

INSIGHTS

## A Private Foreign Issuer Who Issues US Notes Shielded by Sovereign Immunity??

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Imagine an international issuer with US branch offices selling private placement notes in the US to US institutional investors, with the notes governed by NY law and the issuer submitting irrevocably to NY jurisdiction. Now imagine that the issuer's common shares are taken over by its government, which then asserts sovereign immunity in response to a noteholder lawsuit in New York. Surely the notes retain their character as private investments or, at a minimum, the "commercial activity" exception to the Foreign Sovereign Immunity Act (the FSIA) applies? Not so, according to the District Court for the Southern District of New York, in a decision now on appeal to the Second Circuit Court of Appeals. *Fir Tree Capital Opportunity Master Fund v. Anglo Irish Bank*, 2011 WL 6187077 (S.D.N.Y. Nov. 28, 2011), *appeal docketed* No. 11-5310 (2d Cir.) which can be found [HERE](#).

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