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Lost in Translation: English Court of Appeal Confirms That Ratification of the New York Convention Is Not a Waiver of Sovereign Immunity

Client Alerts

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On 24 June 24, 2026, the English Court of Appeal in *CC/Devas (Mauritius) Limited v. India* unanimously held that a state's ratification of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NY Convention) does not, of itself, amount to a submission to the adjudicative jurisdiction of the English courts for the purposes of section 2(2) of the State Immunity Act 1978 (SIA).[1] In dismissing the appeal, the Court of Appeal declined to extend the UK Supreme Court's reasoning in *Infrastructure Services Luxembourg SARL v. Kingdom of Spain*[2] — which held that ratification of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965 (ICSID Convention) amounted to a waiver of immunity— to the NY Convention as the wording of the key provision in both treaties differs in material respects.

Case Background

The appellants in this case held two United Nations Commission on International Trade Law awards against India arising from India's 2011 annulment of a satellite spectrum-lease contract with Devas Multimedia, a claim brought under the Mauritius–India Bilateral Investment Treaty. In 2021, the appellants commenced enforcement proceedings in the English courts, which India sought to resist on grounds of state immunity. The appellants argued that India had agreed in writing to arbitrate the underlying dispute, which is an exception to immunity under section 9 of the SIA (arbitration exception). India separately disputed the issue of whether it had agreed in writing to arbitrate the underlying dispute in proceedings before the Dutch courts, the courts of the seat, and argued that the English proceedings should be stayed.

In order to avoid the delay associated with the concurrent proceedings, the appellants relied on a second ground to defeat India's state immunity defence, which was that India's ratification of the NY Convention, specifically Article III, constituted "a prior written agreement" to submit to the jurisdiction of the English courts and therefore a waiver of immunity pursuant to section 2(2) and section 17 of the SIA (submission to jurisdiction exception).

The High Court ordered that the submission to jurisdiction exception argument should be tried as a free-standing preliminary issue without prejudice to the unresolved arbitration exception dispute and India's related stay application. As previously reported here, the High Court rejected the appellants' submission to jurisdiction exception argument on the basis that the reference to "rules of procedure" in Article III of the NY Convention preserved state immunity in its own terms.

Court of Appeal Decision

The Court of Appeal confirmed that the test for determining whether a waiver of immunity by treaty has occurred is the one formulated by the Supreme Court in *Infrastructure*, which requires "a clear and unequivocal expression of the state's consent to the exercise of jurisdiction." It also confirmed that this question depended on the proper interpretation of the relevant articles of the treaty, interpreted in accordance with the customary international law principles of treaty interpretation (as codified in Articles 31–32 of the Vienna Convention on the Law of Treaties (VCLT).

The appellants placed significant reliance on the Supreme Court's ruling in *Infrastructure* that Article 54(1) of the ICSID Convention—which contains the contracting parties' obligation to recognise an award as if it were a final judgment—constitutes an unmistakable waiver of adjudicative immunity. The appellants argued that the Supreme Court's reasoning should be "read across" to Article III of the NY Convention. The Court of Appeal rejected this argument, noting that there are critical distinctions between the two treaties. Specifically, the Court of Appeal observed that:

- Article III of the NY Convention is qualified by the phrase "in accordance with the rules of procedure of the territory where the award is relied upon"—wording with no equivalent in Article 54(1) of the ICSID Convention.
- The ICSID Convention is a closed, self-contained scheme necessarily involving awards to which a contracting state is a party and expressly preserves only execution immunity (Article 55), leaving no room for adjudicative immunity. The NY Convention is silent on immunity altogether and applies to awards generally, not only those involving contracting states.
- The two treaties have different objects and purposes: The ICSID Convention exists to secure investment via a mutually reinforced enforcement guarantee between states; the NY Convention exists to promote enforcement of arbitral awards generally, regardless of the parties.

Having distinguished the *Infrastructure* case, the Court of Appeal turned its attention to the meaning and effect of the term "rules of procedure" in Article III of the NY Convention, which was the key part of the provision to be interpreted. The appellants argued for a narrow definition of the phrase "rules of procedure" in Article III, stating that it should be confined to rules "that are functionally necessary to facilitate and address the process of recognition and enforcement," which they said did not include state immunity. The appellants, however, accepted that limitation and insolvency defences fall within "rules of procedure" but could not articulate a principled basis for excluding state immunity while including those defences. The Court of Appeal therefore rejected the appellants' interpretation, holding that the only workable definition of a rule of procedure in this context is the one provided by Lord Sumption in *Benkharbouche v. Embassy of the Republic of Sudan*, namely "a rule which, whether technically procedural or substantive in character, has the effect of barring a claim for reasons which do not go to its legal merits; that is to say, rules which do not define the existence or extent of any legal obligation."[3] The Court of Appeal held that state immunity fell squarely within this definition. It also rejected the appellants' arguments that the phrase should be read to have "evolved" away from including immunity since 1958, or that reading it to include immunity created an anomalous, wider waiver of execution immunity than the parties could have intended.

Finally, the Court of Appeal observed the importance of interpreting the treaty in a uniform way, as required by the VCLT. In this regard, the Court of Appeal noted that its conclusion was consistent with the High Court of Australia's decision in *CCDM Holdings LLC v. The Republic of India*[4] on precisely the same point between the same parties—handed down after the Court of Appeal hearing but before judgment—which it considered highly persuasive. The Court of Appeal also highlighted the German Federal Court of Justice in *SchiedsVZ* and the US District Court for the District of Columbia in *Global Voice Group SA v. Republic of Guinea* as pointing the same way.[5]

Commentary

The path to enforcing arbitral awards can often be long and complex. This case confirms that award creditors will not be able to bypass arguments around state immunity by relying on a state's ratification of the NY Convention. Award creditors must therefore continue to establish a section 9 SIA (or equivalent) submission via a valid arbitration agreement, or another applicable SIA exception, to defeat a state's immunity plea. The outcome underscores that the strength of any NY Convention-based enforcement action against a state turns heavily on the underlying investment treaty or contract's arbitration clause and the state's engagement with the arbitration. Once the English courts' jurisdiction is engaged, however, award creditors can expect the English courts to take a pro-enforcement approach.

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