

Client Alert: Section 1782: Second Circuit Allows Foreign Litigants to Obtain Documents Located Outside the US

Publications

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Section 1782 of Title 28 of the US Code allows foreign litigants to petition federal district courts for US-style discovery from a person or entity who “resides or is found” where the district court is located for use in a foreign proceeding. Traditionally, foreign litigants have used this provision to seek documents or testimony from within the United States. Last week, however, the US Court of Appeals for the Second Circuit Court held that Section 1782 allows foreign litigants in a foreign proceeding to get documents located in a foreign country, so long as those documents are “controlled” by a US subsidiary (or any other entity over which the US court has personal jurisdiction). See *In re del Valle Ruiz*, No. 18-3226, 2019 WL 4924395 (2d Cir. Oct. 7, 2019). Specifically, the court held that an American subsidiary of Banco Santander S.A. (Santander), a Spanish entity, had to turn over foreign documents related to the forced sale of Banco Popular Español, S.A. (BPE) to Santander for €1. *Id.* at *1, *2. Such an extension of the use of Section 1782 makes it an increasingly powerful tool for international litigants to obtain US-style discovery and the court’s ruling could well lead to an uptick in Section 1782 petitions, with parties taking advantage of the decision to seek non-US documents from American subsidiaries of global businesses.

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