

CLIENT ALERT

Court Finds that ICC is Tribunal for Purposes of Section 1782 Discovery Assistance

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28 USC 1782 is a US statute authorizing federal courts to grant discovery assistance to persons and entities involved in disputes before a tribunal outside the US. In *In re Application of Babcock Borsig AG*, CA No. 08-mc-10128-DPW, Oct. 30, 2008, a federal district court in Massachusetts held that the ICC is a "tribunal" within the meaning of section 1782, and thus, the court had the statutory authority to order a person or entity within the US to provide documents or testimony for use in a foreign proceeding (here, an ICC proceeding). In this particular case, however, the court decided not to exercise its discretion to grant the discovery request until it received evidence that the ICC panel would be receptive to material obtained pursuant to section 1782. The growing body of law on this point highlights the importance of section 1782 as a strategic consideration for those involved in disputes outside of the US, if there is a person or entity in the US with evidence bearing on the issues, whether or not that person is a party to the proceedings outside the US.

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

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