU law and the ECT from the time the ECT came into force in 1998. Spain's present argument is that the relevant EU treaty provisions and principles that it relies upon, were in place from the time that the ECT entered into force, *ie*, the ECT was the later treaty, and so the effect of EU law on the ECT falls to be considered on that basis.

115 For present purposes, I do not need to decide whether Spain is right to now say that there was *pre-existing* overlap between the ECT and EU law, and not *subsequent* overlap as it contended before the ICSID tribunal. It is sufficient for me to say that I reject Spain's present argument on pre-existing overlap.

116 First, as Spain contends for pre-existing overlap, it cannot rely on Art 41 of the VCLT to argue that the ECT has been amended by a subsequent treaty (the EU treaties). As for Art 30(4)(a) of the VCLT, whether the ECT is the

earlier treaty, or the later treaty, in relation to the EU treaties, Art 30 of the VCLT applies only to "successive treaties relating to the same subject matter". The ICSID tribunal found that the ECT and the EU treaties did not "relate to the same subject matter" in the sense of Art 30 of the VCLT: at [352] of the Award. The court in *DNZ v DOA* reached the same conclusion at [54]–[60], and I remain of the opinion that the EU treaties and the ECT do not "relate to the same subject matter". But, assuming for the sake of argument, they did – Spain's present position that the EU treaties preceded the ECT is disadvantageous to it. On that premise, if EU treaties and the ECT related to the same subject matter for the purposes of Art 30 of the VCLT, then "the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty" (Art 30(4)(a) read with (3)), *ie*, the ECT being the later treaty would tend to prevail over the EU treaties.

117 In any event, there are other reasons for rejecting Spain's EU law argument:

(a) the principle of EU law primacy only operates within the EU system, and not on the broader international plane, and the Singapore court is not obligated to apply the same: *DNZ v DOA* at [30]–[37];

(b) Art 26, ECT, is a multilateral, and not bilateral, obligation which cannot be disapplied as between certain parties only (EU Member States who are also party to the ECT, including the UK as a former EU Member State): *DNZ v DOA* at [38]–[41];

(c) there was no express disconnection clause to carve-out Intra-EU disputes from the ambit of Art 26, ECT: *DNZ v DOA* at [44]; and

(d) Art 16, ECT, deals with any conflict between the ECT and other international agreements, by giving priority to the provision that is more favourable to investors – the possibility of pursuing investor-state arbitration under Art 26, ECT, as contrasted with the prohibition against such arbitration under EU law, provides an additional and therefore more favourable protection to investors: *DNZ v DOA* at [45]–[47].

(2) Whether Art 26, ECT, was an offer to arbitrate Intra-EU disputes

118 The second aspect of the Intra-EU Objection as argued by Spain, is that Art 26, ECT, was in the first place not an offer by it to arbitrate Intra-EU disputes.

119 Spain contends that a contextually sensitive, purposive interpretation of Art 26, ECT leads to the conclusion that EU Member States did not offer to arbitrate Intra-EU disputes. It points to three contextual indicia:

(a) the fact that the EU, as a "Regional Economic Integration Organisation" ("REIO"), was a party to the ECT;

(b) the historical context and purpose behind the ECT; and

(c) the Joint Declaration of 26 June 2024 setting out the common understanding of 26 Contracting States to the ECT.

120 Each of these points was considered, and rejected in *DNZ v DOA*:

(a) the EU's participation in the ECT as an REIO did not mean that the relationships between EU Member States were governed by EU law as if they had not independently ratified the ECT; the 1998 Statement submitted by the European Communities to the Secretariat of the Energy

Charter, makes it clear that the Member States have concluded the ECT independently and are responsible for the obligations incurred in accordance with their respective competences: *DNZ v DOA* at [42]–[43];

(b) Art 26, ECT, on its ordinary meaning, applies to all investor-state disputes equally, and the purpose of the ECT, as defined in Art 2, did not make any distinction between the investor's geographical origin that would deviate from the ordinary meaning of Art 26: *DNZ v DOA* at [48] – [49]; and

(c) the Joint Declaration of 2024 was not unanimously agreed among the EU Member States, and even met opposition: the conditions of subsequent agreement or practice were thus not met: *DNZ v DOA* at [50]–[52].

121 In the present case, Spain did not simply choose to let the EU (of which it was already a member) conclude the ECT on its behalf – Spain was a Contracting Party in its own right. As such, Spain had the rights and obligations of a Contracting Party under the ECT. By Art 26, ECT, Spain offered to arbitrate investment disputes with any Investor of any other Contracting Party – including Contracting Parties who were fellow EU Member States. There is no basis to say that the same words in Art 26, ECT, were an offer by Spain to arbitrate investment disputes with any Investor of a non-EU Contracting Party, but *not* an offer by Spain to arbitrate investment disputes with any Investor of an EU Contracting Party.

122 For the above reasons, and as elaborated upon in *DNZ v DOA*, I reject Spain's Intra-EU Objection to the ICSID tribunal's jurisdiction.

123 I thus find that the Arbitrations Exception in s 11 of the SIA applies, and that Spain did not have state immunity in the proceedings for the recognition/enforcement of the Award against Spain, which culminated in the Registration Order. That leaves only Spain's contention that it is nevertheless in the interests of justice to set aside the registration of the Award (which I now address below.

Is it in the interests of justice to set aside the registration of the Award?

124 Spain contends that even if it did not have state immunity in relation to the registration/enforcement proceedings leading to the Registration Order, it would nevertheless be in the interests of justice to set aside the order.

125 Order 3 rule 2(8)(a) of the Rules of Court 2021 provides as follows:

> (8) The Court may, on its own accord or upon application, if it is in the interests of justice, revoke any judgment or order obtained or set aside anything which was done —
>
> > (a) without notice to, or in the absence of, the party affected

126 Spain invokes that, as the Registration Order was obtained on a "without notice" basis.

127 Spain says it would be in the interests of justice to set aside the Registration Order because the Award clearly amounts to a contravention of EU law and Spain's constitutional arrangements with the EU: Spain's submissions at [123]–[124]. In this regard, Spain repeats its submissions at [101]–[112] that the Award and the decision of the Annulment Committee declining to annual the award, are contrary to Singapore's public policy. A similar appeal by the State in *DNZ v DOA* was rejected (at [124]–[140]).

128 Indeed, Spain is on even weaker ground here. It does not directly ask to set aside the Registration Order on the ground that the Award and the decision of the Annulment Committee were contrary to public policy, for public policy is not a recognised ground on which an ICSID award can be challenged (whereas public policy is a recognised ground for setting aside a New York Convention award like that in *DNZ v DOA*, where the public policy objection nevertheless failed).

129 As the UK Supreme Court held in *Micula* at [68], "a domestic court may not refuse to enforce an authenticated ICSID award on grounds of national or international public policy" and at [69], "Contracting States may not refuse recognition or enforcement of an award on grounds covered by the challenge provisions in the Convention itself (articles 50-52). Nor may they do so on grounds based on any general doctrine of *ordre public*…" (see [49] above).

130 Spain finds itself in a dilemma because it was already an EU Member State from 1986, it then decided to enter into the ECT in 1997 (offering investor-state arbitration of investment disputes pursuant to Art 26), only to find out – from the 2018 decision of *Slovak Republic v Achmea BV*[4] and the 2021 decision of *Republic of Moldova v Komstroy*[5] – that the Court of Justice of the European Union regarded Intra-EU arbitrations to be invalid. Spain's predicament is the result of the treaties that it entered into.

131 As the court in *DNZ v DOA* put it at [139]:

> … Any contradictory obligations the State now faces, are a function of the State entering into the relevant treaties: the ECT

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4 CJEU Case C-284/16, ECLI:EU:C:2018:158, Judgment (6 March 2018)

5 *Republic of Moldova v Komstroy*, CJEU Case C-741/19 ECLI:EU:C:2021:655, Judgment (2 September 2021)

> and the EU Treaties. It is not contrary to Singapore's public policy to uphold an award merely because the award debtor would then face contradictory obligations arising from commitments the debtor had entered into. It is not for the Singapore court to relieve the State of the consequences that may flow from the treaty obligations the State has entered into.

132 The point may be put even more strongly in the present case. As a Contracting State to the ICSID Convention, Singapore agreed pursuant to Art 54 to recognise and enforce ICSID awards such as the Award in the present case. Singapore implemented that in domestic law by passing the AIIDA, s 4 of which "entitled [the Dutch Investors] to have the award registered in the General Division of the High Court".

133 If this court were to accede to Spain's request to set aside the Registration Order, it would be acting contrary to the ICSID Convention and the AIIDA. The court cannot do so, for:

(a) "the courts will always strive to give effect to Singapore's international obligations within the strictures of our Constitution and laws": *The "Sahand" and other applications* [2011] 2 SLR 1093, at [33]; and

(b) "a court operating in a parliamentary democracy is bound to implement the will of Parliament as embodied in domestic legislation, in so far as such legislation is not incompatible with the constitution": *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [33].

134 Setting aside the Registration Order would not be in the interests of justice. On the contrary, the Dutch Investors were and are entitled to have the Award registered, pursuant to the ICSID Convention and the AIIDA.

Conclusion

135 For the above reasons, I dismiss Spain's application to set aside the Registration Order.

136 Unless the parties can agree on costs, they are to file their costs submissions, limited to eight pages excluding any schedule of disbursements, by 17 March 2026.

Andre Maniam
Judge of the High Court

Thio Shen Yi, SC, Joshua Phang Shih Ern and Ang Kai Le (TSMP Law Corporation) for the claimant;
Siraj Omar, SC, Allister Brendan Tan Yu Kuan, Cheng Hiu Lam Larisa, Hendroff Fitzgerald L and Darryl Hor Jun Heng (Siraj Omar LLC) for the respondent.