

US Supreme Court Rejects Heightened Standard for International Arbitration Award

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On June 5, 2025, the US Supreme Court held, in a unanimous decision, that civil litigants in US courts seeking to enforce an arbitration award against foreign nations or instrumentalities do not need to meet a higher standard for jurisdiction than the one set forth by the Foreign Sovereign Immunities Act of 1976 (the “FSIA”). *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, No. 23-1201. Though the Court’s opinion is fairly narrow and non-controversial, it suggests that future efforts by foreign nations and companies to resist US courts’ jurisdiction in order to avoid the enforcement of arbitration awards are likely to be challenged.

In 1976, the US Congress sought to provide clarity and consistency to the unsettled law of immunity for foreign nations and instrumentalities by passing the FSIA. 28 U.S.C. §§ 1602 *et seq.* FSIA provides that foreign nations and instrumentalities are immune to lawsuits in US courts unless the plaintiff can meet one of several exceptions defined by the statute. The exceptions include, among others, claims based on commercial activities with a specified nexus to the United States, claims based on torts causing personal injury or property damage in the United States, and lawsuits to confirm arbitration awards with a nexus to the United States, such as being governed by a treaty or international arbitration agreement to which the United States is a party. Moreover, the statute specifically provides that courts have personal jurisdiction over a defendant if one of the enumerated exceptions is met, and if service on the defendant is carried out in the manner specified by the statute. 28 U.S.C. § 1330.

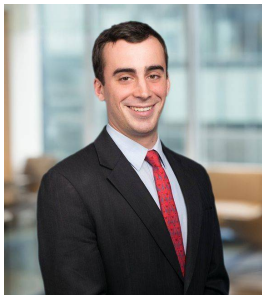
In September 2018, Devas, a privately owned Indian company that develops satellite-based telecommunications technology, filed a petition in federal court in Washington State to confirm an arbitration award it had won against Antrix, a company owned by the Republic of India for use by the Indian Space Department, after Antrix had cancelled a contract worth hundreds-of-millions of dollars. Although Devas showed that the two requirements for personal jurisdiction under the FSIA were met—(1) it met the arbitration exception, and (2) it complied with the statute’s service requirements—Antrix argued that there was no personal jurisdiction because it did not have “minimum contacts” with the forum, as required by the Supreme Court’s test for personal jurisdiction set forth in *International Shoe Co. v. Washington*. The Ninth Circuit Court of Appeals

agreed that there was no personal jurisdiction, holding that satisfying the “minimum contacts” test was an implied requirement of the FSIA.

The Supreme Court reversed in a 9-0 opinion. It held that the FSIA was clear that only the two requirements must be met for personal jurisdiction—establishing that an exception is met, and following the specialized service requirements. The statute did not contain a reference to “minimum contacts,” and the Court “decline[d] to add in what Congress left out.” Notably, the Court emphasized it was only addressing the Ninth Circuit’s holding that “minimum contacts” was an implied *statutory* requirement of the FSIA (a holding that Antrix did not even defend), and did not address Antrix’s argument that the Fifth Amendment of the US Constitution required minimum contacts beyond the statutory requirements. While that argument was left to be addressed by the lower court on remand, there is some support in the Court’s opinion for finding against Antrix on that issue as well. The Supreme Court noted that in enacting the FSIA to “comprehensively regulat[e] the amenability of foreign nations to suit in the United States,” Congress set the Act’s immunity and jurisdictional provisions as the “foundation” of that scheme, and “deliberately tied them together.” The Court further noted that the immunity exceptions themselves “require varying degrees of suit-related domestic contact before a case may proceed,” similar to the minimum contacts test. Thus, the Court provided support for a finding that the FSIA’s jurisdictional provisions were passed in order to meet the constitutional requirements for jurisdiction.

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