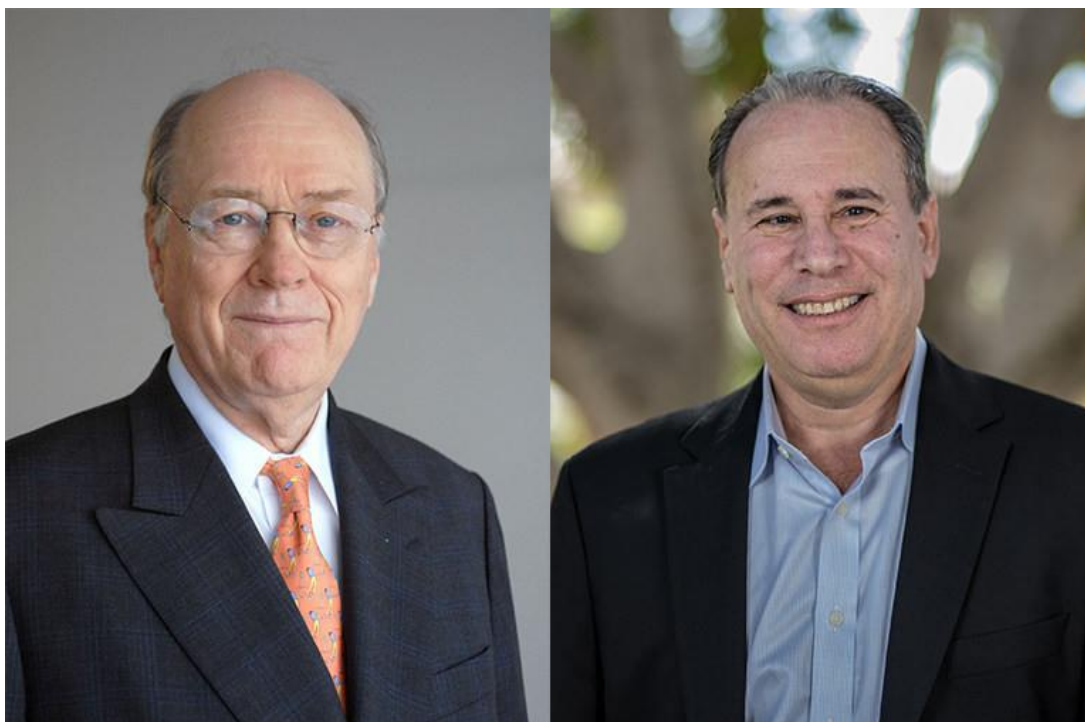


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SCOTUS Resolves FSIA Personal Jurisdiction Issues (In Part)

By Lawrence W. Newman and David Zaslowky | June 25, 2025



The Ninth Circuit stood alone among the circuit courts of appeal in holding that establishing jurisdiction over a foreign state under the Foreign Sovereign Immunities Act (FSIA) requires a traditional minimum contacts analysis, as set forth in *International Shoe Co. v. Washington*, 326 U. S. 310 (1945) and its progeny.

In its June 5, 2025, unanimous decision in *CC/Devas (Mauritius) Ltd. et al. v. Antrix Corp. Ltd. et al.*, 605 U.S. ____ (2025), the Supreme Court emphatically rejected the Ninth Circuit’s position, but left for another day some other issues relating to cases under the FSIA.

Background of the Case

The underlying dispute arose from a 2005 contract between Devas Multimedia Private Ltd., a satellite company, and Antrix Corporation Ltd., the commercial arm of India’s Department of Space. Under the agreement, Antrix was to provide two satellites and lease capacity in the S-band electromagnetic spectrum for Devas’s operations.

In 2011, however, the Indian government decided to retain the spectrum for itself and instructed Antrix to terminate the contract under a force majeure clause. Devas initiated arbitration pursuant to the contract’s arbitration clause and the arbitral panel unanimously found that Antrix had breached the contract, awarding Devas \$562.5 million in damages, plus interest.

Devas confirmed the arbitration award in France and the United Kingdom. It then sought to confirm the award in the United States, bringing suit in the District Court for the Western District of Washington.

Devas grounded jurisdiction for its suit under Section 1605(a)(6) of the FSIA—commonly referred to as the “arbitration exception”—under which a foreign state waives immunity for suits to confirm arbitration awards in circumstances where the arbitration agreement or award is “governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards.” 28 U.S.C. §1605(a)(6).

The District Court confirmed the award and entered a judgment of approximately \$1.29 billion against Antrix (with the increase as compared to the amount of the award being attributable to interest).

That was followed by a number of “dramatic” events, using the words of the Supreme Court. Before Devas could collect on its U.S. judgment, an Indian corporate-law tribunal found that Devas—an Indian company—had procured the Devas/Antrix agreement by fraud.

That tribunal then appointed an Indian Government official to seize control of Devas and wind down its affairs. Next, several Devas shareholders attempted to intervene in the federal proceedings in the U.S. and to enforce the judgment themselves.

They were successful; they secured post-judgment discovery to locate Antrix’s domestic assets and registered the judgment in the Eastern District of Virginia, where Antrix held executable assets. Then, “adding one last wrinkle,” the High Court of New Delhi set aside the arbitration award based largely on the Indian corporate-law tribunal’s earlier fraud determination.

In connection with the underlying U.S. lawsuit, Antrix appealed the District Court’s decision confirming the award. The Ninth Circuit reversed, holding that the district court lacked personal jurisdiction over Antrix. The Ninth Circuit acknowledged that Antrix qualified as a “foreign state” under the FSIA, that an immunity exception applied, and that service of process was proper.

However, it also held that an additional requirement applied: the foreign state must have “minimum contacts” with the United States under the traditional due process standard of *International Shoe*. Applying this standard, the Ninth Circuit concluded that Antrix did not have sufficient suit-related contacts with the U.S. to justify personal jurisdiction.

The Supreme Court’s Holding

Devas appealed to the Supreme Court, arguing that, under the FSIA, there was no requirement to prove “minimum contacts” once the stated requirements for establishing jurisdiction under the FSIA have been met. Justice Alito authored the unanimous Supreme Court opinion that reversed the Ninth Circuit. He wrote that the issue was “straightforward,” and the court, in fact, applied a simple textualist analysis.

The FSIA’s personal jurisdiction provision, 28 U. S. C. §1330(b), provides:

Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have [subject-matter] jurisdiction under subsection (a) where service has been made under section 1608 of this title.

This provision imposes two substantive requirements—one related to subject-matter jurisdiction, the other related to service of process. There is subject matter jurisdiction under the FSIA when any of the FSIA’s immunity exceptions apply. There is service under the FSIA when a plaintiff complies with the FSIA’s specialized service-of-process rules.

Once these requirements are met, then, under Section 1330, personal jurisdiction “shall exist.” As the Supreme Court explained, “the use of the word ‘shall’ creates an obligation impervious to judicial discretion.” Put another way, subject matter jurisdiction plus service of process equals personal jurisdiction under the FSIA.

The Supreme Court went on to explain that a reference to “minimum contacts” was notably absent from the statute. The court declined to add in what Congress left out. The Supreme Court also pointed out that Congress did not dispense altogether with proof of contact between the foreign state and the U.S. in that certain of the FSIA’s immunity exceptions themselves require varying degrees of suit-related domestic contact before a case may proceed.

The “commercial activity” exception, for example, requires “commercial activity of the foreign state elsewhere” that “causes a direct effect in the United States.” 28 U.S.C. §1605(a)(2). Additionally, there is the exception to immunity for “rights in immovable property situated in the United States.” 28 U.S.C. §1605(a)(4).

The Ninth Circuit did not enforce these provisions as written. Instead, it added a minimum contacts requirement, which it said was required by its earlier precedent, *Thos. P. Gonzalez Corp. v. Consejo Nacional de Produccion de Costa Rica*, 614 F. 2d 1247, 1255 (1980).

According to *Gonzalez*, the requirement in the §1605(a)(2) immunity exception that there be a “direct effect” in the U.S. embodied the minimum contacts standard of *International Shoe*. The Supreme Court rejected this argument, explaining that each exception had to be interpreted separately and that the fact that some might contain language resembling the minimum-contacts test does not mean that there is an across-the-board requirement.

In reversing the Ninth Circuit, the Supreme Court affirmed that when a foreign sovereign waives immunity under one of the enumerated exceptions in the FSIA—such as the arbitration exception—and there is proper service of process, U.S. courts have personal jurisdiction to confirm and enforce arbitral awards against that sovereign.

Further Thoughts on the Court’s Decision

Like many in the arbitration community, Mr. Zaslowsky was on record as saying that the Supreme Court would likely grant certiorari to address the Ninth Circuit’s outlier opinion. Once it took the case, the Supreme Court’s decision was not a surprise. Indeed, the Supreme Court’s opinion noted that Antrix did not even attempt to defend the Ninth Circuit’s reasoning. But the *Devas* decision also left open a number of issues.

The Supreme Court declined to address whether foreign states can invoke procedural defenses like *forum non conveniens* (an argument Antrix made) to avoid enforcement of arbitral awards in U.S. courts or how such defenses interact with the FSIA’s jurisdictional provisions.

That issue will be considered on remand. It should be expected that *Devas* will argue that the Supreme Court’s focus on the plain language suggests that, once jurisdiction is established under the FSIA, courts should not entertain procedural challenges that undermine enforcement of arbitration awards and that are not found in the language of the FSIA.

Antrix also argued that the Fifth Amendment’s Due Process Clause itself requires a showing of minimum contacts before a federal court can exercise personal jurisdiction over a company owned by a foreign sovereign. The Supreme Court also declined to address that issue because, as with the *forum non conveniens* issue, the Ninth Circuit did not consider it.

There is, accordingly, still in place the well-established precedent that distinguishes between a State itself (not a “person” entitled to due process protections) and a state-owned entity (which has been considered a “person” entitled to due process protections). *See, e.g., Frontera Resources Azerbaijan v. State Oil Co.*, 582 F. 3d 393 (2d Cir. 2009). This issue will also likely be raised on remand.

There were additional issues raised by *amici* and by Antrix, which, depending on whether they have been waived (an issue the Supreme Court flagged), might also be considered on remand. One such issue is whether a dispute must have some “meaningful connection” to the United States in order to fall under the arbitration exception to sovereign immunity.

Another concerns the fact that the award was set aside in India, where the arbitration took place, which raises the issue of whether an award set aside in the court of the place of arbitration can be the basis for invoking the arbitration exception to immunity.

Looking at the bigger picture, the FSIA's carefully crafted exceptions and the Supreme Court's textualist approach reaffirm that sovereign immunity is not absolute and that commercial activities and arbitration agreements constitute valid grounds for waiver. This balance encourages sovereigns to engage responsibly in commercial transactions, knowing that they can be held accountable.

International arbitration is a preferred method for resolving cross-border disputes, especially those involving state entities. The New York Convention, which governs recognition and enforcement of foreign arbitral awards in 169 countries, already requires signatory states to enforce awards with limited grounds for refusal.

The Supreme Court's decision in *Devas* significantly strengthens the enforcement regime for arbitral awards against foreign states in the United States.

By eliminating the additional minimum contacts requirement, the ruling aligns U.S. practice with the FSIA's statutory scheme and international arbitration norms under the New York Convention. This enhances the attractiveness of arbitration for resolving disputes involving sovereign entities and supports the effective enforcement of awards, thereby promoting fairness and predictability in international commerce.

The ruling also affects practical enforcement strategies. Creditors seeking to enforce arbitration awards against foreign states often face challenges locating and attaching sovereign assets, especially when immunity protections apply. With jurisdictional barriers lowered, creditors can more readily initiate enforcement actions in U.S. courts and pursue discovery or asset identification.

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