

U.S. Supreme Court Rules That The FSIA Does Not Require Minimum Contacts Analysis For Personal Jurisdiction Over A Foreign Sovereign

June 10, 2025

On June 5, 2025, the United States Supreme Court issued its decision in *Devas Multimedia Private Ltd. v. Antrix Corp. Ltd.*,¹ a case involving the enforcement of a foreign arbitral award between a private Indian corporation and an Indian state-owned-entity (“SOE”), and held that the Foreign Sovereign Immunities Act itself does not require “minimum contacts” with the United States to confer personal jurisdiction in U.S. courts.

In its unanimous ruling, the Court declined to weigh in on many of the issues raised by the parties and various *amici curiae*, including whether the Constitutional Due Process Clause requires a showing of minimum contacts before a federal court could exercise personal jurisdiction over a SOE. Instead, the Court’s narrow decision remanded the case to the U.S. Court of Appeals for the Ninth Circuit for further briefing.

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¹ See generally *CC/Devas (Mauritius) v. Antrix Corp. Ltd.*, 605 U.S. ____ (2025) (Alito, J.).
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Background

Under the Foreign Sovereign Immunities Act (the “FSIA”), foreign sovereigns are presumptively immune from suit in U.S. courts unless one of the exceptions to immunity enumerated in the FSIA applies.² The FSIA links sovereign immunity with jurisdiction by providing in Section 1330(a) that federal courts may exercise subject matter jurisdiction over *in personam* claims asserted against a foreign in a non-jury trial where an exception to sovereign immunity applies.³

The FSIA also contains a “personal jurisdiction” provision, providing in Section 1330(b) that “[p]ersonal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.”⁴ The question presented is whether the FSIA, as a statutory matter, also incorporates a minimum contacts requirement in addition to an applicable immunity exception and proper service of process.

Procedural History

In 2005, Devas Multimedia Private Limited (“Devas”), an private Indian telecommunications company, and Antrix Corporation Limited (“Antrix”), a corporation wholly owned by the Republic of India, entered into an agreement under which Devas would provide telecommunications and internet services to Indian consumers from satellites operated by Antrix.⁵ Antrix

terminated the contract in 2011, after which Devas invoked the agreement’s arbitration provision and initiated an International Chamber of Commerce arbitration seated in India and governed by Indian law. In 2015, the tribunal awarded Devas \$562.5 million, which has since increased to \$1.3 billion with interest.⁶

In September 2018, Devas filed suit to confirm the award in the U.S. District Court for the Western District of Washington pursuant to the arbitration exception of the FSIA.⁷ The FSIA’s arbitration exception provides that foreign states and their agencies and instrumentalities are subject to suit for claims seeking to either “enforce” an arbitration agreement made by the foreign state and a private party, or to “confirm an award pursuant to such an agreement to arbitrate,” if certain conditions are met.⁸

In its Motion to Dismiss, Antrix acknowledged that the arbitration exception under the FSIA applied, but asserted it was nevertheless entitled to Constitutional due process protections, including a traditional “minimum contacts” analysis under *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which were not established.⁹

The district court denied Antrix’s motion, holding that because Antrix, as the agent of a foreign state, was not a “person” within the meaning of the Due Process Clause of the Fifth Amendment,¹⁰ “statutory personal jurisdiction under [the] FSIA [comprising satisfaction of an immunity exception and proper service] [wa]s all

² See 28 U.S.C. § 1605.

³ 28 U.S.C. § 1330(a).

⁴ 28 U.S.C. § 1330(b).

⁵ *Devas Multimedia Priv. Ltd. v. Antrix Corp. Ltd.*, No. 2:18-1360 TSZ, 2020 WL 6286813, at *1 (W.D. Wash. Oct. 27, 2020).

⁶ *Id.* at *2.

⁷ *Id.*

⁸ 28 U.S.C. § 1605(a)(6).

⁹ *Id.* at *3-4. The district court had previously determined pursuant to a short minute order that Antrix was “effectively controlled by the Government of India” and therefore

deemed “Antrix to be the alter ego of India for purposes of the Court’s exercise of personal jurisdiction.” See Minute Order at 1, *Devas Multimedia Priv. Ltd. v. Antrix Corp. Ltd.*, No. 2:18-cv-01360-TSZ (W.D. Wash. Apr. 16, 2019), ECF No. 28 at 1. The minute order did not appear to perform an analysis sufficient to overcome the “presumption of separateness” between foreign states and their agencies or instrumentalities as required by *Bancec National City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611 (1983) (“*Bancec*”).

¹⁰ The Court’s pending decision in *Miriam Fuld et al. v. Palestine Liberation Organization, et al.*, Nos. 24-20, 24-151, has the potential to affect both how the Due Process Clause in the Fifth Amendment is interpreted and to what extent Congress can confer personal jurisdiction by statute.

that [wa]s required” to exercise jurisdiction over Antrix.¹¹ The district court recognized the arbitral award, and entered judgment against Antrix.¹²

The Ninth Circuit reversed,¹³ holding that the district court had erred by failing to follow Circuit precedent requiring a finding of minimum contacts before a federal court may exercise personal jurisdiction over a foreign state.¹⁴ Applying the minimum contacts test, the Ninth Circuit then held that Devas had failed to establish that Antrix had “purposefully availed itself of the privilege of conducting activities in the United States.”¹⁵

While the finding of minimum contacts is a well-established requirement for a finding of personal jurisdiction over SOEs, the Ninth Circuit’s application of minimum contacts to foreign sovereigns themselves made it an outlier among other Circuit courts.¹⁶ Devas petitioned the Supreme Court for *certiorari*, and the Supreme Court granted review to answer “[w]hether plaintiffs must prove minimum contacts before federal courts may assert personal jurisdiction over foreign states sued under the [FSIA].”¹⁷ Briefing by the parties and various *amici*, however, raised numerous other questions (some of which the parties contested whether they had been waived or properly presented), including:

1. Whether the FSIA’s arbitration exception confers subject matter jurisdiction only over disputes that have some “meaningful connection” to the United States;¹⁸
2. Whether agreeing to arbitration governed by the New York Convention constitutes consent to jurisdiction in the United States (as a Contracting State) and thus displaces any minimum contacts requirement;¹⁹
3. Whether an award that has been set aside in the rendering state can serve as the basis for an invocation of the arbitration exception;²⁰ and
4. The applicability of *forum non conveniens* in foreign award confirmation proceedings.²¹

The Supreme Court’s Decision

In a unanimous decision authored by Justice Samuel Alito, the Supreme Court reversed the Ninth Circuit’s decision that the FSIA requires a minimum contacts analysis before a court can exercise personal jurisdiction over a foreign state.²² Describing the legal question as “straightforward,” the Court held that “[p]ersonal jurisdiction exists under the FSIA when an immunity exception applies and service is proper.”²³

In so finding, the Court pointed to the two substantive requirements of Section 1330(b), which require that

subject matter and service requirements under Section 1330(b) are satisfied.

¹¹ *Devas Multimedia Private Ltd. v. Antrix Corp. Ltd.*, No. 2:18-cv-01360-TSZ, 2020 WL 6286813, at *3 (W.D. Wash. Oct. 27, 2020) (citing 28 U.S.C. § 1330(b)).

¹² *Id.* at *7.

¹³ *See Devas Multimedia Priv. Ltd. v. Antrix Corp. Ltd., et al.*, Nos. 20-36024, 22-35085, 22-35103, 2023 WL 4884882, at *2 (9th Cir. Aug. 1, 2023).

¹⁴ In *Thomas P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247, 1254-55 (9th Cir. 1980), the Ninth Circuit had interpreted the FSIA’s legislative history to incorporate a minimum contacts requirement as to foreign states as well as their corporate agencies and instrumentalities.

¹⁵ *See Devas Multimedia Priv. Ltd.*, 2023 WL 4884882, at *2. The Supreme Court of India later vacated the award.

¹⁶ The D.C., Second, Seventh, and Eleventh Circuits have held that there is personal jurisdiction under the FSIA if the

¹⁷ Petition for Writ of Certiorari, *CC/DEVAS (Mauritius) Limited et al v. Antrix Corp. Ltd. et al.* at i (May 6, 2024) (No. 23-1201).

¹⁸ *See, e.g.*, Br. of *Amicus Curiae* Professor Andrea K. Bjorklund & Franco Ferrari at 24 (Dec. 11, 2024).

¹⁹ *See, e.g.*, Br. of *Amicus Curiae* Professor George A. Bermann, at 8-14 (Dec. 11, 2024); Br. of *Amicus Curiae* The Republic of India at 18-25 (Jan. 24, 2025).

²⁰ *See, e.g.*, Br. of Resp’t Antrix Corp. Ltd. at 47-48 (Jan. 17, 2025) (“Resp. Brief”); Reply for Pet’r Devas Multimedia Priv. Ltd. at 21 (Feb. 18, 2025) (“Pet’r Reply”).

²¹ *See* Resp. Brief at 48-49; Pet’r Reply at 21.

²² *See CC/Devas (Mauritius)*, 605 U.S. at *2 (2025).

²³ *Id.* at *2, 7.

(1) the district court has subject matter jurisdiction, which exists when any FSIA immunity exceptions applies; and (2) service must be made under the FSIA's specific service of process rules.²⁴ Because the statute declares that personal jurisdiction "shall exist," the Court concluded that the FSIA's test for personal jurisdiction is "automatic" when both criteria are satisfied.²⁵

In rejecting the Ninth Circuit's contrary rule, a position Antrix did not seek to defend before the Supreme Court, the Court noted that any reference to minimum contacts were "noticeably absent" from Section 1330(b).²⁶ In briefing and oral argument, Antrix did not seek to defend the Ninth Circuit's ruling, but instead pointed to (among other arguments), the requirement of other FSIA immunity exceptions requiring some connection to the United States. The Court, however, "decline[d] to add in what Congress left out," observing that the FSIA was supposed to "clarify the governing standards," not "hide the ball."²⁷

Notwithstanding the Court's conclusion that minimum contacts did not expressly appear in Section 1330(b), the Court determined that the FSIA did not necessarily "dispense[] altogether with proof of contact between the foreign state and the United States."²⁸ Instead, the Court pointed to the fact that many of the immunity exceptions that are required for a finding of personal jurisdiction under Section 1330(b) "call for considerable domestic nexus," including, for example, the so-called commercial activities exception.²⁹

The Court also did not reach Antrix's "various alternative reasonings why we should affirm the decision below notwithstanding its misreading of the FSIA."³⁰ The Court acknowledged Antrix's arguments that the Due Process Clause of the Fifth Amendment requires a showing of minimum contacts before a

federal court can exercise jurisdiction over a foreign sovereign, that the claims at issue do not fall within the FSIA's arbitration exception, and that the suit should be dismissed under *forum non conveniens*, but the Court expressly "declined to answer those questions today."³¹ Instead, the Court found that Antrix was "welcome to litigate these contentions on remand consistent with principles of forfeiture and waiver."³²

Key Takeaways

The Court's decision was a narrow one, resolving the Ninth Circuit's status as an outlier court in construing Section 1330(b) of the FSIA. Because the Court left open the question of whether the Due Process Clause applies to require an additional showing of minimum contacts, the Court's decision left undisturbed the well-established precedent distinguishing between foreign states and their agencies and instrumentalities, particularly when it comes to the recognition of SOEs as "persons" entitled to due process protections, just like private foreign corporations.³³ While the Court's determination as to what the FSIA requires for personal jurisdiction is clear, the ruling does not lay to rest the debate whether a foreign state itself is not a "person" for Due Process Clause purposes and does not preclude an SOE from insisting on a showing of minimum contacts under the Due Process Clause even where an immunity exception is met and it has been validly served.

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²⁴ See *id.* at *8.

²⁵ *Id.*

²⁶ *Id.* at *9.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 12.

³¹ *Id.* at 13.

³² *Id.* at *12-13.

³³ See, e.g., *Gater Assets Ltd. v. AO Moldovagaz*, 2 F.4th 42, 49 (2d Cir. 2021) (because "[a]gencies and instrumentalities of foreign sovereigns retain their status as 'separate legal person[s]'" under the FSIA, they "receive protection from the exercise of personal jurisdiction under the Due Process Clause.").