

# White Collar Defense and Investigations



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## Civil Litigation in US Courts: A Primer for Non-US Entities

### Executive Summary

- Civil litigation in the United States has distinctive features that might come as a surprise to non-U.S. entities unfamiliar with the American system. Non-U.S. litigants must navigate a number of evolving complexities that do not always apply to American parties.
- Given the sophistication and reach of the U.S. legal system, plaintiffs frequently seek to litigate their claims against non-U.S. defendants in U.S. courts even when those defendants have minimal connections with the United States.
- Non-U.S. entities should be mindful of, and take proactive steps to mitigate, the risks associated with potential litigation in U.S. courts.

The U.S. legal system has a number of features distinguishing it from its global counterparts. For example, U.S. courts take a very expansive (and some would say intrusive) view of pretrial discovery that differs greatly from civil litigation in most other jurisdictions, and that often comes as an unwelcome surprise to litigants unfamiliar with U.S. procedures.

Given the sophistication of the U.S. legal system and the wide array of available remedies, U.S. courts offer an attractive forum for plaintiffs seeking judicial relief against non-U.S. entities under a variety of federal, state and local law theories. Even entities with seemingly minimal U.S. connections should be aware of the defining characteristics of U.S. civil litigation practice and monitor relevant developments.

This article highlights the unique features of the U.S. legal system and their implications for non-U.S. litigants, providing a brief primer on:

- The structure of the U.S. litigation system.
- Specific types of claims and defenses commonly seen in civil actions brought against non-U.S. entities.
- Certain best practices that non-U.S. entities can adopt to mitigate associated risks.

### Overview of the US Judicial System

The U.S. civil litigation system has a number of unique and prominent features. Non-U.S. litigants should be particularly mindful of (i) the parallel U.S. federal and state court structure, (ii) the presumption of full public access to court documents and hearings, (iii) the expansive nature of pretrial discovery and (iv) the prevalence of juries in civil trials.

# Civil Litigation in US Courts: A Primer for Non-US Entities

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## Parallel Court Structure

The United States has a federal political and legal structure in which power is shared between a national (federal) government and 50 distinct state governments. Consistent with that structure, the federal government and each state have their own court systems, all of which operate in parallel.<sup>1</sup>

Although federal and state courts are similar, the plaintiff's choice of court may dictate meaningful distinctions in the substance and procedure of civil litigation — both between state and federal courts and among the various state courts. For example, although federal courts are only authorized to hear certain types of claims, state courts generally have broad jurisdiction to handle both state and federal claims (and, indeed, state courts handle the vast majority of U.S. civil actions). On balance, state courts are more likely to hear cases involving parties from the same state with smaller amounts at issue. In contrast, federal courts often hear cases among parties from different states (or countries) with higher dollar amounts at issue, as well as those that involve questions of federal law.

Although the plaintiff initially chooses whether to file suit in state or federal court, defendants generally can “remove” actions filed in state court to federal court so long as the action originally could have been brought in federal court.<sup>2</sup> Removal can offer strategic benefits to non-U.S. litigants sued in state courts, allowing them to take advantage of more standardized and predictable federal procedures and to mitigate the risk of “home town bias” that might be present in local courts.

In both state and federal courts, parties generally have the right to appeal the *final* ruling of a trial court (the first or lowest level of court), but appeals of most interim trial court decisions must wait until the case has concluded. Litigants in federal trial courts (known as district courts) have the right to appeal district court rulings to the United States Court of Appeals encompassing the region in which that district court is located. Litigants can seek review of Court of Appeals decisions in the U.S. Supreme Court, but the Supreme Court has discretion whether to hear cases and accepts only a small fraction of cases.<sup>3</sup>

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<sup>1</sup> The District of Columbia (the capital of the United States and a specially created federal district) similarly has its own court system in which local disputes are adjudicated.

<sup>2</sup> See 28 U.S.C. § 1441.

<sup>3</sup> Although variations exist in certain state judicial systems, the structures for appellate review are generally similar to those in the federal system.

## Public Access

Unlike in many other countries, there is a strong presumption of public access to all U.S. court records and proceedings. This presumption is rooted in both the First Amendment to the U.S. Constitution and the common law. Accordingly, litigants in U.S. courts should expect that court filings will generally be accessible to the public (either electronically or upon request). Similarly, most hearings and trials are conducted publicly, meaning that members of the public and press are generally permitted to attend and report on proceedings in court.<sup>4</sup>

## Discovery

Perhaps the defining feature of civil litigation in U.S. courts is the broad approach to discovery. Unlike in many other countries, parties litigating in the United States generally proceed to discovery shortly after filing their respective pleadings. And discovery is often the central stage of a U.S. civil action.

Under the Federal Rules of Civil Procedure (and many state rules, which in most cases are similar to the federal rules), the standard governing discovery is quite broad. U.S. courts generally allow parties to obtain a significant volume of documents from parties and non-parties so long as the information is deemed “relevant” and “proportional” to the action.<sup>5</sup> The breadth of U.S. discovery (and associated litigation costs) often provides a powerful incentive for defendants, where possible, to seek dismissal of the action at the pleading stage.

Parties to U.S. civil litigation may send discovery requests through various written and oral means, including the following:

- **Document discovery.** Parties may request documents or electronically stored information from opposing parties and relevant non-parties.
- **Written discovery.** Parties may issue written requests to opposing parties seeking information relevant to the case. These include interrogatories (requesting answers to written questions) and admissions (requesting that the party admit or deny certain allegations).
- **Depositions.** Unlike in most other nations' courts, parties may generally compel pretrial testimony, under oath, from an opposing party or third-party witnesses. Witnesses are required

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<sup>4</sup> Courts sometimes permit parties to seal narrow categories of particularly sensitive information, including certain types of personally identifiable information and trade secrets.

<sup>5</sup> Fed. R. Civ. P. 26(b)(1).

# Civil Litigation in US Courts: A Primer for Non-US Entities

to truthfully answer all questions over the course of the deposition (which generally lasts seven hours on the record).<sup>6</sup> A corporation may be deposed through a representative whom the corporation designates to testify on its behalf.<sup>7</sup>

- **Expert discovery.** Parties may also develop and rebut expert evidence, which is common, especially in complex or highly technical matters.

## Jury Trials

Where a case does proceed to trial, the Seventh Amendment to the U.S. Constitution guarantees that a defendant has the right to a trial by a jury in suits seeking monetary damages. In such circumstances, the jury, not the judge, serves as the ultimate finder of fact. Although the Seventh Amendment is not expressly applicable to state court proceedings, many state constitutions provide for jury trials in similar circumstances.

## Common Types of Civil Actions Involving Non-US Entities

Although the extraterritorial reach of U.S. law is not boundless, non-U.S. entities with material connections to the United States may be forced to defend civil litigation under a variety of legal theories. This section summarizes several categories of claims that frequently involve non-U.S. litigants.

### Common Federal Actions

Certain federal laws encourage claims against non-U.S. defendants, whether expressly or by their nature. To name a few examples:

**Lanham Act of 1946.**<sup>8</sup> The Lanham Act, a prominent federal statute governing intellectual property and commercial practice, provides a federal framework for trademark registration and establishes certain measures intended to guard against unfair competition in commercial markets. The Lanham Act provides litigants with various private rights of action (including actions for trademark infringement, trademark dilution, and false advertising). Although the U.S. Supreme Court recently clarified that the trademark infringement provisions of the Lanham Act only support claims of alleged infringement occurring within the territorial boundaries of the United States,<sup>9</sup> the Act remains a common source of civil actions against non-U.S. entities that market or sell foreign goods in U.S. commerce.

<sup>6</sup> See *id.* 30(d)(1).

<sup>7</sup> See *id.* 30(b)(6).

<sup>8</sup> 15 U.S.C. §§ 1051 et seq.

<sup>9</sup> See *Abitron Austria GmbH et al. v. Hetronic International Inc.*, 600 U.S. 412 (2023).

**Antiterrorism Act of 1990 (ATA).**<sup>10</sup> The ATA provides U.S. victims of international terrorist attacks (or their families) a private right of action to recover for injuries arising from terrorist acts committed outside the United States. Both the volume and scope of ATA litigation have significantly expanded since 2016, when the statute was amended to encompass secondary theories of liability (*i.e.*, aiding and abetting and conspiracy) arising from the underlying acts of international terrorism.<sup>11</sup> Dozens of ATA actions have since been brought against non-U.S. corporations within a range of industries, including banking and finance, telecommunications, and media and broadcasting.<sup>12</sup>

**Securities actions.** Non-U.S. companies with securities listed on U.S. exchanges may find themselves subject to civil litigation brought under the U.S. securities laws, which allow private civil lawsuits for, among other things, false or misleading statements in registration statements or prospectuses and fraud.<sup>13</sup> Generally, courts in private securities fraud actions are authorized only to hear claims concerning securities listed on U.S. exchanges and U.S. transactions in other securities.<sup>14</sup> That said, especially given the ever-developing legal landscape governing courts' extraterritorial jurisdiction, non-U.S. companies with exposure to U.S. securities markets should be mindful of their U.S. reporting requirements and the risks associated with civil actions (which commonly arise in the form of shareholder class action suits).

**Helms-Burton Act.** The Helms-Burton Act permits U.S. nationals to recover from entities engaged in the "trafficking" of property previously expropriated by the Cuban government.<sup>15</sup> Although civil litigation under the Helms-Burton Act largely was uncommon until 2019, changing U.S. policy has spurred the filing of lawsuits under the act in U.S. courts in recent years, with dozens of cases filed since 2019. Defendants in these cases have included European and Cuban companies operating in industries such as advertising, banking, construction, travel, tourism, transportation, tobacco, ranching and sugar production. Perhaps reflecting the increasing prominence of these cases, the U.S. Supreme Court heard oral argument in February 2026 in two separate actions brought under the act.<sup>16</sup> As of April 2026, the Court has not yet ruled in these cases.

<sup>10</sup> 18 U.S.C. §§ 2331 et seq.

<sup>11</sup> Justice Against Sponsors of Terrorism Act (JASTA), PL 114-222 § 7 (Sept. 28, 2016); see also 18 U.S.C. § 2333(d).

<sup>12</sup> See *Litigation Under the Antiterrorism Act: 2025 Year in Review*, Skadden, Arps, Slate, Meagher & Flom LLP (Jan. 21, 2026).

<sup>13</sup> See, e.g., 15 U.S.C. §§ 77a et seq. (Securities Act of 1933); 15 U.S.C. §§ 78a et seq. (Securities Exchange Act of 1934).

<sup>14</sup> See *Morrison v. Nat. Australia Bank*, 561 U.S. 247 (2010).

<sup>15</sup> 22 U.S.C. §§ 6021–6091.

<sup>16</sup> See *Exxon Mobil Corp. v. Corporación Cimex, S.A.* (No. 24-699) (assessing scope of sovereign immunity defense in actions brought under the act); *Havana Docks Corp. v. Royal Caribbean Cruises, Ltd.* (No. 24-983) (considering the viability of claims brought under the act with respect to property interests that would have expired prior to the alleged "trafficking").

# Civil Litigation in US Courts: A Primer for Non-US Entities

**Judgment enforcement actions.** Both federal and state laws provide mechanisms through which plaintiffs may seek to convert foreign arbitral awards or court judgments into U.S. judgments that are enforceable against a debtor's assets in the United States. Litigants typically bring such proceedings to enforce awards they have obtained against non-U.S. entities (as well as sovereign nations or their agencies and instrumentalities). Various federal statutes — such as the Federal Arbitration Act<sup>17</sup> and the Convention on the Settlement of Investment Disputes Act<sup>18</sup> — create streamlined procedures that allow plaintiffs to file an action to recognize and enforce awards obtained through international arbitral regimes. Although actions to enforce money judgments rendered by foreign courts are, in contrast, largely a creature of state statute or common law, they operate under a broadly similar, streamlined framework.<sup>19</sup>

## State and Local Actions

In addition to federally created legal rights, plaintiffs can assert a range of state or local claims against non-U.S. corporations with U.S. touchpoints. Depending on the facts and circumstances, such actions may be brought in either state or federal courts; on balance, actions asserting non-federal theories would more likely arise from a non-U.S. corporation's business activities within the United States (and, specifically, within a particular state). Such actions commonly feature claims for breach of contract, fraud, negligence, unjust enrichment and/or data privacy breaches.

## Common Defenses and Litigation Considerations

Non-U.S. defendants frequently raise a number of challenges to proceedings in U.S. courts, both to support a request to dismiss the action entirely and to limit discovery in actions that are not dismissed. Common examples include the following:

### Personal Jurisdiction

The presence or absence of personal jurisdiction — the court's authority to issue a decision that binds a specific defendant — is a primary consideration for non-U.S. defendants sued in a U.S. court. In assessing whether they have personal jurisdiction over a non-U.S. defendant, courts generally analyze the nexus between that defendant's U.S. contacts and the claims at issue.

<sup>17</sup>9 U.S.C. §§ 1–16. The FAA incorporates two major arbitration treaties, the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”), see 9 U.S.C. §§ 201–207; and the 1975 Inter-American Convention on International Commercial Arbitration (“Panama Convention”), see 9 U.S.C. §§ 301–307.

<sup>18</sup>22 U.S.C. § 1650a.

<sup>19</sup>Many U.S. states have adopted the Uniform Foreign-Country Money Judgments Recognition Act, which provides well-worn procedures governing such enforcement actions.

A court may find that it has “general” personal jurisdiction over a defendant (*i.e.*, jurisdiction to hear *all* suits brought against that defendant) where the defendant's contacts with the forum state are so substantial that it can be considered “at home” in that jurisdiction. Otherwise, and more commonly with non-U.S. defendants, courts evaluate “specific jurisdiction,” which involves a highly fact-specific analysis that generally turns on the extent to which (i) the non-U.S. defendant purposefully directed its activities toward the United States (and in particular, the forum state), and (ii) the plaintiffs' claims arise out of or relate to those activities.

Personal jurisdiction can also be established under the “alter ego” theory. A subsidiary corporation's U.S. contacts can sometimes be attributed to its parent corporation upon a showing that the parent sufficiently controls the subsidiary such that the subsidiary lacks a separate identity from the parent. In such cases, a parent corporation can be subject to personal jurisdiction in the United States (and held liable for the conduct of its subsidiary) even if the parent corporation itself lacks sufficient connections with the United States.

Personal jurisdiction remains a constantly evolving area of law, particularly as the doctrine applies to suits against non-U.S. defendants. Indeed, just the past calendar year brought two major developments:

- In its June 2025 decision in *Fuld v. Palestine Liberation Organization*, the U.S. Supreme Court concluded for the first time that the Fifth Amendment's Due Process Clause — applicable in cases raising claims under federal law in federal court — “permit[ted] a more flexible jurisdictional inquiry commensurate with the Federal Government's broader sovereign authority” than the standard applicable to claims brought under state law.<sup>20</sup> Although it remains unclear how *Fuld* will be interpreted and applied by lower courts in other cases, the ruling suggests that the standard for establishing personal jurisdiction over non-U.S. defendants may be more permissive in cases involving claims in federal court under federal law than it would be in cases involving state law.
- In August 2025, the U.S. Court of Appeals for the Second Circuit ruled that it had personal jurisdiction over a non-U.S. bank in an action under the ATA based solely on the bank's acquisition of another bank alleged to have committed the wrongful acts.<sup>21</sup> The court concluded that, irrespective of the absence of the defendant's own jurisdictional contacts with the United States, personal jurisdiction was proper in light of the U.S. contacts of the bank it acquired, which could be imputed

<sup>20</sup>606 U.S. 1, 16 (2025).

<sup>21</sup>*Lelchook v. Societe Generale de Banque au Liban S.A.L.*, 147 F.4th 226 (2d Cir. 2025), petition for certiorari docketed, No. 25-983 (U.S. Feb. 19, 2026).

# Civil Litigation in US Courts: A Primer for Non-US Entities

to the defendant for purposes of the litigation. In February 2026, the defendant requested that the U.S. Supreme Court review the Second Circuit's decision and resolve the conflict among the federal appellate courts regarding whether this "corporate successor" theory of personal jurisdiction is valid. The Supreme Court has not yet decided whether it will hear the appeal.

## Service of Process

U.S. law imposes strict requirements for serving process (*i.e.*, delivering the initial papers in a lawsuit to a defendant) on non-U.S. defendants located abroad. Plaintiffs must comply with these requirements before a defendant is required to respond to a lawsuit. Non-U.S. defendants sometimes seek dismissal of lawsuits on the basis that plaintiffs have failed to properly serve process.

## Forum Non Conveniens

Under the doctrine of *forum non conveniens*, U.S. courts may exercise their discretion to dismiss a case on the grounds that the case should be litigated in another country's courts. The availability of this defense to a non-U.S. litigant depends on a number of factors, including whether relevant witnesses and evidence are located outside the United States; the extent to which the action features primarily foreign law claims; whether the claims have a meaningful relationship with the United States; and whether the plaintiff appears to have strategically selected a U.S. forum to obtain a litigation advantage.

## Cross-Border Discovery

Discovery in actions involving non-U.S. litigants can raise a host of issues and complications. For example, courts and parties may be obligated to adhere to international treaties such as the Hague Evidence Convention, a multilateral treaty that facilitates cooperation for obtaining evidence located outside the United States in civil matters. Moreover, U.S. discovery requests may conflict with national "blocking statutes" that restrict (or in some cases, bar entirely) the exportation of documents or information from the country in which the non-U.S. litigant is located. As just one of many examples, Australia's Foreign Evidence Act of 1994<sup>22</sup> permits the attorney general to issue an order blocking the production of specific items or documents for use as evidence in foreign proceedings.

Foreign data privacy or data protection laws may pose similar challenges. The most prominent such law is the General Data Protection Regulation (GDPR), a comprehensive European Union

privacy and security law enacted in 2018 that establishes strict rules governing the processing of EU nationals' personal data.<sup>23</sup> Numerous other jurisdictions have similar data protection policies that meet or exceed the European Union's adequacy standard.

When discovery and evidence requests implicate materials that are located outside of U.S. borders, litigants and U.S. courts must address the conflict between those restrictive foreign data-sharing laws and the U.S. civil litigation system's expansive approach to discovery. Non-U.S. litigants can invoke applicable blocking statutes or data protection laws in an effort to resist or limit the scope of discovery. That said, the mere presence of a foreign blocking statute or data protection regulations — or the burdens commonly associated with cross-border discovery — does not always excuse discovery obligations. U.S. courts may, and often do, order discovery notwithstanding these considerations.<sup>24</sup>

## Foreign Sovereign Immunity

The Foreign Sovereign Immunities Act of 1976 (FSIA) codifies the doctrine of sovereign immunity and establishes that foreign states are generally presumed to be immune from suits in U.S. courts. Sovereign immunity under the FSIA can extend to state-owned entities and arms of the foreign state, such as state-owned businesses in the energy, transportation, and finance sectors. Significantly, the FSIA includes various exceptions that limit immunity. For example, foreign states (and state-owned entities) are not immune from jurisdiction in the United States when they waive their immunity, either implicitly or explicitly, or in cases in which the foreign state (or entity) engaged in commercial activity within the United States. While the FSIA may generally provide state-owned entities with immunity, these entities should be aware of how the statute's exceptions, specifically the commercial activities exception, could limit their immunity in U.S. courts.

## Best Practices

Non-U.S. entities should follow certain best practices to prepare for the possibility of civil litigation in U.S. courts (and to increase their prospects for success should they become involved in U.S. litigation). Such entities should:

- Monitor their connections with the United States to remain aware of potential jurisdictional hooks.
- Analyze and consider governance and organizational structures to mitigate potential jurisdictional risks.

<sup>23</sup> See European Union, *What is GDPR, the EU's New Data Protection Law* (last visited April 13, 2026).

<sup>24</sup> See generally *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522 (1987) (holding that foreign blocking statutes do not automatically deprive U.S. courts of the authority to compel discovery of materials located abroad).

<sup>22</sup> See Foreign Evidence Act 1994 (Cth) s 41-2 (Austl.).

# Civil Litigation in US Courts: A Primer for Non-US Entities

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- Consider storing and maintaining company data and records outside the United States unless it is necessary to keep this data in the United States for business purposes.
- Designate one or a limited number of individuals to accept service of U.S. complaints and otherwise instruct employees to decline to accept documents presented to them by individuals serving process.
- Monitor litigation developments of particular relevance to non-U.S. litigants, including judicial rulings and laws that may expand the jurisdiction of U.S. courts over non-U.S. entities.

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