

## CLIENT ALERT

### Supreme Court Limits the Immunity of International Organizations

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On February 27, 2019, the Supreme Court issued its opinion in *Jam v. International Finance Corp.*, opening the door to claims against international organizations by holding that international organizations are not entitled to absolute immunity from suit in U.S. courts, but are instead entitled to only the same limited immunity currently granted to foreign governments.

The decision revives the claims of certain farmers, fisherman, and villagers who live near a power plant in Gujarat, India and who brought suit against the International Finance Corporation (IFC), an international development bank and member of the World Bank Group, for financing a power plant that they allege polluted the surrounding air, land, and water. The IFC asserted that it was completely immune from suit under the International Organizations Immunities Act of 1945 (IOIA), which provides that international organizations “shall enjoy the same immunity from suit . . . as is enjoyed by foreign governments.” 28 U.S.C. § 288a(b).

The District Court and the D.C. Circuit had previously concluded that the IFC was immune because “the IOIA grants international organizations the virtually absolute immunity that foreign governments enjoyed when the IOIA was enacted” back in 1945. *Jam*, 586 U.S. \_\_\_\_ (2019). Chief Justice Roberts, writing for the seven-Justice majority, referred to the “reference” canon of statutory interpretation to conclude that the IOIA should be read to refer to the law of foreign sovereign immunity as it exists at the time the question under the IOIA arises, not as it existed in some sort of time capsule when the IOIA was enacted back in 1945. Accordingly, an international organization’s immunity is not absolute, but must be decided with reference to the current law of foreign sovereign immunity.

The current law of foreign sovereign immunity is embodied in the Foreign Sovereign Immunities Act (FSIA), which provides certain exceptions to sovereign immunity. The *Jam* opinion discusses the possible application of one of these exceptions, the commercial activity exception, which would allow suits based on an international organization’s commercial activity if there is a sufficient nexus to the United States. The FSIA contains other exceptions as well that may also provide the basis for suits against international organizations – such as potentially allowing suit for torts committed by international organizations or their employees.

The Supreme Court’s decision affects not only the IFC, but other World Bank organizations, (such as the International Bank for Reconstruction and Development, the International Development Association, and the Multilateral Investment Guarantee Agency), as well as numerous other international organizations, including the United Nations, the World Health Organization, the Inter-American Development Bank and its private-sector arm, IDB Invest, and the Organization for Economic Cooperation and Development. This decision may make it possible to bring claims against such international organizations, but because many such international organizations have their own immunity agreements with the United States, knowledge of the IOIA, the FSIA, and international law will be crucial to the success of such claims.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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