PREFACE

Evidence located outside of the United States is becoming increasingly important in U.S. litigation of antitrust cases. The success of litigation often depends on the ability of parties to secure access to evidence abroad. As the U.S. legal system is unique in its approach to civil litigation, the collection of foreign evidence for use in the United States commonly encounters resistance from foreign parties, courts, and even governments that often have a different tolerance for discovery in general, and more particularly the export of discoverable materials. Consequently, securing such evidence requires an understanding of the applicable laws and norms not only in the United States but also the country where the evidence or witness is located. The purpose of this book is to discuss those laws and norms.

The first three chapters of the book are devoted to the application of U.S. law. Chapter II details discovery under the Federal Rules of Civil Procedure, providing both an overview of the scope of these rules and a close examination of the specific methods of discovery under the rules. Many of the concepts discussed in Chapter II will be readily familiar to U.S. practitioners. Although U.S. courts apply their own procedural law to discovery requests made in the context of U.S. litigation, there are several international conventions to which the Unites States is a party. Chapter III identifies the relevant international conventions and explains how each applies to the collection of evidence located in one jurisdiction for use in a foreign jurisdiction. Chapter IV details the common ways foreign law creates obstacles to U.S. litigants obtaining discovery abroad—these include blocking statutes, privacy laws, and privileges.

A discussion of legal issues relating to the collection of evidence abroad would be incomplete if it were limited to U.S. law. It is equally important to understand the laws of the foreign jurisdiction where the evidence is located. Many foreign countries have adopted a restrictive disposition toward discovery requests emanating from the United States. Chapters V through XX address the laws of Australia, Belgium, Brazil, Canada, China, France, Germany, India, Italy, Japan, the Netherlands, South Africa, South Korea, Switzerland, Taiwan, and the United Kingdom as they apply to discovery requests emanating from U.S. civil courts. The book, therefore, provides a comprehensive guide to conducting U.S.-based discovery in foreign jurisdictions.
This book is the result of the energy, commitment, and work of a large number of individuals. The authors responsible for the respective chapters are as follows:

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