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International Arbitration | Judgment & Arbitral Award
Enforcement Update

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Waived Through: UK Supreme Court Confirms No State Immunity Defence Against ICSID Award Recognition in the UK

The judgment materially strengthens the enforceability of ICSID awards in the United Kingdom.

The United Kingdom's Supreme Court has unanimously held that a Contracting State to the ICSID Convention cannot invoke state immunity to resist the recognition in England of an ICSID award made against it.

Gibson Dunn's [Christopher Harris KC](#) was lead counsel on behalf of Border Timbers, the successful respondent in Zimbabwe's appeal in the Supreme Court and below.

1. Executive summary

On 4 March 2026, the United Kingdom's Supreme Court handed down its unanimous judgment in [The Kingdom of Spain v Infrastructure Services Luxembourg S.À.R.L. and another; Republic of Zimbabwe v Border Timbers Ltd and another \[2026\] UKSC 9](#).

The Supreme Court held that, by ratifying the ICSID Convention, Contracting States have submitted to the adjudicative jurisdiction of the courts of all other Contracting States for the purposes of the recognition of an ICSID award rendered against them. This submission arises from the clear and unequivocal language of Article 54(1) of the ICSID Convention, which satisfies

the requirements of section 2(2) of the United Kingdom's State Immunity Act 1978 (the **SIA**).

The Supreme Court has therefore held that the SIA precludes a State party to the ICSID Convention from invoking state immunity to resist the English Court's recognition of an ICSID award. The judgment does not affect a State's immunity from execution against its assets.

The judgment materially strengthens the enforceability of ICSID awards in the United Kingdom.

2. Background

The joined appeal concerned two ICSID awards: one rendered against Spain, and the other against Zimbabwe. In each case, the award creditors successfully obtained orders registering their respective award in England under the Arbitration (International Investment Disputes) Act 1966.

Both States applied to set the recognition orders aside on state immunity grounds. Those applications were rejected by:

- a. the High Court, in two separate judgments: (i) in Spain's case, by Fraser J ([\[2023\] EWHC 1226 \(Comm\)](#)), which we covered in a prior [client alert](#); and (ii) in Zimbabwe's case, by Dias J ([\[2024\] EWHC 58 \(Comm\)](#)); and
- b. the Court of Appeal, in a combined appeal ([\[2024\] EWCA Civ 125](#)), which we covered in a prior [client alert](#).

Spain and Zimbabwe appealed the Court of Appeal's decision to the Supreme Court.

3. The Supreme Court's judgment

The central issue on appeal before the Supreme Court was whether, by agreeing to be bound by Article 54(1) of the ICSID Convention, Spain and Zimbabwe had submitted to the jurisdiction of the English courts (within the meaning of section 2(2) of the SIA 1978), such that they do not enjoy immunity from the English courts' adjudicative jurisdiction with respect to the recognition proceedings.

This issue was addressed by analysing the following questions:

1. What is the test for deciding whether there has been an agreement to submit to the jurisdiction of the English courts under section 2(2) of the SIA?
2. What is the correct interpretation of Articles 53 to 55 of the ICSID Convention as a matter of customary international law, and does Article 54(1) meet the above test?

As to the first question, the Supreme Court found that a waiver of immunity by treaty requires "a *clear and unequivocal expression of the state's consent to the exercise of jurisdiction*" but does not require using explicit words such as "waiver" or "submission". Accordingly, the appropriate test is "*whether the words used necessarily lead to the conclusion that the state has submitted to the jurisdiction.*" In reaching this conclusion, the Supreme Court accepted the analysis advanced on behalf of Border Timbers and departed from Lord Goff's approach in his dissenting judgment

in [R v Bow Street Magistrate, Ex parte Pinochet \(No 3\) \[2000\] 1 AC 147](#), which had widely been considered to represent English law on the subject. The Supreme Court held that Lord Goff had taken “*an unnecessarily narrow view of what may constitute an express waiver of immunity.*”

As to the second question, the Supreme Court held that Article 54(1) of the ICSID Convention^[1] constitutes a clear and unequivocal submission to the adjudicative jurisdiction of the English courts for the purposes of recognising and enforcing the arbitral awards against Spain and Zimbabwe. In reaching that conclusion, the Supreme Court applied the general principles of treaty interpretation under the Vienna Convention on the Law of Treaties and drew support from (i) the ordinary meaning of Articles 53 – 55 of the ICSID Convention (without reading in words or implying terms into them), (ii) the Convention’s context, (iii) its object and purpose, (iv) its *travaux préparatoires*, and (v) judgments on the same issue by the courts of Australia, New Zealand, Malaysia and the United States.

4. Commentary

The Supreme Court’s decision is a welcome development for parties looking to enforce ICSID awards in the United Kingdom. It confirms that the SIA prevents States from relying on state immunity to resist the recognition of ICSID awards under the 1966 Act, thus removing a significant procedural defence at the recognition stage.

In practical terms, the judgment should shortcut debate on state immunity issues at the recognition stage for ICSID awards, saving time and cost for ICSID award creditors and allowing them to move more quickly towards seeking execution.

The Court of Appeal will soon be deciding whether a State’s ratification of the New York Convention 1958 is similarly a waiver of adjudicative immunity in respect of proceedings for the recognition of a New York Convention award for the purposes of section 2 of the SIA (CA-2025-001365 - *CC/Devas (Mauritius) Ltd and others v The Republic of India*; hearing scheduled between 24-26 March 2026).

[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. [...]”

The following Gibson Dunn lawyers prepared this update: Piers Plumptre, Ceyda Knoebel, Alexa Romanelli, Theo Tyrrell, Katie Mills and Dimitar Arabov.

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these issues. Please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the firm’s [International Arbitration](#) or [Judgment & Arbitral Award Enforcement](#) practice groups, or the authors in London:

Piers Plumptre (+44 20 7071 4271, pplumptre@gibsondunn.com)

Ceyda Knoebel (+44 20 7071 4243, cknoebel@gibsondunn.com)

Alexa Romanelli (+44 20 7071 4269, aromanelli@gibsondunn.com)

Theo Tyrrell (+44 20 7071 4016, ttyrrell@gibsondunn.com)

Katie Mills (+44 20 7071 4045, kmills2@gibsondunn.com)

Dimitar Arabov (+44 20 7071 4063, darabov@gibsondunn.com)

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