

Foreign companies escape US jurisdiction

A ruling by the US Supreme Court last Thursday effectively ended US jurisdiction in so-called foreign cubed cases. These lawsuits are where foreign shareholders in foreign companies listed in foreign exchanges seek to bring cases against those companies in US courts.

The Court threw out a case brought by three Australian shareholders against Aussie bank NAB. The shareholders claimed that they had been misled on the performance of the bank's US mortgage servicing subsidiary. But the justices said that the section of the Exchange Law that they were using was never intended to cover foreign companies or their foreign shareholders especially when those securities were bought on a foreign exchange. This was despite the alleged fraud happening within the US.

The ruling has massive implications for a number of foreign companies who are currently being sued by overseas shareholders in US courts. These companies include Porsche, Vivendi, EADS, Infineon and Alstom. While these companies will still be sued by their investors in their home jurisdictions, they will now in all likelihood escape trial in the US.

Shareholders like to sue in the US because the securities laws are seen to favor investors over corporate management.

This ruling does not mean that foreign companies will escape US jurisdiction when it comes to their US shareholders who bought shares listed or traded in the US - something that BP can confirm, given the mounting number of lawsuits it is facing in the US as a result of its disastrous Gulf oil spill.

But it does mark a turning point in the relations between foreign companies and US justice. Time was when the US legal system assumed a quasi-global sovereignty over all companies. It looks like that legal sovereignty is now being handed back to foreign jurisdictions. CFOs of foreign companies with US operations can breathe a little easier from now on.