Contents

Introduction  xv
By Jorge Mestre

Chapter 1  Argentina  1
By Guido Santiago Tawil and Federico Campolieti
I. Understanding the Argentine Judicial System  1
II. Obtaining Discovery in Argentina  2
A. Applicable Statutes and/or Conventions  2
B. Application of the Hague Convention  2
C. Other Multilateral and Bilateral International Treaties  3
D. Production of Documents  4
E. Depositions  4
F. Written Interrogatories  5
G. Parties’ Freedom to Resort to Other Mechanisms of Evidence Production  5
III. Conclusion  6

Chapter 2  Plurinational State of Bolivia  9
By Lindsay Sykes and Fernando Escobar Pacheco
I. Understanding the Litigation Process in Bolivia  9
II. Obtaining Evidence in Bolivia  9
A. Applicable Statutes and/or Conventions  9
B. Procedure  10
C. Scope  10
D. Production of Documents  11
E. Oral Examinations  11
F. Written Interrogatories  12
G. Investigation/Reenactment  12
H. Third-Party Discovery  12
I. Prohibited Evidence, Confidentiality, and Waiver of Protection  12
J. Protective Orders  13
K. Costs  13
III. Alternative Dispute Resolution and Settlement Agreements in Bolivia  13
IV. Conclusion  14
Chapter 3  
**Brazil**

*By Mauricio Gomm Santos and Silvia Arruda Gomm*

I. The Brazilian Judicial System  
II. Evidence  
   A. Discovery  
   B. Oral Testimony  
   C. Expert Witnesses  
   D. The Principle of Publicity, Confidentiality, and Protective Orders  
III. Civil Law vs. Common Law  
IV. International Conventions  
   A. Hague Convention of March 18, 1970, on the Taking of Evidence Abroad in Civil or Commercial Matters  
   B. Other International Conventions with Similar Purposes  
   C. Convention of October 5, 1961, Abolishing the Requirement of Legalization for Foreign Public Documents (Hague Apostille Convention)  
   D. Central Authority  
V. International Legal Cooperation  
   A. Direct Assistance (*Auxílio Direto*)  
   B. Letter Rogatory  
      1. Court of Original Jurisdiction  
      2. Proceeding to Grant *Exequatur* of Letters Rogatory  
   C. Recognition of Foreign Decisions  
      1. Review of STJ Decisions on Private Commercial Matters  
      2. Analysis of Decisions Involving State-Owned Entities  
   D. Public Policy Prevents Requests for Letters Rogatory and Recognition of Foreign Decisions  
VI. Conclusion

Chapter 4  
**Canada**

*By Brett Harrison and Laura Brazil*

I. Understanding the Canadian System  
II. Obtaining Discovery in Canada  
III. The U.S. Motion  
   A. Procedure  
   B. Relevant Law  
   C. Contents and Scope  
IV. The Canadian Application  
   A. Procedure  
   B. Relevant Law  
   C. Contents and Scope  
V. Discretionary Factors  
   A. Relevancy  
   B. Necessary for Trial  
   C. Evidence Not Otherwise Obtainable  
   D. Not Contrary to Public Policy
CONTENTS

E. Reasonable Specificity 46
F. Not Unduly Burdensome 47

VI. Deposition Tips and Traps 47
VII. Conclusion 48

Chapter 5  China 51
By Meg Utterback, Willis Sautter, Steven Chen, and Holly Blackwell
I. Introduction 51
II. Obtaining Discovery in China for Use in U.S. Litigation 55
   A. Discovery under the Hague Evidence Convention 55
      1. Document Requests 55
      2. Depositions 56
   B. Discovery under the Federal Rules 57
III. Blocking Statutes 57
   A. State Secrets 58
   B. Personal Data 59
   C. Trade Secrets 60
   D. Accounting Archives 61
IV. Discovery under Hague Convention or Federal Rules? 61
   A. Recent U.S. Cases 63
V. Conclusion 65

Chapter 6  Colombia 67
By Paula C. Arias, Esq.
I. An Introduction to the Colombian Legal System 67
II. Alternative Dispute Resolution in Colombia 68
III. International Judicial Cooperation for Evidentiary Matters: The Framework 69
IV. The Applicable Law in Colombia 70
V. Obtaining Evidence from the United States in Colombia 72
   A. Production of Documents or Exhibición 73
   B. Oral Examinations 74
      1. Statement of a Party 74
      2. Testimony 75
   C. Nonparty Discovery 76
   D. Confidentiality and Waiver of Protection 77
   E. Costs 78
V. Conclusion 78

Chapter 7  Dominican Republic 81
By Marcos Peña Rodríguez and Laura Medina Acosta
I. Understanding the Litigation Process in the Dominican Republic 81
II. Obtaining Evidence in the Dominican Republic 82
   A. Applicable Statutes and/or Conventions 82
   B. Production of Documents 85
   C. Oral Examinations 85
   D. Confidentiality and Waiver of Protection 85
<table>
<thead>
<tr>
<th>Chapter 8</th>
<th>France</th>
<th>89</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>By Rajeev Sharma Fokeer</td>
<td></td>
</tr>
<tr>
<td>I.</td>
<td>Introduction</td>
<td>89</td>
</tr>
<tr>
<td>II.</td>
<td>Discovery under the French System</td>
<td>90</td>
</tr>
<tr>
<td>A.</td>
<td>Applicable Statutes and Conventions</td>
<td>91</td>
</tr>
<tr>
<td>B.</td>
<td>Procedure for Compulsion of Evidence</td>
<td>91</td>
</tr>
<tr>
<td>1.</td>
<td>Requirements Common to Testimony and</td>
<td>91</td>
</tr>
<tr>
<td></td>
<td>Documentary Evidence</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Special Features Relating to Depositions</td>
<td>93</td>
</tr>
<tr>
<td>3.</td>
<td>French Limitations Pertaining to Pretrial</td>
<td>93</td>
</tr>
<tr>
<td></td>
<td>Discovery Requests</td>
<td></td>
</tr>
<tr>
<td>C.</td>
<td>Procedure for Voluntarily Obtained Evidence</td>
<td>94</td>
</tr>
<tr>
<td>D.</td>
<td>The French “Blocking” Statute</td>
<td>95</td>
</tr>
<tr>
<td>E.</td>
<td>The Position Expressed by French Authorities</td>
<td>99</td>
</tr>
<tr>
<td>III.</td>
<td>Costs and Other Practical Considerations</td>
<td>101</td>
</tr>
<tr>
<td>IV.</td>
<td>Conclusion</td>
<td>102</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 9</th>
<th>Germany</th>
<th>107</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>By Tobias Scholl and Marcus Schriefers</td>
<td></td>
</tr>
<tr>
<td>I.</td>
<td>Introduction</td>
<td>107</td>
</tr>
<tr>
<td>II.</td>
<td>Obtaining Documents in German Proceedings</td>
<td>108</td>
</tr>
<tr>
<td>A.</td>
<td>Evidence Gathering under German Civil Law</td>
<td>109</td>
</tr>
<tr>
<td>B.</td>
<td>Third-Party Evidence</td>
<td>110</td>
</tr>
<tr>
<td>III.</td>
<td>Assisting the U.S. Court under the Hague</td>
<td>110</td>
</tr>
<tr>
<td></td>
<td>Convention</td>
<td></td>
</tr>
<tr>
<td>A.</td>
<td>Changes in Legislation</td>
<td>111</td>
</tr>
<tr>
<td>B.</td>
<td>First Decision</td>
<td>112</td>
</tr>
<tr>
<td>C.</td>
<td>Second Decision</td>
<td>112</td>
</tr>
<tr>
<td>D.</td>
<td>Third Decision</td>
<td>113</td>
</tr>
<tr>
<td>E.</td>
<td>Costs of Proceedings</td>
<td>114</td>
</tr>
<tr>
<td>IV.</td>
<td>Special Fields of Law</td>
<td>114</td>
</tr>
<tr>
<td>A.</td>
<td>Access to Files</td>
<td>114</td>
</tr>
<tr>
<td>B.</td>
<td>Shifting the Burden of Proof</td>
<td>116</td>
</tr>
<tr>
<td>C.</td>
<td>Insurance Law</td>
<td>118</td>
</tr>
<tr>
<td>V.</td>
<td>Conclusion</td>
<td>118</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 10</th>
<th>Hong Kong</th>
<th>121</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>By Angela Ho</td>
<td></td>
</tr>
<tr>
<td>I.</td>
<td>Discovery Generally</td>
<td>121</td>
</tr>
<tr>
<td>II.</td>
<td>Discovery in Hong Kong</td>
<td>121</td>
</tr>
<tr>
<td>III.</td>
<td>Automatic Discovery under Order 24, Rules</td>
<td>122</td>
</tr>
<tr>
<td></td>
<td>1 and 2 of RHC</td>
<td></td>
</tr>
<tr>
<td>IV.</td>
<td>Oral Discovery</td>
<td>124</td>
</tr>
<tr>
<td>V.</td>
<td>E-Discovery</td>
<td>124</td>
</tr>
<tr>
<td>VI.</td>
<td>Specific Discovery</td>
<td>126</td>
</tr>
</tbody>
</table>
VII. Obtaining Evidence in Hong Kong by Foreign Litigants in Aid of Foreign Proceedings 127

VIII. Conclusion 128

Chapter 11  India 131
By Vikas Goel and Sonil Singhania

I. Introduction 131

II. Initial Disclosure 133
A. General 133
   1. Noncommercial Disputes 133
   2. Commercial Disputes 133
B. Filing Written Statements 134
C. Production of Documents 134

III. Provisions in the Code Pertaining to Discovery by Formal Request or by Court Order 136
A. Striking Interrogatories 137
B. Answer to Interrogatories 137

IV. Production and Inspection of Documents 138
A. Noncommercial Disputes 138
B. Commercial Disputes 140
C. Inspection of Documents 140
   1. Noncommercial Disputes 140
   2. Commercial Disputes 141
D. Noncompliance with Order for Discovery or Interrogatory or Request for Inspection 142

V. Admissions 142
A. Rules Pertaining to Admission of Documents 142
B. Notice to Admit Facts 143
C. Judgment on Admissions 143

VI. Availability of Confidentiality and Protective Orders 143

VII. Private Agreements with Respect to Discovery 144

VIII. How Discovery Can Be Obtained in India by Litigants in Foreign Jurisdictions 145

IX. Rules Applicable to Foreign Commissions 145

X. Discovery Procedure in India When Compared with Discovery Procedure in the U.S. 146

XI. Language Used in Indian Courts 147

Chapter 12  Israel 155
By Eric S. Sherby

I. Introduction 155

II. Israeli Discovery Procedures Generally 155
A. Discovery Tools 155
B. Scope of Discovery 157
C. Privileges 157
III. Processing Incoming Letters of Request 157
   A. Appointment of Private Lawyer 158
   B. Nature of Evidence Available 159
   C. Specific Items to Address in the Letter of Request 161
      1. Timing Issues 161
      2. Scope of Document Requests 161
      3. Confidentiality of Documents 162
         a. Documents Sought from an Israeli Witness 162
         b. Documents Already Deemed Confidential 163
      4. Explaining the Deposition Process 164
      5. Methods of Recording 165
      6. Timing of Production of Documents by Witness 165
      7. Bates Stamping 165
      8. Relevancy Issues 166
      9. Recording the Deposition 166
     10. Other Logistical Issues 167

Chapter 13 Italy 169

   By Micael Montinari 169

   I. Introduction 169
   II. Ordinary Proceedings in Italy 170
      A. Anticipatory Measures 170
      B. Taking Evidence During the Ordinary Domestic Italian Proceedings 171
         1. Disclosure of Documentary Evidence 171
         2. Examination of the Party 172
         3. Witness Examination 172
         4. The Expert Report 173
      C. Gathering Evidence in Antitrust and Class Actions Related Claims 173
      D. Gathering Evidence in Intellectual Property Related Claims 174
         1. Right of Information 174
      E. Measures for Preserving Evidence 174
         1. Anticipatory Expert Report 175
         2. Private Dawn Raid 175
         3. Seizure 175
   III. Obtaining Evidence in Italy for U.S. Proceedings 176
      A. Applicable Statutes and/or Conventions 176
      B. Production of Documents 176
         1. Letter of Request 177
         2. Diplomatic or Consular Officers 177
      C. Oral Examinations 178
      D. Confidentiality and Waiver of Protection 179
      E. Third-Party Discovery 179
      F. Possible Remedies in Cases of Compelled Compliance with Orders Regarding Evidence 179
      G. Costs 180
   IV. Conclusion 180
Chapter 14  Japan  
By Kazuma Higuchi  

I. Understanding the Litigation Process in Japan  
   A. Overview and Characteristics  
   B. Obtaining Evidence under the Japanese Code of Civil Procedure  
      A. Inquiry to Opponent (Toujisha Shoukai)  
      B. Preservation of Evidence (Shouko Hozen)  
      C. Request for Examination (Chousa Shokutaku)  
      D. Request of Expert Testimony (Kantei Shokutaku)  
      E. Request to Send Documents (Bunsho Souhu Shokutaku)  
      F. Order to Submit Documents (Bunsho Teishutsu Meirei)  
      G. Request for Information (Bengoshi-kai Shoukai)  
   C. Obtaining Evidence in Japan for U.S. Proceedings  
      A. Applicable Statutes and Conventions  
      B. Production of Documents  
      C. Oral Examinations  
      D. Deposition on Consular Premises  
      E. Witness Examination in Courts  
      F. Confidentiality and Waiver of Protection  
      G. Third-Party Discovery  
      H. Costs  

IV. Conclusion  

Chapter 15  Mexico  
By José Antonio Rodríguez Márquez  

I. Introduction  
II. Constitutional Grounds  
   A. Prevalence of International Treaties  
   B. Federal Resolutions  
   C. Organization of the Mexican Territory  
   D. Legal Frame to Obtain Evidence  
III. The Hague Convention  
   A. Reservations and Declarations  
   B. Letters of Request  
   C. Privilege  
   D. Blocking Statutes  
IV. International Procedural Cooperation  
   A. Lack of Commitment  
   B. Foreign Public Documents and Notifications  
   C. Letters of Request  
   D. Applicability of National Law and Simplification of Forms  
   E. Production of Documents and Witnesses  
   F. Arbitration  
   G. Mediation  
V. Conclusion
Chapter 16  Nigeria

By Dr. Babatunde Ajibade and Benedict Oregbemhe

I. Introduction 211
II. Understanding the Litigation Process in Nigeria 212
III. Obtaining Evidence in Nigeria in Aid of Proceedings in the United States 212
IV. Applicable Law and Rules 213
  A. The Foreign Tribunals Evidence Act 1856 213
  V. Procedure for Obtaining Evidence in Nigeria 214
VI. The Vienna Convention on Consular Relations 216
VII. Production of Documents 217
VIII. Oral Examination 218
IX. Confidentiality, Privileged Communications, and Waiver of Protection 219
X. Third-Party Discovery 220
XI. Costs 220
XII. Conclusion 220

Chapter 17  Pakistan

By Taha Alizai and Zainab Salahuddin

I. Scope of Discovery under Pakistan Law 223
II. Discovery of Documents 223
III. Discovery of Facts 225
IV. Discovery in Pakistan for U.S. Litigants 226

Chapter 18  Perú

By Luis Bedoya Escurra and Jean Paul Chabaneix

I. Overview 229
II. Matters Concerning the Submitting of Evidence in a Judicial Proceeding 230
  A. General Outlook 230
  B. Classification 231
    1. Party’s Declarations 231
    2. Witnesses’ Statements 231
    3. Documentary Evidence 232
    4. Expert’s Reports 233
    5. Judicial Inspections 233
III. Evidence That Can Be Submitted Prior to Trial 233
  A. Expert’s Reports 234
  B. Witnesses’ Testimonies 234
  C. Recognition of Private Documents 234
  D. Exhibition of Documents 235
  E. Positions Acquittal 235
  F. Judicial Inspection 235
IV. About the Convention on the Taking of Evidence Abroad 235
V. About the Application of Hague Convention 237
VI. Conclusion 237
Chapter 19  Puerto Rico  
By Luis N. Saldaña

I. Introduction: Understanding the Litigation Process in Puerto Rico  
II. The Relationship between the Commonwealth of Puerto Rico and the United States  
III. Obtaining Evidence in Puerto Rico  
   A. Applicable Statutes and/or Conventions  
   B. Production of Documents  
   C. Oral Examinations  
   D. Confidentiality and Waiver of Protection  
   E. Third-Party Discovery  
   F. Costs  
IV. Conclusion

Chapter 20  Russia  
By Timur Aitkulov

I. Overview of the Russian State Judicial System  
II. Discovery in Russia  
III. Legal Framework  
   A. International Treaties and Conventions  
      2. Bilateral Treaty  
   B. Federal Laws  
IV. Types of Evidence that Can Be Obtained  
V. Procedure  
VI. Grounds for Dismissal  
VII. Advocate’s Requests

Chapter 21  Singapore  
By Raghunath Peter Doraisamy

I. Introduction  
II. Discovery of Documents  
III. Interrogatories  
IV. Obtaining Evidence for Foreign Courts  
V. Conclusion

Chapter 22  Switzerland  
By Sandrine Giroud and Sofian Ghezala

I. Understanding the Litigation Process in Switzerland  
II. Obtaining Evidence in Switzerland  
   A. Applicable Statutes and/or Conventions  
      1. Domestic Proceedings  
      2. International Proceedings and Blocking Statutes  
   B. Application of the 1970 Hague Convention in Switzerland  
      1. Obtaining Evidence by Way of a Letter of Request  
         a. Conditions for the Submission of a Letter of Request  
         b. Conditions for the Execution of the Requests
2. Obtaining Evidence through Diplomatic Officers or Consular Agents and through Commissioners  
   a. Conditions for the Submission of a Request for Judicial Assistance  
   b. Authorization from the FDJP  
   c. Procedural Safeguards  
C. Protective Brief  
D. Production of Documents  
E. Precautionary Taking of Evidence Procedure  
F. Oral Examinations  
G. Confidentiality and Waiver of Protection  
   1. Swiss Banking Secrecy  
   2. Protection of Legitimate Interests  
H. Third-Party Discovery  
I. Costs  
III. Conclusion  

Chapter 23 United Kingdom (England and Wales)  
By Gavin Foggo and Sabrina Janzik  
I. Overview  
   A. Documentary and Oral Testimony in the Normal Course: Standard Procedure  
   B. Special Types of Disclosure Order  
II. Discovery Procedure under the Evidence Act and Hague Convention  
   A. The Evidence (Proceedings in Other Jurisdictions) Act 1975  
   B. Procedure  
   C. Scope of Discovery  
   D. Documentary Evidence  
   E. Oral Testimony: Orders for Depositions  
   F. Privilege of Witnesses  
III. Special Types of Disclosure Orders  
   A. Section 25 of the Civil Jurisdiction and Judgments Act 1982  
      1. Norwich Pharmacal Order  
      2. Bankers Trust Orders  
      3. Search and Seizure Orders/Anton Piller Orders  
IV. Conclusion  

Chapter 24 United States  
By Amanda McGovern, Esq., Kingsley Nwamah, Esq., and Kirk Villalón, Esq.  
I. Understanding the Litigation Process in the U.S.  
II. Obtaining Evidence for a Party Litigating in the U.S.  
   A. Methods of Obtaining Discovery/Brief Overview  
   B. Obtaining Discovery through the Federal Rules  
   C. Obtaining Discovery through the Hague Convention  
   D. Obtaining Evidence through Letters Rogatory  
   E. Obtaining Evidence through Diplomatic or Consular Officers
III. Types of Discovery 307  
   A. Production of Documents 307  
   B. Deposition Testimony 308  
   C. Written Interrogatories 309  
IV. Discovery-Related Issues 309  
   A. Scope of Discovery from Nonparties 309  
   B. Confidentiality and Waiver of Protection 310  
   C. Costs 311  
V. Conclusion 311  

Chapter 25   Uruguay 313  
*By Federico Florin*  
I. Understanding the Litigation Process in Uruguay 313  
II. Obtaining Evidence in Uruguay 314  
   A. Applicable Statutes and/or Conventions 314  
   B. Letters Rogatory 315  
   C. Applicable Procedures for Foreign Court Requests 316  
   D. Production of Documents 316  
   E. Depositions 317  
   F. Confidentiality and Waiver of Protection 318  
   G. Third-Party Discovery 318  
   H. Costs 318  
      I. Ability of the Parties to Avoid Judicial Proceedings by Agreement 319  
         1. Arbitration 319  
         2. Settlement and Conciliation 320  
   J. Designated Language 321  
III. Conclusion 321  

Chapter 26   Venezuela 325  
*By Ramon Alvins*  
I. Understanding the Litigation Process in Venezuela 325  
II. Obtaining Evidence in Venezuela 326  
   A. Applicable Statutes and/or Conventions 326  
   C. Production of Documents 327  
   D. Oral Examinations 328  
   E. Protective Orders 329  
   F. Confidentiality and Waiver of Protection 330  
   G. Nonparty Discovery 330  
   H. Costs 331  
      I. Settlement Agreements 331  
III. Conclusion 332  

Index 335