No Assignment, No Enforcement: English Court of Appeal Holds That Only Original Award Creditor May Enforce an ICSID Award

NOVEMBER 2026 | SINGAPORE



Introduction

Can a successful claimant in an International Centre for Settlement of Investment Disputes ("**ICSID**") arbitration sell the award? And can the buyer then step into the claimant's shoes to enforce that award directly against the respondent State?

In *Operafund Eco-Invest SICAV plc and others v The Kingdom of Spain* [2026] EWCA Civ 1392, handed down on 2 November 2026, the English Court of Appeal (Lewison, Males and Foxton LJJ) held that the answer is "no" – at least where the purported assignment is voluntary (rather than by operation of law) and the respondent State has not consented.

Background

The first and second claimants, Operafund Eco-Invest SICAV PLC and Schwab Holding AG respectively (collectively, the "**Original Award Creditors**"), were investors in the Spanish renewable energy sector. Following changes to Spain's regulatory regime, they brought an ICSID arbitration against Spain (one of 51 known investment treaty claims brought in the wake of Spain's changes to its renewables tariff regime) under the Energy Charter Treaty ("**ECT**") and opted for ICSID arbitration. In 2019, they obtained an award in their favour worth approximately €29.3 million ("**Award**"). In 2021, the Award was registered in England under the Arbitration (International Investment Disputes) Act 1966 ("**1966 Act**").

In January 2024, the Original Award Creditors purported to assign all their rights, interests and benefits under or in respect of the Award to Blasket Renewable Investments LLC ("**Blasket**"), a Delaware company formed for the purpose of acquiring and exploiting investment treaty awards. Blasket then applied to be substituted as claimant in the English recognition and enforcement proceedings. Spain resisted, contending that an ICSID award is not capable of being assigned and that the assignee cannot invoke the enforcement machinery of the ICSID Convention.

The Commercial Court refused the application for substitution. The English Court of Appeal dismissed Blasket's appeal.

The Court of Appeal's Judgment

ICSID awards cannot be assigned without the obligor State's consent

Foxton LJ, who gave the leading judgment, treated the assignability of rights arising under an ICSID award as a question governed by public international law. Specifically, he considered whether, under international law, an obligee of a treaty right is entitled to assign that right without the obligor's consent. Given that it was common ground that neither the ECT nor the ICSID Convention conferred such a right, Foxton LJ approached the question from the perspective of customary international law. After examining various commentaries, including a 1974 Report of the International Law Commission, Foxton LJ concluded that such a unilateral assignment of treaty rights without the consent of the obligor State was not permitted as a matter of customary international law.

Foxton LJ held that the analysis did not change even though the present case concerned rights afforded to *private individuals* (albeit conferred under a treaty) rather than treaty obligations between States *per se*. Ultimately, he reasoned, such rights were still international law rights and subject to the general rule. After examining the materials placed before him, he concluded that customary international law had yet to develop a separate *positive rule* allowing for assignment by private investors, noting that with a single exception, the cases relied upon by Blasket to the contrary had all been decided in the past three years, suggesting that a new customary international law rule had yet to crystallise. He also rejected the application of the so-called *Lotus*-principle (that is, that under international law, one may do whatever is *not expressly prohibited*), holding that even if the *Lotus* principle applied to non-State actors (and not just States) and that it was *not unlawful* to assign a treaty award, this alone would not make that assigned award enforceable against the award debtor State. Blasket needed to show that the assignment was legally effective on the international plane, not merely that making the assignment was not wrongful.

In so holding, the English Court of Appeal diverged from the positions taken in the United States (*Blue Ridge Investments, LLC v Argentine Republic*, Memorandum Opinion & Order, 30 September 2012, 10 Civ 153 (PGG), 902 F Supp 2d 367), Australia (*Blasket Renewable Investments LLC v Kingdom of Spain* [2025] FCA 1028), and the Netherlands (*Spain v Blasket Renewable Investments LLC*, 21 July 2026, Case No C/10/720308/KG ZA 26-503). However, the Court held that those courts had approached the question differently, by asking whether international law "prohibited" assignment, rather than whether international law *allowed* it.

Only a party to the award may seek recognition and enforcement under Article 54(2)

Article 54(1) of the ICSID Convention obliges each Contracting State to recognise an award as binding and to enforce the pecuniary obligations imposed by it. Article 54(2) provides that to that end, "[a] party seeking recognition or enforcement … shall furnish" a certified copy of the award to the designated court or authority. The Court held that "a party" means a party to the arbitration and to the award – that is, the original award creditor. An assignee who was never a party to the arbitration is not within that description and therefore cannot seek recognition and enforcement of the award.

The Court also rejected the argument that the 1966 Act created a freestanding substantive right which was assignable as a matter of domestic law, holding that it only created implementing machinery for the enforcement of ICSID awards, and that if the award was not assignable, registration under the 1966 Act could not make the enforcement right assignable either.

Conclusion and Takeaways

This decision places England and Wales out of step with many other jurisdictions. As the Court noted in its judgment, a secondary market in investment treaty awards has developed in recent years. This business model has thus far depended on the purchaser being able to acquire the award and then pursue enforcement in its own name across multiple jurisdictions. This decision removes England and Wales from that list: for voluntary assignments of ICSID awards; at least, the buyer cannot step into the seller's shoes before the English courts.

To be clear, the Court did not rule against "award trading" *per se*, but against claimant substitution. Foxton LJ noted that the Original Award Creditors remain entitled to enforce the award against Spain and that Blasket could "control the process and recover any sums recovered by the claimants by enforcement" under clause 7 of the Assignment Agreement between the Original Award Creditors and Blasket. In other words, if this decision holds, the market may need to adjust by structuring transactions around the transfer of the *contractual entitlement to the proceeds* rather than the assignment of the award itself. Provisions relating to, among other things, powers of attorney, funding arrangements, and control provisions may also need to be considered, as will contingencies such as the insolvency or unwillingness of the original award creditor to prosecute the action. This may mean that awards sought to be enforced in England and Wales will have to be priced differently.

This decision also draws a divide between ICSID and non-ICSID awards. As Foxton LJ noted, the New York Convention (which would generally apply to the enforcement of non-ICSID awards) contains similar language on enforcement at Article IV but it is generally regarded as permitting assignees of a qualifying award to avail themselves of its recognition and enforcement provisions. This may have an impact both on forum selection at the outset of the arbitration and on the secondary market for arbitral awards. It also creates an interesting distinction in that ICSID awards may be seen as more attractive from the sovereign immunity standpoint (see the decision of the Singapore Court of Appeal in *Kingdom of Spain v NextEra Energy Global Holdings BV* [2026] SGCA 43), but less attractive to secondary market investors seeking to enforce in England and Wales.

Finally, it should also be noted that the English Court of Appeal expressly reserved its position on two questions which did not arise in this case, namely: (i) involuntary transfers – whether a transfer of rights occurring by operation of law (e.g. insolvency, death, or corporate succession) would enable the transferee to enforce the award; and (ii) State consent – whether an assignment (or novation) to which the award debtor State has consented would enable the assignee to obtain recognition and enforcement under Article 54(2).

The practical significance of this decision may be considerable as it creates a real obstacle for anyone who buys an ICSID award with English enforcement in mind, so it would not be surprising if the matter is appealed to the UK Supreme Court. Given the global market for the enforcement of awards, it would also not be surprising if the same question came before the courts of other jurisdictions, including Singapore, in the not-too-distant future.

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