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Cross-Border Evidence Gathering: A Primer on Mutual Legal Assistance Treaties and Letters Rogatory



This article, authored by a sitting US District Judge and a former federal prosecutor and State Department Section Chief now in private practice, is focused on the reality that, whether engaging in the civil discovery process or investigating criminal conduct, the need to collect evidence located in a foreign country arises more frequently today than ever before.

That said, national sovereignty, international treaties, and international law typically preclude U.S. law enforcement officials or litigation counsel from simply flying to a foreign country to conduct searches, question suspects/witnesses, documents, or otherwise engage in criminal or civil evidence gathering. As this article explains, the two indispensable vehicles for obtaining foreign evidence continue to be Mutual Legal Assistance Treaties (MLATs) and Letters Rogatory. The article walks the reader through how these two evidence gathering mechanisms work and provides practitioners with advice that is both practical and strategic.

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