

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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REPUBLIC OF GUATEMALA,		)	
		)	
<b>Petitioner,</b>		)	
		)	
<b>v.</b>		)	<b>Case No. 1:22-cv-00394(CM)</b>
		)	
IC POWER ASIA DEVELOPMENT LTD.,		)	
		)	
<b>Respondent.</b>		)	
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**AFFIDAVIT IN SUPPORT OF GUATEMALA’S REQUEST  
FOR A CERTIFICATE OF DEFAULT**

Rodney Quinn Smith affirms the following under penalty of perjury:

1. I am a partner at GST LLP representing Petitioner, the Republic of Guatemala (“Guatemala”), in the above-captioned matter. I respectfully submit this affidavit in support of Guatemala’s request for a certificate of default against Respondent, IC Power Asia Development LTD (“ICPA”), pursuant to Fed. R. Civ. P. 55(a) and Local Rule 55.1.

2. On January 14, 2022, Guatemala filed a Petition for Recognition of an Arbitration Award issued in its favor and against ICPA by an arbitral tribunal (“Tribunal”) sitting in London, the United Kingdom. *See* ECF No. 1.

3. Thereafter, Guatemala attempted to effect service on ICPA by serving its agent, IC Power Pte. Ltd (“IC Power”) pursuant to Fed. R. Civ. P.4(e)(1) and N.Y. C.P.L.R. § 311-a(a). *See* Affidavit of Service, ECF No. 21. Under N.Y. C.P.L.R. § 311-a(a), a petitioner may serve any foreign limited liability company by “delivering a copy personally to...any member of the limited liability company in this state, if the management of the limited company is vested in its members.”

4. On February 28, 2022, Guatemala served Mr. Laurence Charney on behalf of ICPA. Mr. Charney is part of the “senior management” of the IC Power where he acts as the Chairman of the Audit Committee and Chairman of the Nominating and Corporate Governance Committee.<sup>1</sup> *See* IC Power Pte. Ltd., Amendment to Registration Statement under the Securities Act of 1933 (Form F-1) (Jan. 23, 2017), p. 285. By effecting service on ICPA’s agent, IC Power, Guatemala believe it had properly served ICPA. *See New York Marine Managers Inc. v. M.V. Topor*, 716 F. Supp. 783, 786 (S.D.N.Y 1989) (holding that service on defendant’s agent constitutes proper service on defendant).

5. On August 5, 2022, this Court determined that it had subject-matter jurisdiction and specific jurisdiction over ICPA but determined that Guatemala had not properly served ICPA as it did not consider Mr. Charney an agent for purposes of service under N.Y. C.P.L.R. § 311-a(a). The Court ordered that Guatemala serve ICPA pursuant to N.Y. C.P.L.R. § 307. *See* ECF No. 31, pp. 10, 12-17. The Court gave Guatemala “30 additional days from the date of [the] order to properly serve ICPA in accordance with N.Y. Bus. Corp. Law § 307.” *See id.*, p. 18. Due to the intervening holiday, the 30-day deadline expired on September 6, 2022.

6. Shortly thereafter, Guatemala was able to confirm the agent for service of process for ICPA in Israel as the law firm of Gornitzky & Co. law firm. *See* ECF No. 33 at ¶¶ 16-17. On September 5, 2022, service by mailing was completed with proof of delivery and signature. *See* ECF No. 33-7.

7. ICPA has failed to defend the action brought against it. Under Federal Rule of Civil Procedure 12(a)(1)(A)(i), a respondent “must serve an answer within 21 days after being served

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<sup>1</sup> <https://www.sec.gov/Archives/edgar/data/1649678/000119312517014652/d102505df1a.htm>

with the summons and complaint.” Fed. R. Civ. P. 12(a)(1)(A)(i). Despite accepting service on September 5, 2022, ICPA has neither appeared nor provided a response to the Petition.

8. Respondent is not an infant, incompetent person, or a person in the military service.

9. Guatemala, therefore, respectfully requests that the clerk grant the request for certificate of default.

Dated: October 10, 2022

Respectfully submitted

/s/ Quinn Smith

**GST LLP**

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