



WEIL'S SCOTUS TERM IN REVIEW

June 6, 2025

Supreme Court Clarifies Personal Jurisdiction Requirements in Suits Under the Foreign Sovereign Immunities Act

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Yesterday, in a 9-0 decision authored by Justice Alito, the Supreme Court in *CC/Devas (Mauritius) Limited v. Antrix Corp.* held that plaintiffs are not required to prove minimum contacts before federal courts may assert personal jurisdiction over foreign states sued under the Foreign Sovereign Immunities Act (“FSIA”).

The FSIA provides that foreign states and their “instrumentalities” are immune from federal lawsuits—and thus United States courts may not exercise jurisdiction over them—unless (1) one of the enumerated exceptions to this immunity applies, and (2) the foreign state is properly served. If both of those prerequisites are satisfied, the FSIA provides that “personal jurisdiction over a foreign state shall exist as to every claim for relief.” 28 U.S.C. § 1330(b).

Devas arose from a dispute between two Indian corporations, one of which is wholly owned by the Indian government, over a contract in India to build and launch satellites for telecommunications services. After the government-owned corporation purported to cancel the contract, the private corporation pursued international arbitration, eventually securing an award of more than \$500 million. The private corporation then sought to confirm the arbitral award in the United States as the first step toward enforcing the award against the government-owned corporation’s U.S.-based assets. The private corporation filed an action in a U.S. federal district court in Washington, served the government-owned corporation, and asserted jurisdiction under 28 U.S.C. § 1605(a)(6), an FSIA exception providing jurisdiction for the confirmation of arbitral awards. The district court, treating the government-owned corporation as the foreign state’s “alter ego,” granted the corporation’s motion to confirm the award.

The Ninth Circuit reversed the order confirming the award. The panel relied on a prior Ninth Circuit case, decided shortly after the FSIA's passage, which held that in order for a U.S. court to exercise personal jurisdiction over a foreign-state defendant in an FSIA action, a plaintiff must prove that the foreign state has minimum contacts with the United States pursuant to *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), in addition to the FSIA's statutory requirements of an enumerated immunity exception and proper service. The Ninth Circuit was the only circuit to follow this approach, with four other circuits declining to impose such a requirement. The Ninth Circuit concluded that the government-owned corporation in *Devas* lacked minimum contacts with the United States.

The Supreme Court unanimously reversed. Justice Alito, writing for the Court, held that a minimum-contacts analysis is not required before a court may assert personal jurisdiction over foreign states sued under the FSIA. This follows from the FSIA's text, which states: "personal jurisdiction over a foreign state *shall exist*" provided that the case falls within one of the enumerated immunity exceptions and the foreign state has been properly served. See 28 U.S.C. § 1330(b) (emphasis added). "Notably absent from §1330(b)," Justice Alito wrote, is any reference to "minimum contacts," and the Ninth Circuit was wrong to read such a requirement into the statute.

The Supreme Court declined to reach any additional arguments against confirming the award—including

arguments that the government-owned corporation was a "person" entitled to due process protections pursuant to the Fifth Amendment to the Constitution—because the Ninth Circuit had not addressed those issues.

The outcome is not surprising. In the Supreme Court, neither of the parties nor the United States (which participated as amicus) defended the Ninth Circuit's minimum-contacts rule. Moreover, both the parties and the United States agreed that the Supreme Court did not need to reach the government-owned corporation's new arguments to decide the case.

Following *Devas*, litigants in the Ninth Circuit will now operate under the same interpretation of the FSIA's personal jurisdiction requirements as the rest of the circuits—that proper service and a statutory exception to immunity are sufficient to establish personal jurisdiction under the statute. But otherwise the immediate impact of *Devas* is likely to be limited. In particular, the question of whether a plaintiff must establish minimum contacts in order to satisfy the *constitutional* threshold for personal jurisdiction remains unanswered by the Supreme Court.

More broadly, *Devas* underscores the Court's commitment to textual interpretation of statutes, and the Court's reluctance to read requirements or exceptions into a statute without a textual hook. Companies should consult counsel on the strength of their text-based arguments and work to preserve those arguments throughout any litigation.

Weil's SCOTUS Term in Review is published by the Appellate & Strategic Counseling practice of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, +1 212 310 8000, www.weil.com.

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