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Legal Sidebar

The Foreign Sovereign Immunities Act's Requirements for Personal Jurisdiction over Foreign States

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The Foreign Sovereign Immunities Act (FSIA) (codified as amended at 28 U.S.C. § 1330 & §§ 1602–11) addresses the immunity of foreign states from U.S. courts' jurisdiction, generally providing such states with immunity from suits brought in U.S. federal and state courts. If one of the FSIA's several exceptions to the presumption of foreign state sovereign immunity applies in a nonjury civil case brought against a foreign state, Section 1330(a) gives a federal district court subject matter jurisdiction, regardless of the amount in controversy. In such cases, Section 1330(b) provides that a federal district court "shall" have personal jurisdiction over the foreign state where service of process has been made under FSIA's process service rules.

In June 2025, the Supreme Court resolved a dispute about the proper interpretation of the FSIA's requirements for personal jurisdiction. Based on its reading of the statute's express terms, the Court held in *CC/Devas (Mauritius) Ltd. v. Antrix Corp.* that the FSIA provides federal courts with personal jurisdiction over foreign states under Section 1330(b) only "when an immunity exception applies and service is proper."

This Legal Sidebar begins with an explication of the FSIA and relevant legal background regarding personal jurisdiction over foreign sovereigns in U.S. courts. It then analyzes the Supreme Court's decision in *CC/Devas*. Finally, this Sidebar discusses some considerations for Congress.

The FSIA and Personal Jurisdiction

Congress passed the FSIA with the goal of assigning courts the responsibility of determining whether foreign sovereign immunity applies. Before the statute was enacted in 1976, the executive branch would frequently file "suggestions of immunity" when it believed foreign states were entitled to immunity, and courts generally treated those suggestions as controlling. Congress intended the FSIA to replace this process by subjecting immunity determinations to a clear set of statutorily-delineated legal standards and charging federal courts with making those determinations. The Supreme Court has since observed that the

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FSIA "contains a comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state or its political subdivisions, agencies or instrumentalities."

The FSIA's default rule is that foreign states are immune from U.S. jurisdiction: 28 U.S.C. § 1604 provides that "a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter." The FSIA's sovereign-immunity exceptions, which are found in Sections 1605 to 1607, include cases in which the foreign state has waived its immunity; cases based on the foreign state's commercial activity within the United States or outside the United States if the activity has "a direct effect in the United States"; cases in which money damages are sought for harms that occurred in the United States and that were caused by tortious acts of the foreign state or its officials; certain cases involving arbitration; and certain cases based on acts of terrorism by designated state sponsors of terrorism or that occur in the United States. (For further discussion of the FSIA's structure and background, see this Legal Sidebar.)

Section 1330(a) provides that federal district courts have original jurisdiction of any nonjury civil action in which one of the FSIA's exceptions applies. In such cases, Section 1330(b) grants the court personal jurisdiction over the foreign sovereign defendant where the defendant is served as specified in Section 1608 of the FSIA. In some FSIA cases, foreign sovereign defendants have argued that, notwithstanding the FSIA, they have *constitutional* protections that may preclude federal courts' exercise of personal jurisdiction; namely, protections that the Due Process Clause of the Fifth Amendment affords to "person[s]." The Supreme Court has not determined whether foreign states or their agencies or instrumentalities are "persons" within the meaning of the Due Process Clause and thus has not determined whether foreign sovereign defendants are entitled to its protections. Some federal appellate courts that have addressed the question have concluded that foreign states are not "persons" under the Due Process Clause and that personal jurisdiction exists under the FSIA when an exception applies and service is proper.

The Supreme Court's Interpretation of the FSIA's Personal-Jurisdiction Requirements in *CC/Devas*

In *CC/Devas*, a satellite company brought suit in federal district court against Antrix, a company owned by the Indian government that promotes its space program, to recover for breach of contract. After confirming a prior international arbitral award, the district court entered judgment in favor of Antrix. On appeal, the Ninth Circuit reversed the district court's judgment on the basis that personal jurisdiction was lacking under the FSIA. The appellate court, which left open the question of the applicability of the Due Process Clause to foreign sovereigns, affirmed its circuit precedent and held that, in addition to the requirement set forth in Section 1330(b), Congress had intended to incorporate an additional requirement into the FSIA—the "minimum contacts" standard. This standard, which is set forth in prior Supreme Court cases, limits U.S. state courts' authority to exercise personal jurisdiction over nonresident defendants under the Due Process Clause of the Fourteenth Amendment. More specifically, state courts may exercise personal jurisdiction over a defendant only if the defendant has "certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" It was this statutory interpretation, which the Ninth Circuit based on its reading of the FSIA's legislative history, that the Supreme Court rejected.

Writing for a unanimous Court, Justice Samuel Alito based the Court's interpretation of the FSIA on its statutory text and structure. By its terms, the Court observed, Section 1330(b) imposes two requirements: (1) district courts must have subject matter jurisdiction based on the applicability of one of the FSIA's exceptions, and (2) service was made pursuant to Section 1608 of the FSIA. "When both criteria are satisfied," the Court explained, "the statute declares that personal jurisdiction 'shall exist.'"

Emphasizing that the text contains no "reference to 'minimum' contacts," the Court noted that the FSIA's structure "reinforces" the Court's reading of the plain meaning of the statute. Referencing its prior decisions concluding that the FSIA "comprehensively regulat[es] the amenability of foreign nations to suit in the United States," the Court explained:

> The Act's immunity and jurisdictional provisions are the foundation of this comprehensive scheme, and Congress deliberately tied them together. Namely, whenever a[n] exception applies, § 1604's immunity falls away, and § 1330 grants jurisdiction.

Strongly suggesting that legislative history may not overrule the "plain meaning" of statutory text, the Court stated that the Ninth Circuit had in any event misread the FSIA's legislative history. According to the Court, the legislative history relied on by the Ninth Circuit in fact supports the plain meaning of the text: Although Congress may have believed that the FSIA's requirements satisfied due process standards for personal jurisdiction, Congress intended for "personal jurisdiction [under the FSIA to] rise[] and fall[] based on whether an immunity exception applies and the plaintiff has effectuated proper service."

Declining to address the claim that the Fifth Amendment's Due Process Clause requires a separate analysis before a federal court may exercise personal jurisdiction over a foreign sovereign, the Court reversed the Ninth Circuit's judgment and remanded the case. The Court further stated that Antrix may have the option to litigate this issue on remand.

Considerations for Congress

The Supreme Court in *CC/Devas* interpreted the FSIA to vest federal courts with personal jurisdiction over foreign sovereigns if the court has subject matter jurisdiction and the defendant is served as specified in Section 1608. Congress may consider whether it agrees with that interpretation and whether to amend the FSIA to affirm, reject, or otherwise modify it.

Additionally, as noted, the Supreme Court had declined to consider whether the Fifth Amendment Due Process Clause applies to foreign sovereigns before *CC/Devas*, and it again declined to address the issue when Antrix raised it. The Court did, however, point out at the end of its *CC/Devas* opinion that Antrix was "welcome" to bring a due process claim in the proceedings on remand. Accordingly, future constitutional rulings in the *CC/Devas* litigation or other FSIA cases may impact Congress's authority to confer personal jurisdiction in the FSIA.

If a court were to determine following *CC/Devas* that foreign sovereigns are "persons" under the Due Process Clause, or were to address whether the FSIA's grant of personal jurisdiction in Section 1330(b) is constitutional, the court may consider the Supreme Court's decision in *Fuld v. Palestine Liberation Organization* to be relevant to its analysis. In *Fuld*, the Court upheld a different statute against a constitutional challenge that vests federal courts with personal jurisdiction over two nonsovereign foreign defendants. The Court concluded that it was inappropriate "to import the Fourteenth Amendment minimum contacts standards into the Fifth Amendment," reasoning that, while states' authority is limited to their borders, the federal government's authority is "both nationwide and extraterritorial." Accordingly, the Court held that "the Due Process Clause of the Fifth Amendment necessarily permits a more flexible jurisdictional inquiry commensurate with the Federal Government's broader sovereign authority." Some of the Court's reasoning in *Fuld* arguably suggests that Congress's authority to grant personal jurisdiction may be broader if a court understands the statute to be one that "ties federal jurisdiction to conduct closely related to the United States that implicates important foreign policy concerns."

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