

The UK Supreme Court Confirms That States Cannot Invoke State Immunity to Avoid the Registration of ICSID Arbitration Awards

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Introduction

In *Kingdom of Spain v Infrastructure Services Luxembourg S.À.R.L. and Republic of Zimbabwe v Border Timbers Ltd* [2026] UKSC 9, the Supreme Court unanimously held that, having acceded to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States 575 UNTS 159 (“**ICSID Convention**”), Spain and Zimbabwe could not invoke state immunity to resist the registration of ICSID awards in England and Wales.

This development is a welcome clarification on an issue that has been the subject of decisions in a number of jurisdictions including Australia, New Zealand, Malaysia, and the U.S.

Background

A party seeking to enforce an ICSID award in England and Wales must first obtain registration of that award from the English courts. In essence, this recognises that the award is legally binding so that it may be treated as a domestic judgment. Once the award has been registered, the party may move to “execution” – that is, to use the powers of the court to compel compliance.

In *Spain* and *Zimbabwe*, foreign investors in Spain and Zimbabwe successfully obtained ICSID awards against Spain and Zimbabwe. Both investor companies then successfully applied to the High Court to register their respective awards in England.

However, both Spain and Zimbabwe applied to set aside the registration orders under

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section 1 of the State Immunity Act 1978 (“**SIA 1978**”) which provides that states are immune from the jurisdiction of the UK courts, unless there is a certain exception. The exceptions include where: (1) the state in question has submitted to the jurisdiction of the English courts by prior written agreement (section 2(2), SIA 1978); and (2) the state has agreed in writing to submit a dispute to arbitration (section 9, SIA 1978).

The High Court dismissed both Spain and Zimbabwe’s applications to set aside the registration orders, though it did so on different grounds, reflecting the prior uncertainty under English law concerning the interaction between the registration of ICSID awards and the immunity provisions of SIA 1978.

In a combined appeal heard in June 2024, the Court of Appeal dismissed Spain’s and Zimbabwe’s appeals.

Judgment

Spain and Zimbabwe appealed to the Supreme Court on two primary grounds:

1. Had Spain and Zimbabwe waived state immunity and submitted to the jurisdiction of the English courts by agreement, within the meaning of section 2(2) of the SIA 1978 as a result of article 54(1) of the ICSID Convention?
2. Had Spain and Zimbabwe agreed to arbitration with the respondent investors within the meaning of section 9(1) of the SIA 1978?

Issue 1: Had Spain and Zimbabwe waived state immunity and submitted to the jurisdiction of the English courts by agreement, within the meaning of section 2(2) of the SIA 1978 as a result of article 54(1) of the ICSID Convention?

As to the first issue, two questions arose.

First, what is the test for deciding whether there had been a prior written agreement to submit to the jurisdiction under section 2(2) of the SIA 1978? The Supreme Court held that this was a matter for domestic law: waiver of immunity by treaty requires “*a clear and unequivocal expression of the state’s consent to the exercise of jurisdiction*”, but this does not require explicit words such as “*waiver*” or “*submission*”.

Secondly, does article 54(1) meet the test under section 2(2) of the SIA 1978? The Supreme Court held that it did. Article 54(1) provides that each contracting state “*shall*” recognise an award as binding and enforce the award within its territories as if it were a final judgment of a court in that state. A contracting state (such as Spain or Zimbabwe) cannot simultaneously agree that the UK “*shall*” recognise and enforce an ICSID award rendered against it, whilst also claiming immunity from recognition and enforcement that would prevent the UK from complying with its own ICSID obligations.

As to the first issue, the Supreme Court, therefore, held that both Spain and Zimbabwe had waived state immunity and submitted to the jurisdiction of the English courts by agreement within the meaning of section 2(2) of the SIA by signing article 54(1) of the ICSID Convention.

Issue 2: Had Spain and Zimbabwe agreed to arbitration with the respondent investors within the meaning of section 9(1) of the SIA 1978?

In light of the conclusion that Spain and Zimbabwe had waived immunity under section 2(2) of the SIA, the Supreme Court declined to consider the second issue as to whether Spain and Zimbabwe had agreed to arbitrate within the meaning of section 9(1) of the SIA.

Commentary

The Supreme Court's decision provides helpful confirmation that the 158 states that have signed the ICSID Convention cannot invoke state immunity to resist the registration in the UK courts of ICSID awards against them.

The Supreme Court noted the important principle of consistent interpretation of international instruments and the intention that the text of international treaties be interpreted by the courts of all state parties as having the same meaning. To that end, the Supreme Court noted that (as the Court of Appeal had observed) there is broad international consensus as to the meaning and effect of article 54(1) of the ICSID Convention and that the courts of Australia, New Zealand, Malaysia, and the U.S. had all already interpreted article 54(1) as a waiver of adjudicative immunity by each contracting state, and, where domestically relevant, a submission to jurisdiction.

However, as the Supreme Court (and the Court of Appeal) emphasised, article 55 of the ICSID Convention makes clear that domestic laws apply to the execution of awards and that nothing in article 54 provides a derogation from state immunity from execution.

The Supreme Court's decision provides comfort to investors in removing the possibility for procedural immunity defences being raised at the registration stage.

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