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Insights

CC/DEVAS V INDIA: DOES THE NEW YORK CONVENTION IMMUNITY DEBATE MATTER IN PRACTICE?

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Summary

In advance of London Arbitration Week we shine the spotlight on State Immunity in the context of the enforcement of ICSID and NYC awards.

In our insight "Achmea Induced clarity on sovereign immunity in the US and the UK", we considered States' increasing reliance on immunity from jurisdiction to resist enforcement of investment treaty awards. The argument is straightforward: if a State did not validly agree to arbitrate, the arbitration agreement specific exception to immunity in section 9 of the State Immunity Act 1978 ("**SIA**") would not be engaged, and the English enforcing court must decide that question for itself. Immunity therefore offers States another opportunity to advance jurisdictional objections which tribunals have already rejected.

For ICSID awards, the UK Supreme Court's decision in *Infrastructure Services Luxembourg SARL v Kingdom of Spain* [2026] UKSC 9 closed that route for State award debtors to re-open jurisdictional objections. It held that States' agreement and ratification of the ICSID Convention, specifically its Article 54(1), constitutes a submission to jurisdiction under the broader prior agreement exception under section 2 SIA.

Attention has now shifted to Article III of the New York Convention ("**NYC**"). In *CC/Devas (Mauritius) Ltd v Republic of India* [2026] EWCA Civ 797, the Court of Appeal rejected the argument that ratification of the NYC amounts to an equivalent submission. Permission to appeal to the Supreme Court was granted on 2 November 2026, in proceedings now titled *CCDM Holdings LLC and others v Republic of India*.

The Court of Appeal's reasoning centred on Article III's requirement that awards be enforced "*in accordance with the rules of procedure*" of the enforcing State. Those rules include State immunity. The reciprocal obligation to enforce awards therefore preserves, rather than displaces, that

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immunity. The Court also declined simply to read across the Supreme Court's reasoning on the differently worded Article 54(1) in the ICSID Convention.

But does that outcome, and by extension the pending Supreme Court appeal, matter in practice? Unlike the ICSID regime, the NYC regime already allows English courts to examine the existence and validity of an arbitration agreement under Article V of the NYC as reflected in section 103 of the Arbitration Act 1996 ("**AA**"). If a valid written agreement to arbitrate already engages section 9 SIA, and an invalid agreement can still defeat enforcement under section 103 AA, is the Article III NYC constituting a s.2 SIA submission debate (the "**Article III/s.2 Debate**") largely academic?

Existing Broad Scope of Review of English Courts in Enforcing NYC Awards under Article V NYC

The significance of the ICSID debate lay in the Convention's self-contained system. Jurisdictional challenges belong within that system. Recognition and enforcement before domestic courts do not ordinarily provide a further opportunity to reopen them. Had Article 54(1) ICSID Convention not constituted a submission under section 2 SIA, creditors relying instead on section 9 would have faced an independent judicial determination of whether the State had agreed in writing to arbitrate the relevant dispute. That would have opened a potentially significant additional avenue of review at the immunity stage.

The NYC starts from a different position. In England, section 103 AA gives effect to the Article V NYC's grounds for refusing recognition and enforcement, including the absence of a valid arbitration agreement under section 103(2)(b) AA. In *Dallah Real Estate and Tourism Holding Co v Government of Pakistan* [2010] UKSC 46, the UK Supreme Court confirmed that, when faced with a section 103(2)(b) AA objection to enforcement, the English enforcing court should determine for itself whether the alleged agreement binds the award debtor.

Accordingly, even if Article III NYC constitutes a submission to jurisdiction under s.2 SIA, a State debtor could still advance an available Art V NYC/s.103 AA objection, requiring an independent determination of the existence of an arbitration agreement.

There May Nevertheless Be Practical Value in an Article III NYC Submission under Section 2 SIA

Given the apparent overlap between section 9 SIA and section 103 AA, it may appear that the Article III/s.2 Debate is purely academic with no practical consequences.

However, the central distinction may not necessarily be whether the English court can examine the arbitration agreement and objections to its existence and validity; but rather when, under which statutory provision, and subject to what constraints it could do so. This blog briefly examines two potentially material distinctions:

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Procedure, timing and availability of security.

Immunity is a preliminary question. Unless the section 2 SIA exception applies, a creditor relying on section 9 must establish the necessary agreement to arbitrate before the court can exercise its substantive enforcement powers. A State's jurisdictional objection can therefore delay access to those powers even where the creditor ultimately succeeds.

The point is best illustrated by *Hulley Enterprises Ltd v Russian Federation* [2021] EWHC 894 (Comm), where the English Commercial Court held that it **could not** exercise the powers under section 103(5) AA to adjourn enforcement and order security while Russia's immunity challenge remained unresolved.

If Article III supplied an independent section 2 submission, the court would not first have to resolve the underlying arbitration agreement dispute under section 9 before those powers became available. It would remove the preliminary immunity barrier for award creditor to seek security under section 103(5) AA. This earlier access to the court's enforcement powers against a State debtor is likely commercially significant. When properly utilised, it should deter State debtors from seeking to delay enforcement proceedings with unmeritorious arguments and objections to the existence of an arbitration agreement.

Different statutory contexts, potentially different bars to objections available.

Section 9 SIA asks whether the State agreed in writing to submit the dispute to arbitration, for the purpose of determining immunity. Section 103 addresses a specified set of grounds for refusing recognition and enforcement in the specific arbitral award enforcement context as informed by the drafting history of the NYC. Both can require an independent examination of consent, but they technically concern different topics which were legislated in different contexts.

That distinction may matter where a State debtor seeks to raise an objection which it did not pursue in the arbitration. At the enforcement stage, under s. 103 AA, an award creditor may argue that an agreement, waiver or estoppel prevents reliance on an objection. Whether the same conduct has equivalent consequences under s.9 SIA, when the State invokes immunity relying on the same objection, requires separate analysis. A loss of the right to advance an enforcement defence is not necessarily the same thing as the loss of a right to rely on immunity and dispute a State's submission to the English court's jurisdiction.

The distinction should not, however, be overstated. At least, as far as estoppel is concerned, section 9 SIA does not invariably guarantee a wholly fresh hearing. In *Hulley Enterprises Ltd v Russian Federation* [2025] EWCA Civ 108, the Court of Appeal held that an issue estoppel arising from the Dutch courts' determination of the arbitration agreement question (and based on section 31 of the Civil Jurisdiction and Judgments Act of 1982) could establish the section 9 exception.

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Conclusion

The pending UK Supreme Court appeal in *CC Devas* is unlikely to transform drastically the English courts' ability to examine the existence and validity of an arbitral agreement in NYC enforcement proceedings. Unlike the ICSID regime, Article V NYC (and in England, section 103 AA) already permits independent determination of an available challenge to the arbitration agreement. A determination that Article III NYC constitutes a section 2 SIA submission would not remove that safeguard.

Nevertheless, the route through immunity can affect the timing and conduct of enforcement, access to security, and potentially the objections which remain available to a State debtor considering its conduct in the arbitration and earlier ancillary proceedings. The UK Supreme Court's determination of whether Article III NYC constitutes a section 2 SIA submission, and the practical implications of its answer, will therefore be of value to practitioners. The debate is not simply whether jurisdictional objections can be heard, but how, when and under which legislative regime can they be deployed.

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Meet the team



Kevin Cheung

Senior Associate, London

kevin.cheung@bclplaw.com
+44 (0) 20 3400 4844

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