NEW YORK STATE BAR ASSOCIATION
COMMERCIAL AND FEDERAL LITIGATION SECTION

GUIDELINES FOR OBTAINING CROSS-BORDER EVIDENCE

"Life in a great society, or for that matter in a small, is a web of tangled relations of all sorts, whose adjustment so that it may be endurable is an extraordinarily troublesome matter."

– Judge Learned Hand, 1872-1961
Chief Judge of the United States Court of Appeals for the Second Circuit

Increasingly, parties who have disputes in court or in arbitration find a need to obtain evidence from some person or entity located in another country. These guidelines are intended to serve as best practices to courts and counsel as a guiding set of principles to facilitate the process of gathering evidence. They are not intended to be fixed rules. The authors hope that these guidelines will contribute to the development of increased cooperation and coordination among courts and litigants in different jurisdictions in matters of cross-border evidence collection.

Guideline 1. Utilizing the laws and respecting the customs of sovereign nations is the most effective means of gathering evidence abroad.

Commentary. Seeking extraterritorial evidence will often require the aid of a foreign court, which will present the evidence-seeker with a different and perhaps unfamiliar set of rules and customs upon which to base its request. It is important to remember that if the assistance of a foreign court is needed, that court will apply its own evidence laws, not those of the country from which the request originated.[1] What may be a reasonable request in one jurisdiction may offend the laws and customs of another jurisdiction and cause the request to be summarily rejected.[2] It is thus important to respect the laws and customs of the jurisdiction in which that court sits when asking for help in gathering evidence. Since these laws and customs provide an important background against which the request is evaluated, respecting these foreign laws and customs and drafting evidence requests that conform to them will often be the best and most effective means of obtaining evidence.

Guideline 2. The Hague Evidence Convention is an internationally-agreed means of gathering evidence abroad and counsel practicing internationally should be familiar with its operation along with that of other internationally-recognized methods.

Commentary. Nearly fifty years ago, a group of signatory nations, "[d]esiring to improve mutual judicial co-operation in civil or commercial matters" signed the Convention on

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[1] *See Dow Jones & Co. v. Harrods, Ltd.*, 237 F. Supp. 2d 394, 428-29 (S.D.N.Y. 2002) (Marrero, U.S.D.J.) ("Absent extraordinary circumstances, it would not comport with considerations of 'practicality and wise administration of justice' for the courts of one nation as a matter of course to sit in judgment of the adequacy of due process and the quality of justice rendered in the courts of other sovereigns, and to decree injunctive relief at any time the forum courts conclude that the laws of the foreign jurisdiction under scrutiny do not measure up to whatever the scope of rights and safeguards the domestic jurisprudence recognizes and enforces to effectuate its own concept of justice. On this larger scale, there can be no room for arrogance or presumption, or for extravagant rules or practices that may encourage insularity or chauvinism rather than respect for comity. It cannot be the proper province of any one judge in any one country, giving expression to the push of a moment or the pull of the immediate case, to promulgate judgments that impose that court's rule and will across all sovereign borders so as to reach the rest of humankind.") (footnotes omitted).

[2] Under U.K. law, an evidence request must not only request the evidence, but also provide a basis for the judicial authority to conclude that the evidence is in the possession of the party to whom the request is made. Requests for evidence lacking a legal basis would be rejected under U.K. law. *See, e.g.,* Evidence (Proceedings in Other Jurisdictions) Act 1975; *Re Asbestos Industrial Coverage cases*, 1985 1 WLR 331; *Golden Eagle Refinery v Associated International Insurance,* 1998 EWCA Civ 293.

the Taking of Evidence Abroad in Civil or Commercial Matters (18 March 1970) ("Hague Evidence Convention").[3] The Hague Evidence Convention thus established a system of state-by-state "Central Authorities" that, by agreement among the ratifying nations, were authorized to accept "Letters of Request" seeking evidence in their nations.[4] It remains the most universally-accepted means of obtaining cross-border evidence,[5] and in some nations, the only accepted means of obtaining cross-border evidence.[6] Nevertheless, concerns regarding the perceived ineffectiveness of and delays associated with the Hague Evidence Convention procedures sometimes result in its being viewed by many as a last resort, rather than the first option.[7] But the number of countries that require use of the Hague Evidence Convention is growing. In the European Union, for example, the General Data Protection Regulation ("GDPR") only recognizes judgments of foreign courts pertaining to data transfer if "based on an international agreement . . . in force between the requesting [foreign] country and the Union or a Member State." *See* GDPR Article 48. In the absence of other multinational treaties, the Hague Evidence Convention may soon be the exclusive means of obtaining cross-border disclosure within the EU.[8]

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[3] *See* Hague Evidence Convention, Preamble.

[4] *See* Hague Evidence Convention, Articles 2 and 3.

[5] Other international agreements on the taking of evidence exist, such as the Inter-American Convention on the Taking of Evidence Abroad, a multilateral treaty between eighteen member states of North, Central and South America. *See* 1438 UNTS 390; OASTS No. 44; 14 ILM 328 (1975), *available at* http://www.oas.org/juridico/english/treaties/b-37.html. The United States is not a signatory to this particular Convention, however.

[6] In France, for example, the only legal means of collecting documents or for obtaining witness testimony to be used in a foreign proceeding is through the Hague Evidence Convention. In the United States, discovery may be sought either through the Hague Convention or according to the procedural rules of the federal or state jurisdiction where the action is pending. *See, e.g., Société Nationale Industrielle Aérospatiale v. United States District Court for the Southern District of Iowa*, 482 U.S. 522 (1987) ("*Aérospatiale*"); Cheney v Wells 2008 NY Slip Op 28436 [22 Misc 3d 502]. *See also* Gary B. Born, The Hague Evidence Convention Revisited: Reflections on Its Role in U.S. Civil Procedure, 57 LAW AND CONTEMPORARY PROBLEMS 3 (Summer 1994).

[7] *See, e.g.,* Abigail West, *A Meaningful Opportunity to Comply*, 63 KAN. L. REV. 189 (2014) (noting that in response to a survey of member nations conducted by the Hague Evidence Convention, the U.S. claimed that letters of request issued pursuant to the Hague Convention "can take anywhere from one month to two years to execute," and that the U.S. Department of State had once indicated on its website that requests to China "have not been particularly successful in the past."). *But see Tiffany (NJ) LLC, et al. v. Andrew, et al.*, 10-cv-9471-RA-HBP (S.D.N.Y.) at D.I. 58 (November 7, 2012) (describing a successful request made under the Hague Evidence Convention directed to China which resulted in the production of responsive documents after a period of 9 months).

[8] Not all privacy laws are as restrictive as the GDPR. In Singapore, for example, the Personal Data Protection Act of 2012 ("PDPA") permits personal data to be used without the consent of the individual if "the use is necessary for any investigation or proceedings." PDPA Schedule 2 ¶ 1(f). Meanwhile, Singapore's Personal Data Protection Regulations of 2014 ("PDPR") provide that the personal data may be transferred outside of Singapore so long as the recipient is bound by "legally enforceable obligations" that provide to the transferred personal data "a standard of protection that is at least comparable to the protection under the Act." PDPR ¶ 9. Pursuant to ¶ 10, a "legally enforceable obligation" would include "any law," "any contract . . . ," "any binding corporate rules . . ." or "any other legally binding instrument." *Id.*

Thus, the Hague Evidence Convention will likely find increasing use as it becomes mandatory in other jurisdictions.[9] Accordingly, a working familiarity with the Hague Evidence Convention, an understanding of its requirements and limitations, and a willingness to use it are important skills for any litigator involved in a case where international evidence is involved.[10]

Guideline 3. Cross-border evidence disclosure issues that are expected to arise in a multi-national case should be raised with and addressed by the presiding court in the home forum at the earliest possible juncture.

Commentary. Due to the often time-consuming complexity of the issues concerning cross-border evidence gathering, as well as the delay inherent in navigating through multiple layers of national and international bureaucracy, it is important to address cross-border disclosure issues as early as practicable. Early discussion can help ensure that all parties appropriately preserve relevant documents and data. Obligations to preserve evidence, which are imposed by U.S. courts, may be unfamiliar to non-U.S. litigants who become involved in U.S. litigation. Courts and litigants in U.S.-based litigations may similarly lack familiarity with the extent to which courts elsewhere have similar (or dis-similar) requirements to preserve documents and data generally.

Many courts have rules that encourage case disclosure issues to be raised as early as possible.[11] However, in cases that are known to implicate data, documents or knowledgeable

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[9] While use of the Hague Convention may increase, there is nevertheless on-going discussion of the Treaty's effectiveness and of alternative mechanisms. *See, e.g.*, Daniel S. Alterbaum, *Comment: Christopher X and CNIL: A Clarion Call to Revitalize the Hague Conventions,* 38 YALE J. INT'L L. 271 (Winter 2013) (arguing that U.S. courts should "designate the Hague Convention" as the first-resort set of procedures for procuring evidence); Marissa L. P. Caylor, *Modernizing the Hague Evidence Convention: a Proposed Solution to Cross-Border Discovery Conflicts During Civil and Commercial Litigation*, 28 B.U. INT'L L.J. 341 (Summer 2010) (recommending that Hague Convention be amended to delegate the resolution of cross-border conflicts of evidence-related law to special authorities or an institution within the Hague Conference); Brian Friederich, *Reinforcing the Hague Convention on Taking Evidence Abroad After Blocking Statutes, Data Privacy Directives, and Aerospatiale*, 12 SAN DIEGO INT'L L.J. 263 (Fall 2010) (recommending making the Hague Convention the "first resort for taking evidence abroad").

[10] A model letter of request is available on the Hague Convention website which can be used as a template. *See* https://www.hcch.net/en/instruments/conventions/publications1/?cid=82&dtid=2.

[11] For example, Rule 26(f) of the Federal Rules of Civil Procedure provides that all cases in U.S. federal courts must have an initial case management conference that sets the schedule for the case and addresses fundamental discovery issues in the case such as the number of interrogatories, depositions, and document requests that the parties may use to take discovery. In the Commercial Division of New York State Supreme Court, Commercial Division Rule 8 further requires the identification at the preliminary conference of any known issues relating to electronically stored information ("ESI"). Other jurisdictions have procedures providing for similar conferences. *See, e.g., Discovery Best Practices: General Guidelines for the Discovery Process in Ontario,* ONTARIO BAR ASSOCIATION ("Issue #2: How should discovery planning be initiated? . . . As soon as practical but at least by the close of pleadings, all parties should hold a discovery conference in person or at least by telephone to discuss the most expeditious and cost effective means to complete the discovery process, with regard to: [i]. the nature and complexity of the proceedings; [ii]. the number of documents and potential witnesses involved; [iii]. the ease and expense of retrieving discoverable information; and [iv]. whether given the volume of documents and the time/cost of production, some form of proportional discovery may be considered and agreed to.").

witnesses located in countries other than the home jurisdiction, issues unique to international evidence-gathering are likely to arise, including:

(a) Whether the applications for cross-border evidence collection will be made under the Hague Convention and the schedule for making those applications;

(b) Whether oral testimony is needed from individuals abroad and the manner in which that testimony may be taken; and

(c) Whether documents or data located outside of the forum state[12] will be sought for production, whether any party will object, and whether the documents or data are subject to the data protection laws of a non-forum country.

With early discussion of these and related issues, anticipated problems likely to arise can be aired (and perhaps resolved), and a realistic schedule can be adopted that accommodates the longer timeframes often necessary for international evidence-gathering.

Guideline 4. Cooperation between adversaries should be promoted in order to help narrow and manage evidence-gathering issues in international cases.

Commentary. Cooperation with one's adversary is viewed by some counsel as being in tension with the notion of zealous advocacy for one's client.[13] This perception is unwarranted, however. In fact, cooperating with one's adversary is often to the client's benefit, as it tends to resolve disputes and reduce litigation costs otherwise spent on issues that would have to be adjudicated by the court, despite likely having no effect on the ultimate outcome of the case.

In the context of international disclosure, cooperation among adversaries is oftentimes especially necessary. Everything—from negotiating search mechanisms to gathering data housed abroad, to arranging convenient locations to take testimony from foreign witnesses, to communicating with non-parties who possess key information but may not be subject to personal jurisdiction of the country where the case is pending—requires cooperation among adversaries to accomplish the objective of seeking international disclosure.

Cooperation with one's adversary is a "principle[] of behavior to which the bar, the bench, and court employees should aspire."[14] Particularly in the realm of international evidence gathering, where sovereign nations may disagree on the ability to obtain certain data, documents, or testimony, cooperation between adversarial parties can help avoid or resolve

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[12] "Forum state" refers to the state where litigation is pending.

[13] *See, e.g.,* Preamble, Model Rules of Professional Conduct, American Bar Association, Center for Responsibility (2018), at [9] ("[9] . . . These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.").

[14] New York State Standards of Civility, N.Y. Ct. Rules, Pt. 1200, App. A.

issues that can be costly but unlikely to affect the merits of the case.[15] And resolving these issues amicably—something that is often encouraged by forum and non-forum jurisdictions—can provide the foreign jurisdiction with some comfort that all issues affecting the parties are being adequately raised, discussed, and addressed. Therefore, it is critical for counsel to cooperate with adversaries in order to obtain necessary cross-border evidence in a case.

Guideline 5. The scope of the requested disclosure should be proportional to the needs of the multi-national case.

Commentary. The amount of evidence that is gathered before trial varies extensively in individual nations, particularly between countries with civil law systems rather than common law systems. The United States is a well-known outlier, which permits the collection of large amounts of data during pretrial discovery.[16] But 2015 amendments to the U.S. Federal Rules of Civil Procedure narrowed the scope of discovery and required that the discovery of information be "proportional to the needs of the case."[17]

In the context of cross-border disclosure, seeking a narrower scope of evidence may, in many instances, be to the benefit of the requesting party. In addition to promoting cooperation between adversaries and reducing the total litigation costs incurred by both sides, seeking narrower disclosure makes it more likely that the requesting party will obtain the disclosure being sought. Moreover, when the disclosure is provided, it will not be buried in thousands of other documents (a task far too easy when so much data is generated day-to-day), but rather it will be presented amidst a smaller body of documents that can be readily reviewed by the receiving party. Further, many jurisdictions (other than the United States) will simply refuse to entertain a request for "all documents" concerning a subject and will insist instead on a

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[15] It is also a principle in the New York State Bar Association's 2011 Best Practices in E-Discovery in New York State and Federal Courts. *See* Best Practices in E-Discovery in New York State and Federal Courts (Version 2.0), Report of the E-Discovery Committee of the Commercial and Federal Litigation Section of the New York State Bar Association (December 2012) ("GUIDELINE NO. 4: Counsel should endeavor to make the discovery process more cooperative and collaborative."). And the latest edition of the *Principles of the Sedona Conference*, a leading guide for best practices in e-discovery, includes the so-called "Cooperation Proclamation," which encourages counsel to cooperate as much as possible to reduce unnecessary delay and expense associated with non-merit issues. *See The Sedona Principles, Third Edition*, 19 SEDONA CONF. J. 1, 30-32 (2018) (listing cooperation as a "common theme" of the Sedona Principles); *see also id.* at 76-78 (comment 3.b includes cooperation as part of the Sedona Principles).

[16] *See, e.g., The Sedona Conference International Principles on Discovery, Disclosure & Data Protection in Civil Litigation (Transitional Edition)* (January 2017) at 2-3 ("'Discovery' is a central–and somewhat unique– feature of civil litigation in the American legal system . . . which often conflicts with the significantly narrower scope permitted in other countries, particularly concerning information deemed confidential or subject to Data Protection Laws.").

[17] *See* Rule 26, Federal Rules of Civil Procedure 26 (as amended December 1, 2015). While the federal government has adopted this standard, individual U.S. states continue to follow their own rules of civil procedure, which may not embrace the concept of proportionality. For example, New York State has not yet formally adopted the concept of proportionality into its discovery rules. The Rules of the Commercial Division of New York State state that the Court is "mindful of the need to conserve client resources, encourage proportionality in discovery, promote efficient resolution of matters, and increase respect for the integrity of the judicial process." Preamble, Commercial Division Rules of Practice.

request that identifies "particular documents."[18] Thus, it is all the more important to request evidence with particularity and specificity when seeking cross-border evidence.[19]

Because massive amounts of data may need to be processed in order to respond to broad requests, disclosure requests in international litigations should be tailored so they are narrow and specific and not duplicative of other requests. Consideration should also be given to whether requesting parties may obtain the same or similar evidence through less expensive or burdensome means.

Guideline 6. It is important to respect and comply with the varying laws and customs of different jurisdictions concerning the taking of depositions, witness statements or other pretrial testimony.

Commentary. The taking of pretrial oral testimony, too, varies extensively from jurisdiction to jurisdiction. In the United States, pretrial oral testimony can be taken by deposition (questioning under oath), usually over a period of seven hours.[20] But elsewhere, the procedure may be much different. Sometimes, the witness examination must be written out ahead of time and provided to the witness. Sometimes the questions must be confined to a particular scope.[21] In some countries, consular officials must be present during the witness examination.[22] In others, the examination must take place at a particular location or require the

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[18] *See, e.g., Rio Tinto Zinc Corp. v. Westinghouse Elec. Corp,* [1978] App. Cas. 547, 1 C.M.L.R. 100 (House of Lords 1977) (Lord Diplock) ("The requirements of [section 2](4)(b)... are not in my view satisfied by the specification of classes of documents. What is called for is the specification of 'particular documents' which I would construe as meaning individual documents separately described . . ."). *See also In re Asbestos Insurance Coverage Cases*, *supra* n. 2 (noting that a request for "'monthly bank statements for the year 1984 relating to his current account' with a named bank would satisfy the requirements of the paragraph, provided that the evidence showed that regular monthly statements had been sent to the respondent during the year and were likely to be still in his possession. But a general request for 'all the respondent's bank statements for 1984' would in my view refer to a class of documents and would not be admissible.").

[19] Note, however, that by Directive, the European Commission has called on member states to implement measures designed to enhance the ability of private litigants to pursue damages actions arising from violations of EU competition law. Among the required measures are liberalized means to gather evidence, which include enabling national courts "to order specified . . . categories of evidence upon request of a party." European Commission Directive 2014/104/EU, Preamble (16). This Directive further instructs that evidence gathering should be bounded by "proportion[ality]" considerations. *Id.*, Art. 5.3. Implementation of the Directive though national legislation is on-going. *See, e.g.*, Jacques-Phillipe Gunther, et al., Transposition of the European Damages Directive into French Law, Wilkie Farr & Gallagher LLP (Mar. 28, 2017); NCTM, Italian implementation of the Directive 2014/104/EU on antitrust damages actions (Jan. 8, 2018), http://www.nctm.it/en/news/articles/italian-implementation-of-the-directive-2014-104-eu-on-antitrust-damages-actions; Henar Gonzalez, et al., Spain transposes the EU directive on antitrust damages claims, Lexology (June 2, 2017); Norton Rose Fulbright, German competition law update: New revised act against restraints of competition entered into force (June 2018).

[20] *See, e.g.,* FRCP 30(d)(1); N.Y. Commercial Division Rule 9(c)(5)(ii).

[21] *See, e.g.,* David Epstein, *Obtaining Evidence from Foreign Parties,* INT'L BUS. LITIG. & ARBITRATION 2004, at 131, 133 (PLI Litig. & Admin. Practice Course, Handbook Series No. 704, 2004).

[22] For example, in Brazil, the questions must be drafted ahead of time, which are then provided to a government official who asks the questions on the party's behalf. *See* U.S. Department of State Bureau of Consular Affairs, Judicial Assistance Country Information: Brazil, *available at* https://travel.state.gov/content/travel/en/legal/Judicial-

permission of the government in order to take testimony or witness statements. In still others (as in Switzerland and China),[23] witness examinations cannot be conducted at all, and are deemed illegal. It often is more convenient (or sometimes necessary) to make witnesses available in another, familiar location to conduct the examination; or to take the examination telephonically or through video conferencing. But this, too, may sometimes be frowned upon by foreign courts, at least when done under judicial compulsion.[24]

Therefore, it is important to keep in mind the various conditions under which pretrial examinations may be taken in jurisdictions where knowledgeable witnesses may be located and to engage opposing counsel in discussions regarding a mutually convenient location for witnesses to provide testimony that can be used in the presiding court.

Guideline 7. It is important to be mindful that requested data may be protected by or subject to the jurisdiction of a foreign country, which may have data protection or other privacy laws different from those of the forum state.

Commentary. Data that is accessible in a country may not always be data that is subject to the jurisdiction of that country. Data accessed every day by someone located in a jurisdiction where litigation is pending may be housed on computer servers located in another country, and thus, will be subject to that country's data protection laws.[25] Furthermore, document preservation obligations in connection with U.S. litigation may conflict with privacy

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Assistance-Country-Information/Brazil.html (accessed 12/11/2018) (noting that the government of Brazil "views the taking of depositions for use in foreign courts as an act that may be undertaken in Brazil only by Brazilian judicial authorities").

[23] The U.S. Department of State reports that attorneys who attempt to take depositions in Switzerland without pre-approval by the Swiss government "are subject to arrest on criminal charges." *See* U.S. Department of State Bureau of Consular Affairs, Judicial Assistance Country Information: Switzerland, *available at* https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Switzerland.html (accessed 03/19/2018). In China, "participation in such activity could result in the arrest, detention or deportation of the American attorneys and other participants." *See* U.S. Department of State Bureau of Consular Affairs, Judicial Assistance Country Information: China, *available at* https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/China.html (accessed 03/19/2018).

[24] *See, e.g.,* Brief for the Federal Republic of Germany as Amicus Curiae at 6-7, *Anschuetz & Co., GmbH v. Mississippi River Bridge Authority* 474 U.S. 812 (1985) (No. 85-98) ("The Federal Republic of Germany likewise considers it a violation of its sovereignty when a foreign court forces, under the threat of sanctions, a person under the jurisdiction of German courts to remove documents located in Germany to the United States for the purpose of pretrial discovery, or orders a person, under the threat of sanctions, to leave the Federal Republic of Germany and travel to the United States to be available for oral depositions. The taking of evidence is a judicial function exclusively reserved to the courts of the Federal Republic of Germany.").

[25] *See* Damon C. Andrews & John M. Newman, *Personal Jurisdiction and Choice of Law in the Cloud*, 73 Md. L. Rev. 313, 324 (2013).

and data protection laws in other jurisdictions.[26] Indeed, some nations, such as France, have implemented so-called "blocking statutes," which prohibit the transfer of information outside of their borders if the information is intended to be used for the purposes of litigation.[27] Understanding that such data are governed by different laws and will not always be retrievable by a litigant in another country (or, for that matter, by a foreign court) is important to properly handling litigations with international scope. Therefore, it is important to be cognizant of the location of data and the laws that govern it when seeking to retrieve data for use in international litigation.

Guideline 8. When seeking evidence in a foreign nation, it is prudent to engage local counsel familiar with that jurisdiction's policies and procedures on pretrial disclosure.

Commentary. In gathering evidence from a specific foreign jurisdiction, it is important to engage local counsel or technical experts where appropriate to obtain guidance about legal principles and practical considerations that will govern data security and regulation, as the liability that can result from a breach are becoming new sources of risk that clients must address. Keeping abreast of these regulations and obtaining outside advice when considering how to collect data from an unfamiliar jurisdiction, are now standard parts of international litigation.

[26] For example, certain provisions of the European Union's GDPR, a privacy law that took effect on May 25, 2018, may conflict with U.S. litigation hold document requirements. *See* Regulation (EU) 2016/679. In particular, unlike in the U.S., the GDPR's definition of "processing" is very broad and includes the act of preserving data. *Id.* Art. 4.

[27] The French blocking statute prohibits "any person to request, search for or communicate . . . documents or information of an economic, commercial, industrial, financial or technical nature for the purposes of establishing evidence in view of foreign judicial or administrative procedures . . . ." *See* Art 1bis, Law no. 68-678 of July 26, 1968, relating to the Communication of Economic, Commercial, Industrial, Financial or Technical Documents and Information to Foreign Individuals or Legal Entities, as modified by French Law no. 80-538 dated July 16, 1980. *See also* Thomas Rouhette and Ela Barda, *The French Blocking Statute and Cross-Border Discovery*, 84 DEFENSE COUNSEL JOURNAL 3 (July 2017). For an analysis of some blocking statutes from other nations, *see, e.g.,* M.J. Hoda, *The* Aérospatiale *Dilemma: Why U.S. Courts Ignore Blocking Statutes and What Foreign States Can Do About It*, 106 CAL. LAW REV. 231 (2018) (noting that the effectiveness of blocking statutes on an international level depends in part on whether they are actually enforced by the national governments).

COMMERCIAL AND FEDERAL LITIGATION SECTION
SPECIAL COMMITTEE ON CROSS-BORDER EVIDENCE COLLECTION[28]

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[28] On February 22, 2018, the Commercial and Federal Litigation Section of the New York State Bar Association ("NYSBA") convened a Special Committee on Cross-Border Evidence Collection ("the Committee"). Mindful of the growing need for cross-border collaboration in an increasingly complex and global world, the Committee sought to author a set of guidelines and best practices to foster cooperation in evidence gathering in international cases ("the Guidelines"). The foregoing Guidelines are the result of: legal research; interviews with current practitioners around the world; and deliberation among the Committee members. The Guidelines were approved by the Executive Committee of the NYSBA Commercial and Federal Litigation Section on December 19, 2018.