



Overseas Discovery:

Overview of Discovery
Tools and the Powerful
Section 1782 Statute

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Seyfarth Shaw LLP

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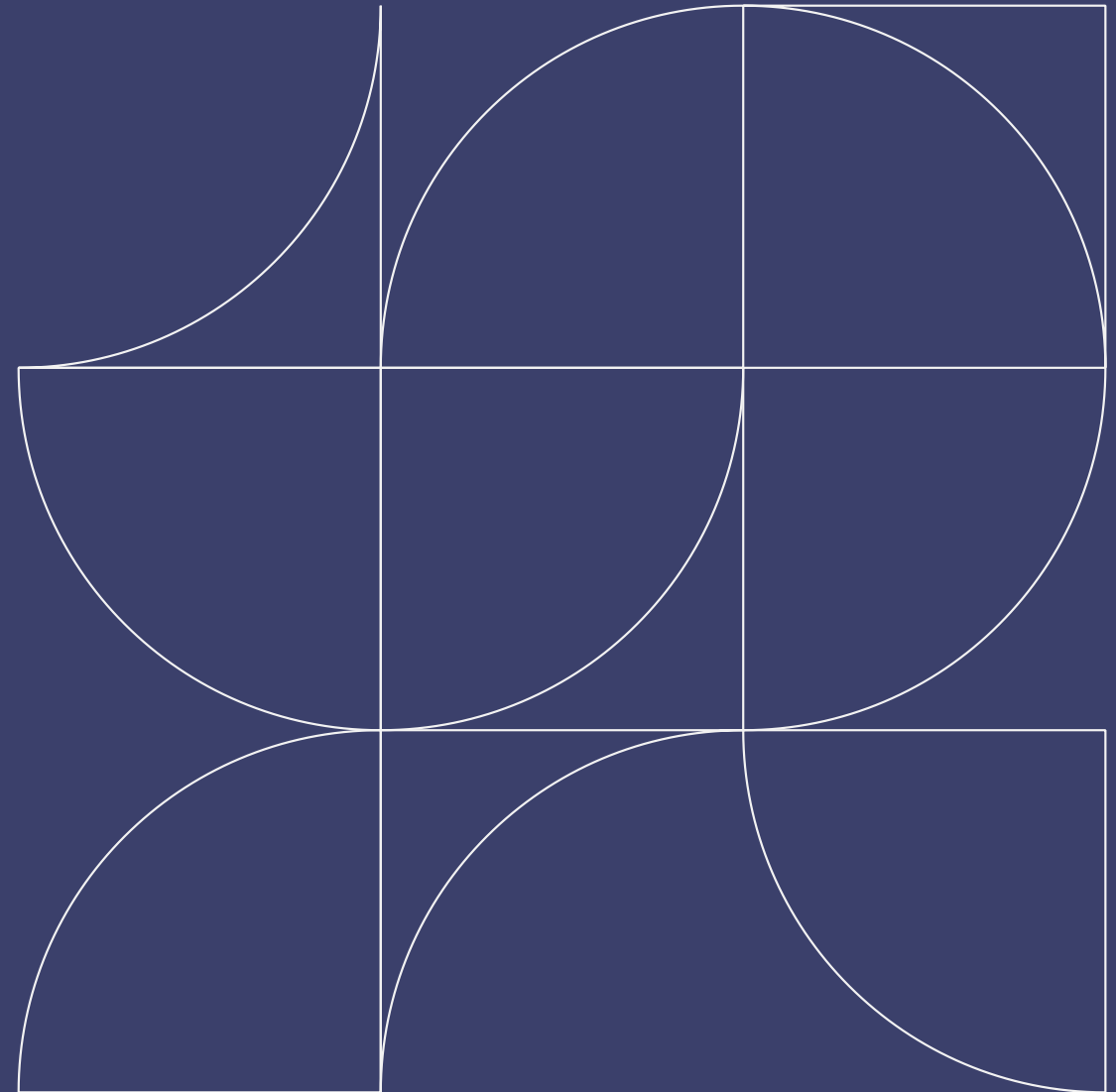
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Introduction



International Dispute Resolution Group

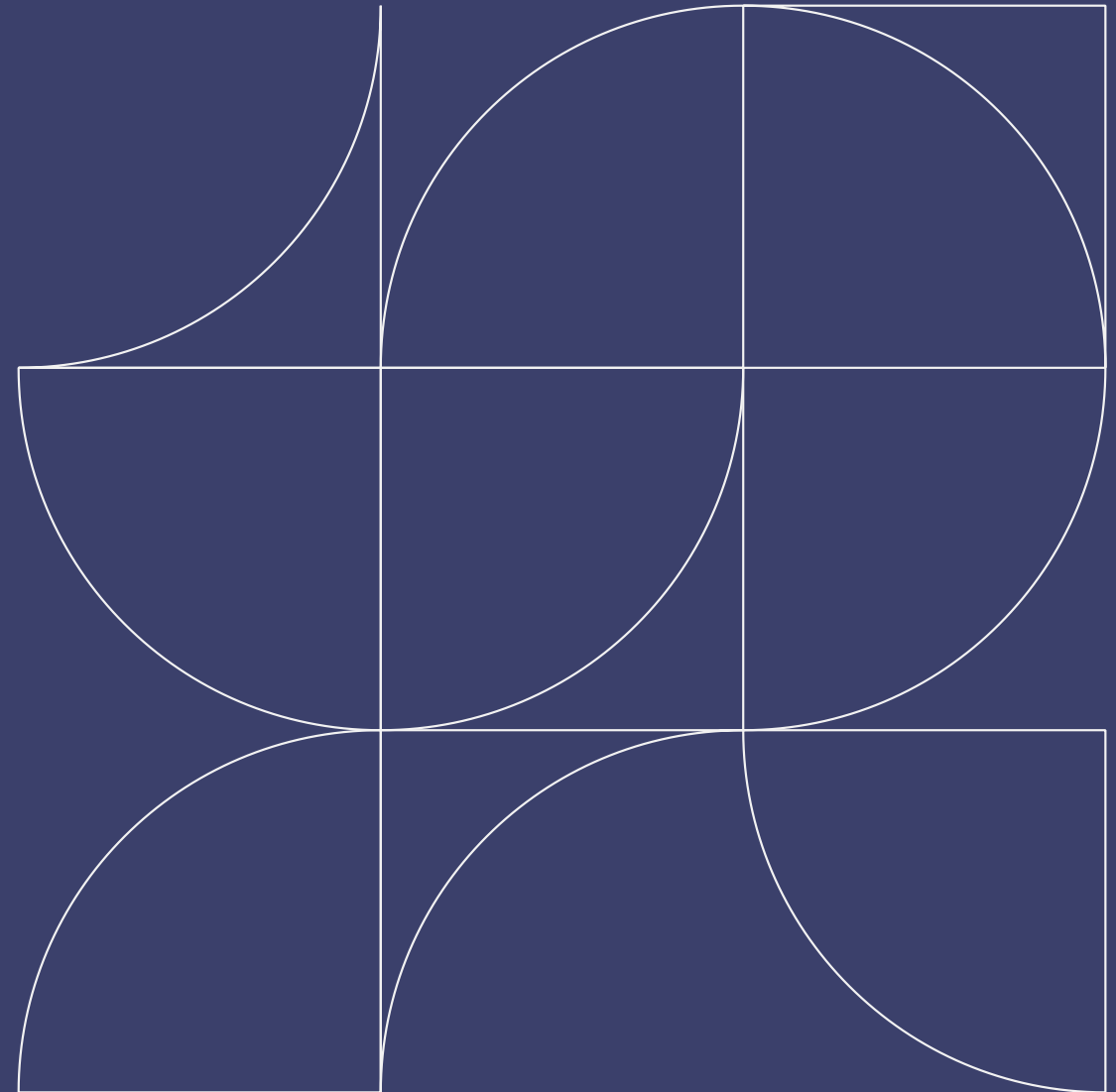


For decades, Seyfarth has been resolving complex international disputes between and among nations, companies, and other parties.

Building upon our top-ranked construction, product liability, intellectual property, trade secrets, employment, international corporate, and complex commercial practices, Seyfarth's international dispute resolution and arbitration group represents clients across the globe in cross-border disputes. We bring to bear a deep bench of practitioners with experience spanning every major international dispute resolution forum. We are engaged by clients to seize upon details, assess risk and to bring swift and definitive closure to potential and actual disputes.

- We are a founding member of the Atlanta International Arbitration Society (ATLAS).
- We are proud signatory of the Equal Representation in Arbitration Pledge. This Pledge seeks to increase, on an equal opportunity basis, the number of women appointed as arbitrators in order to achieve a fair representation as soon as practically possible, with the ultimate goal of full parity.

Letters Rogatory





Letters Rogatory Basics

- Request from court in one country to court of another country for assistance in obtaining evidence
- Used to avoid violating sovereignty of the second country
- Litigant must apply to court in originating country for letters, which must be signed by the judge
- Often transmitted to the second country through diplomatic channels (e.g., through the U.S. State Department)

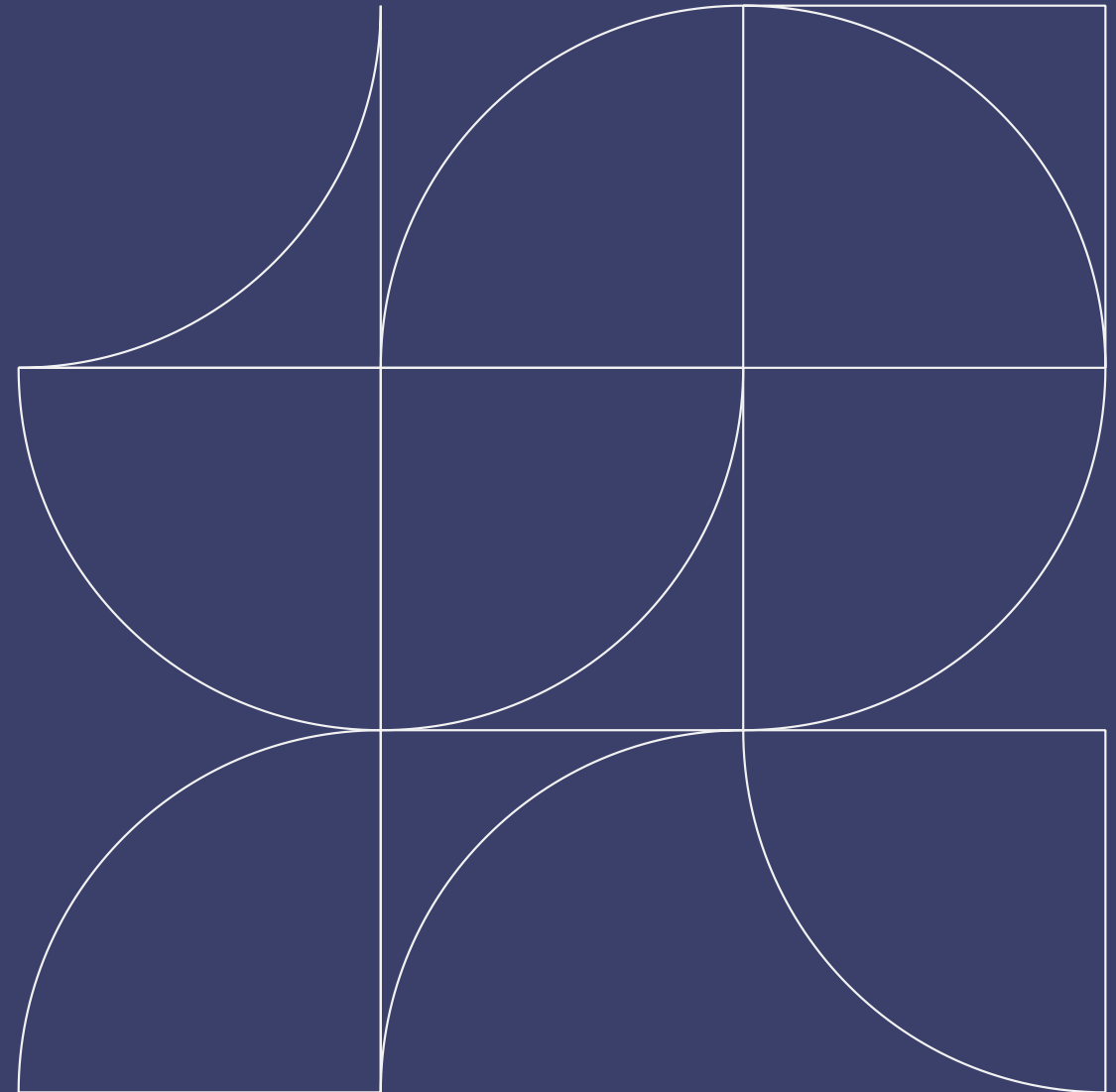


Letters Rogatory Basics (Cont'd)

- Often lengthy process
- The U.S. State Department website includes additional information:

<https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/obtaining-evidence/Preparation-Letters-Rogatory.html>

The Hague Convention



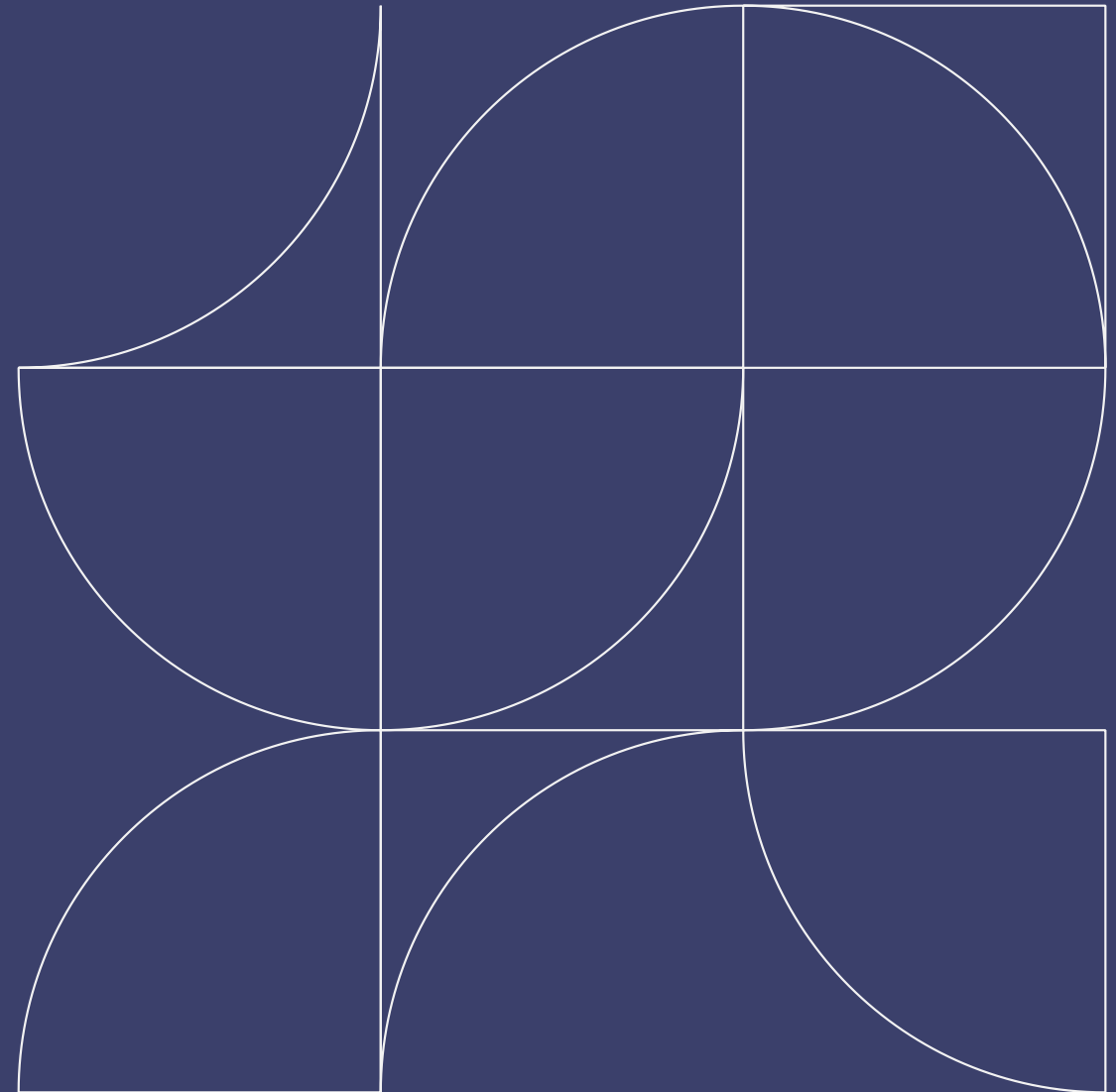


The Hague Convention (Cont'd)

- Many countries signed with a reservation preventing parties from obtaining U.S.-style discovery
- Example from the United Kingdom:

Her Majesty's Government declare that the United Kingdom will not execute Letters of Request for the purpose of obtaining pre-trial discovery of documents.

Other Issues





Other Issues

Can take testimony at a U.S. embassy overseas with witness cooperation, unless country in question does not allow (e.g., China)

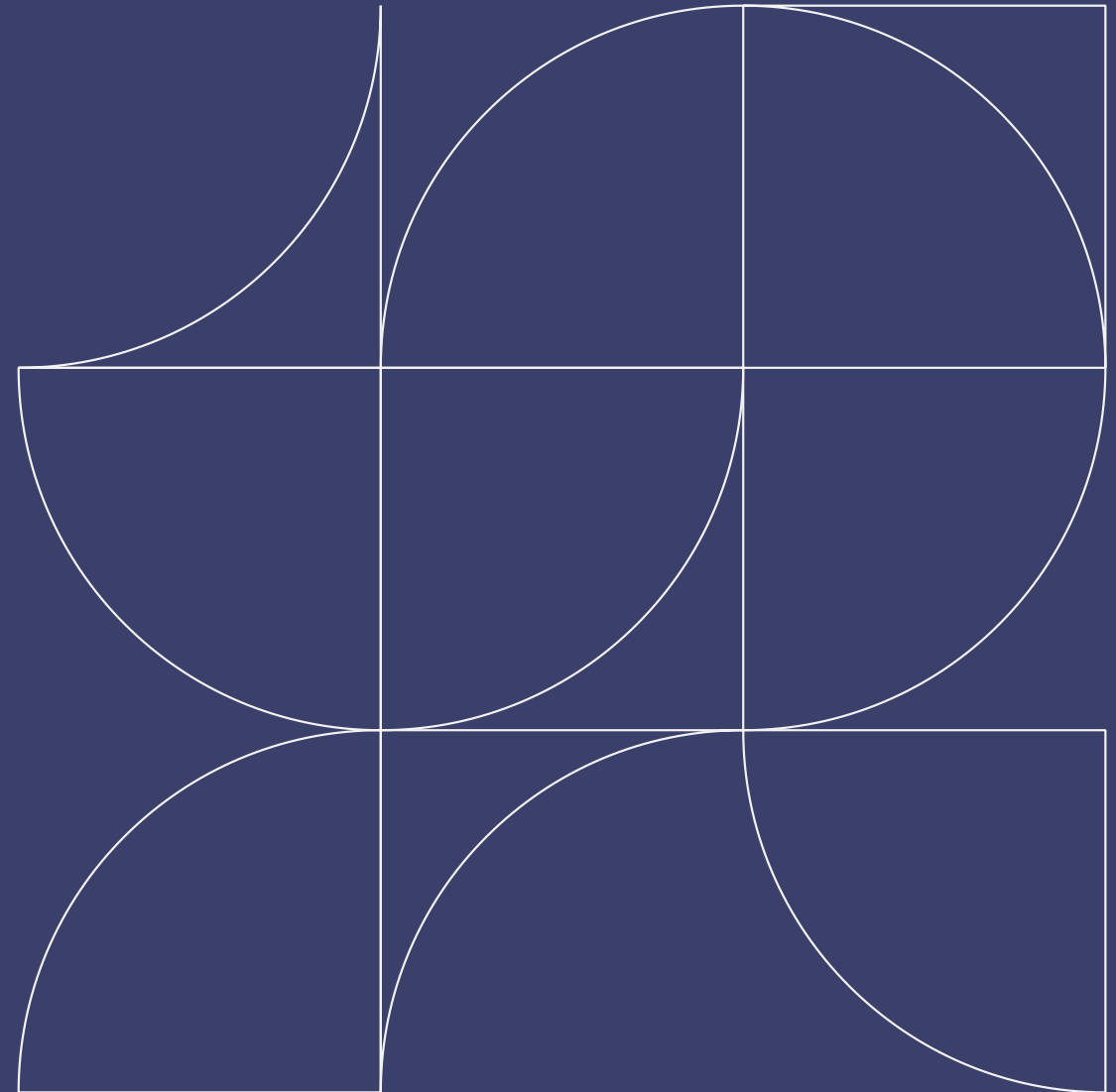
Other Issues

Some countries have “blocking statutes” prohibiting voluntary compliance with a foreign discovery demand (e.g., France)



Subject to international treaties or agreements and laws and regulations in force, it is prohibited for any person to request, search for or communicate, in writing, orally or in any other form, documents or information of an economic, commercial, industrial, financial or technical nature for the purposes of establishing evidence in view of foreign judicial or administrative procedures or in the context of such procedures

Section 1782



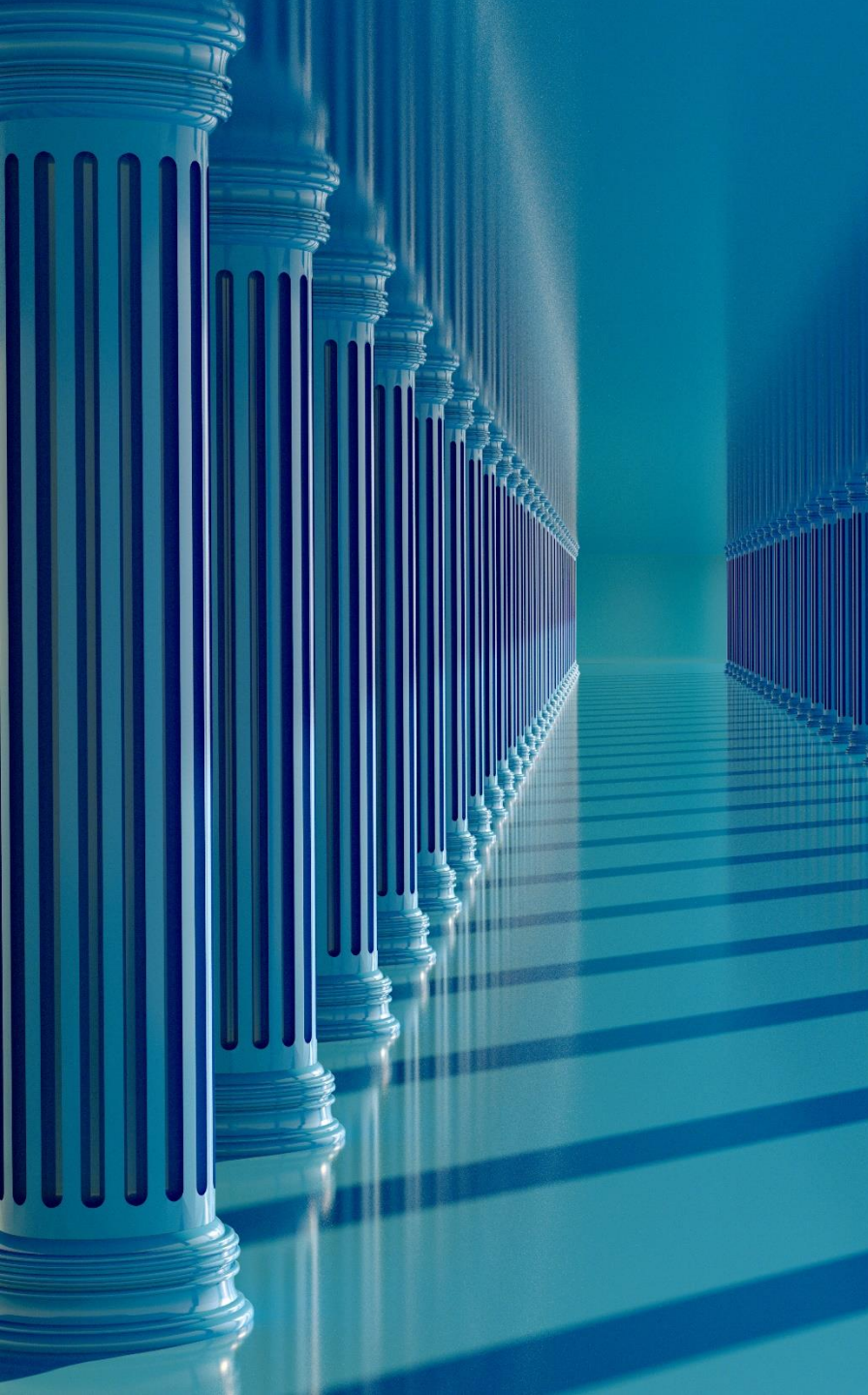
Section 1782

Powerful tool for litigants to obtain U.S.-style discovery for use overseas

UNITED STATES CODE
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28 U.S.C. § 1782(a):

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation.



Expanding Use of Section 1782

- Applications ranged from 25 to 45 per year from 2012 through 2016
- Expanded to 120 per year by 2020
- Since 2012, federal courts have granted 73% of 1782 applications in full or part

Three Requirements in the Statute

1



Discovery target
found in the district

2



“For use” in a proceeding
in a foreign or
international tribunal

3



Application made by a
person “interested” in the
overseas proceeding

Supreme Court Adds Four Factors

1

Whether the person from whom discovery is sought is a participant in the foreign proceeding

2

Nature of the foreign tribunal and character of the proceeding

3

Whether the application circumvents foreign proof-gathering restrictions

4

Whether the request is unduly intrusive or burdensome



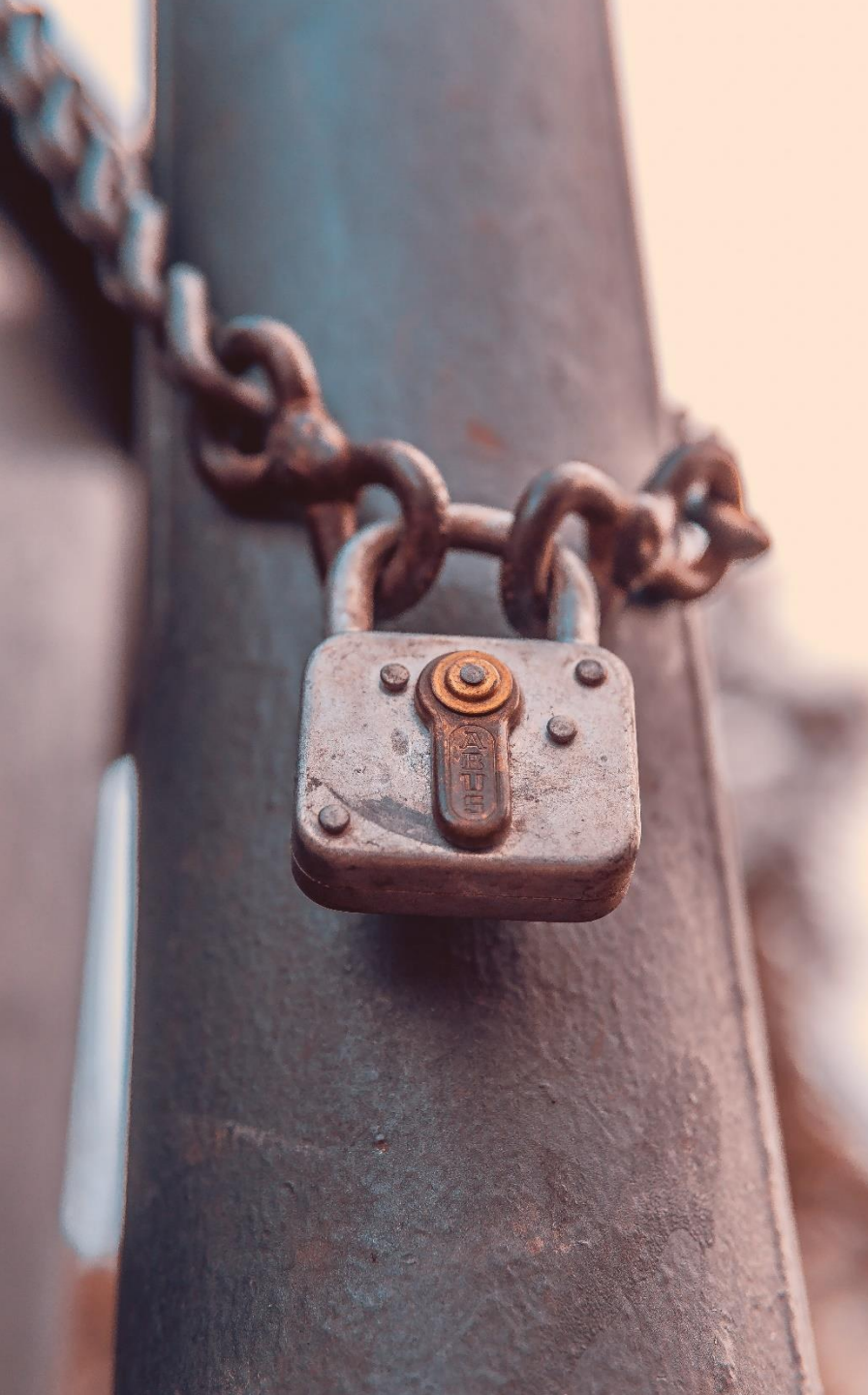
Key Section 1782 Considerations

- Does an application made in the U.S. require production of documents held overseas?
- Can discovery be “for use” in a proceeding that has not been commenced?
- Does private arbitration qualify as a “foreign or international tribunal”?



Key Section 1782 Considerations (Cont'd)

- Is the discovery target a participant in the overseas proceeding?
- Is the foreign tribunal receptive to the discovery?
- Is the applicant trying to circumvent the laws of the country in which the overseas litigation is pending?



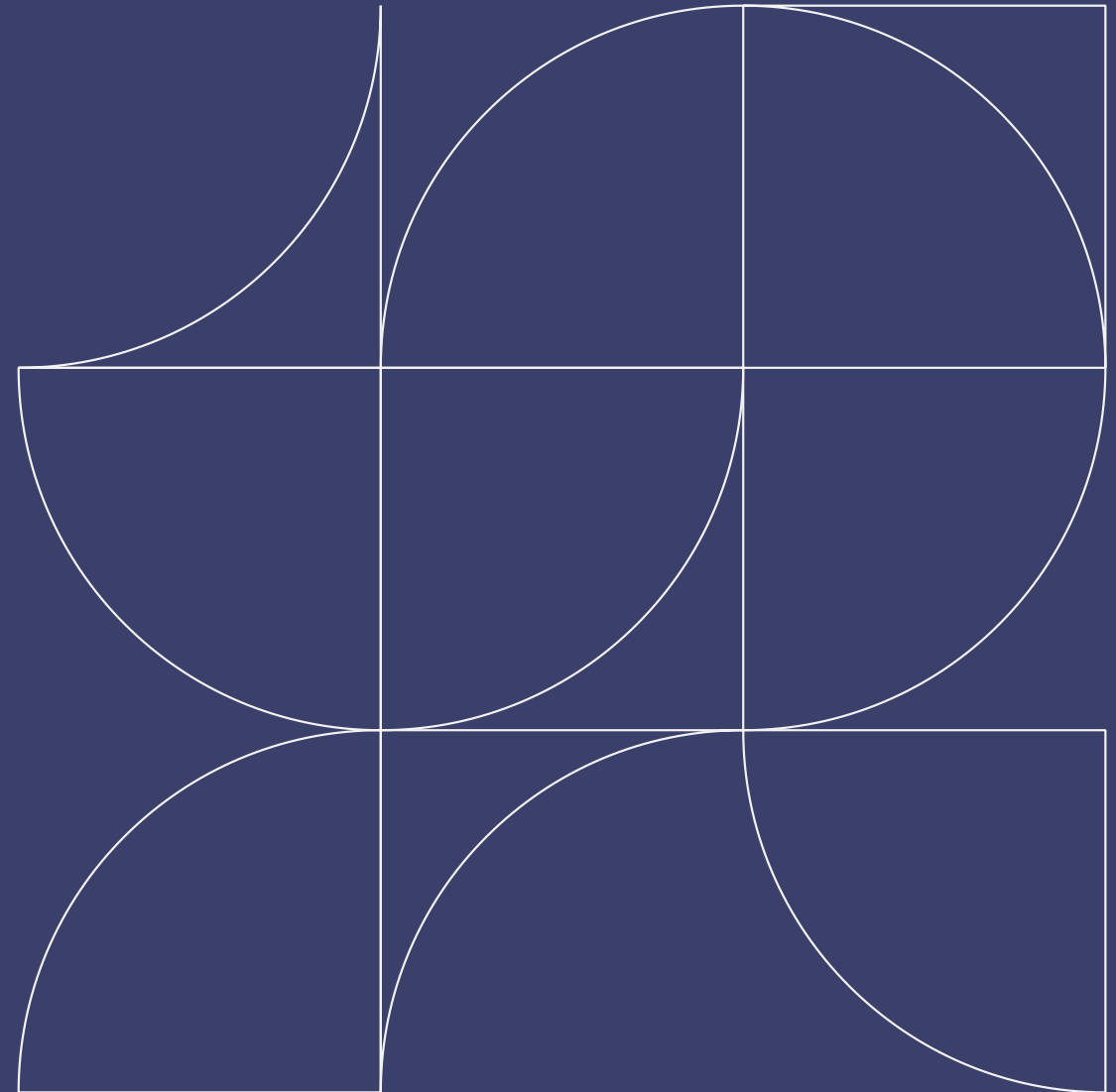
Key Section 1782 Considerations (Cont'd)

Are the requests unduly burdensome?

- Burden could include compliance with overseas privacy laws (e.g., GDPR)



Conclusion

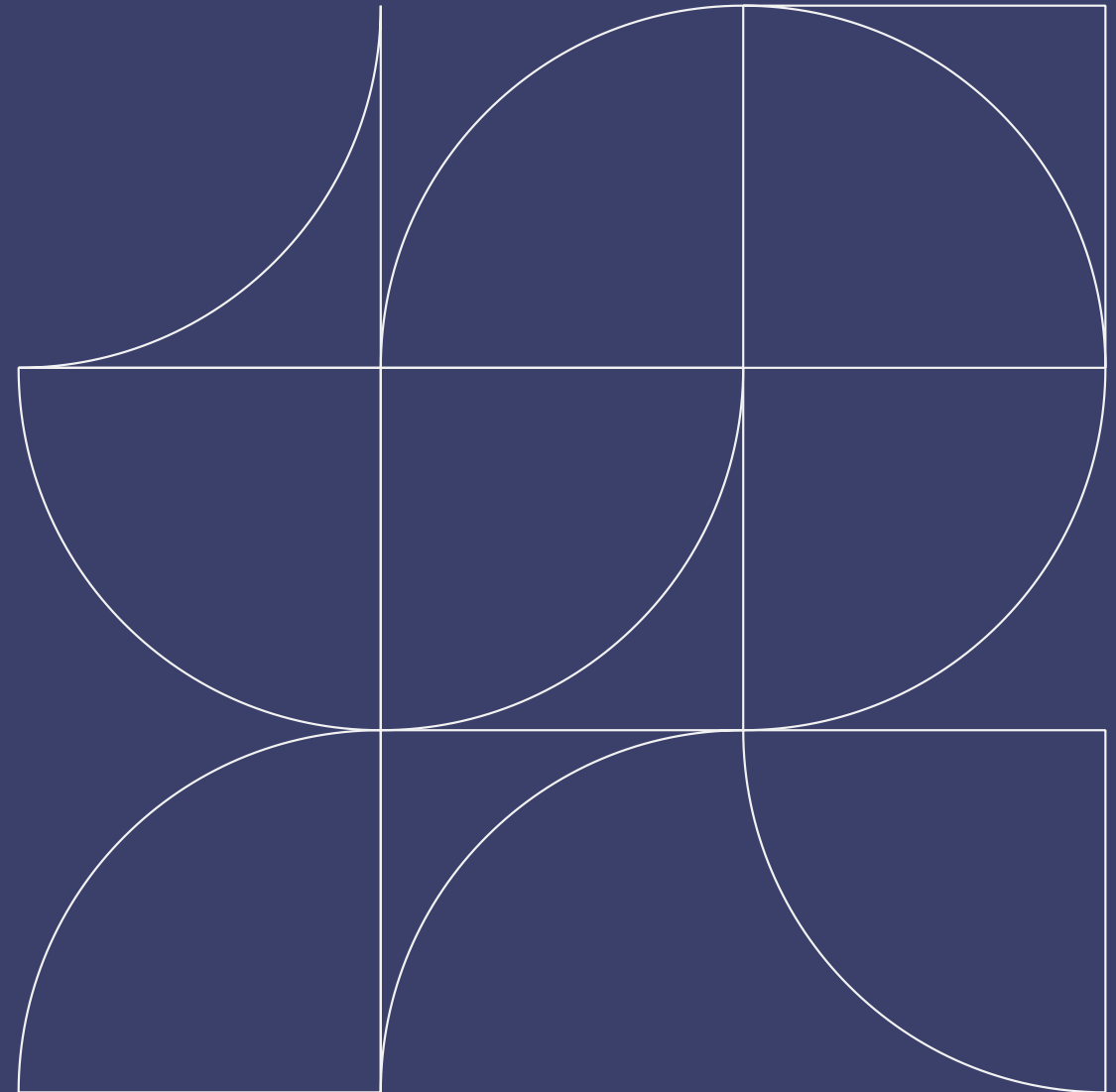




Key Takeaways

- There are several tools available for litigants seeking discovery overseas, but they can be costly and cumbersome
- U.S. law provides a powerful tool for overseas litigants to obtain discovery in the U.S., Section 1782
- Section 1782 has several pressure points that individuals and entities seeking or opposing discovery under Section 1782 should consider

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thank
you

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