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June 17, 2025

# Supreme Court Declines to Heighten Jurisdictional Requirements for Enforcement of Arbitration Awards Against Foreign States And State-Owned Enterprises

On June 5, 2025, the Supreme Court issued a significant decision regarding the enforcement of arbitration awards against foreign states and state-owned enterprises. In *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*, 605 U.S. \_\_\_\_ (2025) (slip op.) (“Devas”), an action concerning the enforcement of a \$526.5 million arbitration award against an entity owned by the Republic of India, the Supreme Court unanimously held that personal jurisdiction exists in the United States over a state-owned enterprise under the Foreign Sovereign Immunities Act (“FSIA”) when an exception to sovereign immunity applies and service is proper. In so doing, the Supreme Court ruled that the FSIA does not require proof of “minimum contacts” to establish personal jurisdiction over a state-owned enterprise for purposes of enforcing an arbitration award. *Devas* confirms the longstanding, pro-arbitration stance of U.S. courts, and indicates that the Supreme Court will not extend immunity protections to foreign states and state-owned enterprises beyond the express requirements of the FSIA.

## Background

### 1. Enforcement of Arbitration Awards under the Foreign Sovereign Immunities Act

For over two centuries, the United States has granted foreign states and state-owned enterprises immunity from suit in U.S. courts as a matter of international comity.<sup>1</sup> The U.S. Congress codified those principles in the Foreign Sovereign Immunities Act (“FSIA”) of 1976, which has become the “the sole basis for obtaining jurisdiction over a foreign state in our courts.”<sup>2</sup> The FSIA provides that, as a starting point, “foreign state[s] shall be immune from the jurisdiction of the courts of the United States.”<sup>3</sup> The FSIA, however, recognizes that “[p]ersonal jurisdiction” over foreign states and state-owned enterprises “shall exist” under certain circumstances, including where a party brings a claim related to certain commercial activities or torts.<sup>4</sup>

As relevant here, the FSIA provides that U.S. courts shall have personal jurisdiction over foreign states and state-owned enterprises in actions related to the enforcement of arbitration agreements—and the resulting arbitration awards—where such agreements are governed by international conventions to which the United States is a party, including the New York Convention on the Recognition and Enforcement of Arbitral Awards (“New York Convention”), and the Inter-American Convention on International Commercial Arbitration (“Panama Convention”).<sup>5</sup> Where a litigant brings a claim seeking to enforce such an arbitration agreement, the FSIA provides that U.S. courts shall have personal jurisdiction over the foreign

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state and state-owned enterprise so long as service is properly effectuated. As a result, parties often turn to U.S. courts to enforce arbitration awards against foreign states and state-owned enterprises.<sup>6</sup>

### 2. History of the Dispute

*Devas* arose from a contractual dispute between two Indian companies: Devas Multimedia Private Ltd. (“Devas”), a privately owned telecommunications company, and Antrix Corporation Ltd. (“Antrix”), a company owned by the Republic of India. Devas and Antrix entered into a satellite-leasing agreement, under which Antrix agreed to build and launch a new satellite network and lease some of that network’s capacity to Devas, and Devas agreed to use the leased capacity to provide multimedia services across the country.

In 2011, Antrix terminated its contract with Devas by invoking the contract’s *force majeure* clause. Antrix cited a decision by the Indian Government to use the same satellite capacity for other purposes, thereby preventing Antrix from leasing it to Devas. As a result, and pursuant to the contract’s arbitration clause, Devas initiated an arbitration against Antrix under the Rules of Arbitration of the International Chamber of Commerce. Devas claimed that Antrix’s termination was in breach of the parties’ contract and that the purported *force majeure* was self-induced. The arbitral tribunal unanimously ruled for Devas in 2015 and awarded \$526.5 million in damages, plus interest.<sup>7</sup>

Following its successful arbitration against Antrix, Devas sought to confirm the award in multiple jurisdictions, including the United States, the United Kingdom, and France. In 2018, the U.S. District Court for the Western District of Washington confirmed the award and entered a \$1.29 billion award (including interest) against Antrix.<sup>8</sup> On appeal, the Ninth Circuit reversed the district court’s decision for lack of personal jurisdiction. In a departure from precedents in other circuits,<sup>9</sup> the Ninth Circuit held that personal jurisdiction under the FSIA also requires a traditional “minimum contacts” analysis as set out in *International Shoe v. Washington*, 326 U.S. 310 (1945) and its progeny. In other words, the Ninth Circuit read an additional requirement into the FSIA’s personal jurisdictional provision—namely, that the foreign state or state-owned enterprise has “minimum contacts” with the United States.<sup>10</sup>

The Supreme Court granted certiorari to decide whether the FSIA requires proof of minimum contacts in order to exercise personal jurisdiction over foreign states and state-owned enterprises.

### The Supreme Court Decision

On June 5, 2025, the Supreme Court reversed the Ninth Circuit’s decision, unanimously holding that the FSIA does not require proof of minimum contacts “over and above the contacts already required by the Act’s enumerated exceptions to foreign sovereign immunity.”<sup>11</sup>

At the outset, the Court noted that “the most natural reading” of the FSIA is that personal jurisdiction over a foreign sovereign is “automatic” whenever (1) an exception to immunity applies; and (2) service of process has been accomplished—in other words, subject matter jurisdiction plus service of process equals personal jurisdiction.<sup>12</sup> The Court found it significant that the FSIA does not make any reference to “minimum contacts.”<sup>13</sup> The Court declined to “add in what Congress left out: the FSIA was supposed to clarify the governing standards, not hide the ball.”<sup>14</sup>

More importantly, the Court noted that the FSIA’s immunity and jurisdictional provisions are the foundation of a comprehensive regulatory scheme that governs the amenability of foreign states and state-owned enterprises to suits in the United States. The Court was concerned that reading an additional requirement into the FSIA—instead of enforcing it as written—would “weaken the link Congress forged among foreign sovereign immunity, subject matter jurisdiction, personal jurisdiction, and the enumerated exceptions [to sovereign immunity],” and “create a gap in the Act’s otherwise comprehensive framework.”<sup>15</sup>

### Implication

*Devas* signals that the Supreme Court is reluctant to impose restrictions on actions to enforce arbitration awards against foreign states and state-owned enterprises beyond the requirements of the FSIA. *Devas* aligns with U.S. courts’ longstanding policy favoring arbitration, including where one of the parties is a foreign state or a state-owned enterprise. *Devas*, however, leaves open questions regarding the applicability of *forum non conveniens* and whether the Fifth Amendment’s Due Process Clause independently requires a showing of “minimum contacts” in disputes against foreign states and state-owned enterprises, all of which will first need to be addressed on remand before the Ninth Circuit.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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<sup>1</sup> *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 486 (1983).

<sup>2</sup> *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989).

<sup>3</sup> 28 U.S.C. § 1604.

<sup>4</sup> 28 U.S.C. §§ 1605, 1330(b). A state-owned enterprise qualifies as an “agency” or “instrumentality of a foreign state” that is subject to the FSIA if the foreign state—or a political division thereof—owns the “majority of” the enterprise’s “shares or other ownership interest.” *See* 28 U.S.C. §§ 1603(a)-(b); *see also Schansman v. Sberbank of Russia PJSC*, 128 F.4th 70, 80 (2d Cir. 2025). However, the “foreign state *itself*”—and not, for instance, a subsidiary of a state instrumentality—must “own[] a majority of the corporation’s shares,” and such ownership “status [is] determined at the time the suit is filed.” *Dole Food Co. v. Patrickson*, 538 U.S. 468, 477 (2003) (emphasis added).

<sup>5</sup> *See, e.g., Process & Indus. Developments Ltd. v. Federal Republic of Nigeria*, 27 F.4th 771 (D.C. Cir. 2022) (applying the arbitration exception under the FSIA to an agreement governed by the New York Convention). The arbitration exception also applies if (i) the arbitration takes place or is intended to take place in the United States; (ii) the underlying claim could have otherwise been brought in U.S. Courts under another exception to the FSIA; or (iii) the foreign state waives its sovereign immunity. 28 U.S.C. § 1605(a)(6).

<sup>6</sup> *See, e.g., Process & Indus. Developments Ltd.*, 27 F.4th at 775–76; *ConocoPhillips Petrozuata B.V. v. Bolivarian Republic of Venezuela*, 628 F. Supp. 3d 1, 6 (D.D.C. 2022); *Tatneft v. Ukraine*, 301 F. Supp. 3d 175, 198–199 (D.D.C. Mar. 19, 2018); *Continental Cas. Co. v. Argentine Republic*, 893 F. Supp. 2d 747, 750 (E.D. Va. 2012).

<sup>7</sup> In 2012, Devas also initiated a separate investment arbitration against India under the Mauritius-India Bilateral Investment Treaty, alleging, *inter alia*, that India had expropriated its investment and breached its obligation to accord fair and equitable treatment to Devas’ investors and shareholders (Mauritius companies). That tribunal found India liable and awarded compensation to the three Mauritian companies. *See CC/Devas (Mauritius) Ltd., Devas Employees Mauritius Private Limited, and Telcom Devas Mauritius Limited v. Republic of India (I)*, PCA Case No. 2013-09, Award on Jurisdiction and Merits, July 25, 2016; and *Id.*, Award on Quantum, October 13, 2020.

<sup>8</sup> *Devas Multimedia Private Ltd. v. Antrix Corp. Ltd.*, No. 18-1360, Dkt. 49 at 5 (W.D. Wa. Oct. 27, 2020).

<sup>9</sup> *See, e.g., Price v. Socialist People’s Libyan Arab Jamahiriya*, 294 F.3d 82, 89, 95 (D.C. Cir. 2002) (holding that “under the FSIA, subject matter jurisdiction plus service of process equals personal jurisdiction,” and that no minimum contacts analysis is required) (cleaned up); *Gater Assets Ltd. v. AO Moldovagaz*, 2 F.4th 42, 49 (2d Cir. 2021) (same); *S & Davis Int’l, Inc. v. Republic of Yemen*, 218 F.3d 1292, 1303 (11th Cir. 2000) (same); *Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 694 (7th Cir. 2012) (holding that the commercial exception to sovereign immunity under the FSIA “is not congruent with a general personal jurisdiction inquiry”).

<sup>10</sup> *Devas Multimedia Private Ltd. v. Antrix Corp. Ltd.*, Memorandum, No. 20-36024, at 3–6 (9th Cir. Aug. 1, 2023). Devas petitioned the Ninth Circuit to rehear the decision *en banc*, which the Ninth Circuit rejected. *See id.* Order (9th Cir. Feb. 6, 2024).

<sup>11</sup> *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, Nos. 23-1201 and 24-17, 2025 WL 1583292, (U.S. June 5, 2025) (“Slip. Op.”) at 7.

<sup>12</sup> Slip. Op. at 8.

<sup>13</sup> Slip. Op. at 9.

<sup>14</sup> *Id.*

<sup>15</sup> Slip. Op. at 10.