

Questionnaire relating to the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Evidence Convention)

Responding State: People's Republic of China (Hong Kong Special Administrative Region)

I. General Feedback

1. How does your State rate the general operation of the Evidence Convention?
(b) Good.
2. How does your State rate the useability of the HCCH publications developed to assist users of the Evidence Convention (the Practical Handbook on the Operation of the Evidence Convention ([Evidence Handbook](#)) and [Guide to Good Practice](#) – The Use of Video-Link)?
(b) Good.
3. What work could be carried out by the PB to facilitate the acceptance of accessions to the Evidence Convention (e.g., providing additional information or facilitating direct communication between your Central Authority and new Contracting Parties)?
-
4. Does your State's Central Authority have a manual or electronic case management register or system that is used to track incoming requests under the Evidence Convention?
(d) Yes – manual for incoming and outgoing.
5. If your State's Central Authority has oversight for outgoing requests, please indicate if there is a system used to track the progress of these.
(b) Yes – manual.

II. Scope of the Convention

6. In the previous five years*, has your State experienced any difficulties in interpreting the scope of the Evidence Convention?

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.
(d) No.
7. Does your State consider the Evidence Convention mandatory or non-mandatory?
(b) Non-mandatory.

8. Has your State adopted “blocking statutes” or laws which are known by any other description, which prevent evidence being taken in the territory of your State for use in foreign proceedings other than under the Evidence Convention (or other international instrument)?

(b) No.

9. Has your State received or submitted requests for the taking of evidence in connection with arbitration proceedings?

(b) No.

10. Have any decisions relating to the use of the Evidence Convention in arbitration proceedings been rendered by the judicial authorities of your State?

(b) No.

III. Operation of the Convention

A. Chapter I – Preparing, transmitting and progressing Letters of Request

Requesting State refers to the State from which a Letter of Request is, or will be, issued.
Requested State refers to the State to which a Letter of Request is, or will be, addressed.

11. As the **requesting State**, how are Letters of Request transmitted?

(d) Other.

“Requests from the Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong SAR, China”) are transmitted via the Chief Secretary for Administration’s Office, which is a competent forwarding authority, to Central Authorities of the requested States”.

12. As the **requesting State**, do the authorities of your State use the recommended Model Form?

(c) No.

“The form is prescribed pursuant to local law, specifically Order 39 rule 3 (see Form 35, High Court Form, Cap. 4A (<https://www.elegislation.gov.hk/hk/cap4A>)).”

13. Does your State consider further work on the Model Form would be beneficial? For example, a review of the Model Form with a view to including video-link and the preparation of guidelines outlining how to complete the Model Form.

-

14. As the **requested State**, do the authorities of your State send an acknowledgement of receipt for a Letter of Request?

(b) No.

15. During the past five years*, as the **requested State**, has your State received a Letter of Request that is non-compliant?

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(a) Yes.

15.1. If the answer to Q15 above is “yes”, why was the request non-compliant?

-

16. As the **requested State**, does your State provide advance assistance to foreign judicial authorities to prepare a Letter of Request to be sent under the Evidence Convention?

(b) No.

“Note: That said, letters of request in which a private agent in the Hong Kong SAR, China is not named would ultimately be passed to the Law Officer (International Law), Department of Justice of the Hong Kong SAR, China in order that an application may be made to the court for the letter of request to be executed. If the letter of request is found not to meet the legal requirements to enable execution, the Department of Justice of the Hong Kong SAR, China would write to the requesting juridical authority advising the latter of the supplemental information or modifications needed in order to enable execution”.

17. As the **requested State**, does your State provide advance assistance to legal representatives to prepare a Letter of Request to be sent under the Evidence Convention?

(b) No.

18. Once your State has received a Letter of Request, do your State’s judicial authorities rephrase, restructure, and / or strike out objectionable questions or offensive wording in order to execute a Letter of Request (also known as “blue-pencilling”)?

(a) Yes.

“Rephrase, restructure and/or strike out. As explained in O.70/1/24-15 of the ‘Hong Kong Civil Procedure 2023’”.

19. As the **requested State**, can the execution of a Letter of Request that has been received be challenged?

(a) Yes.

“As a general principle, Courts of the Hong Kong SAR, China would give effect to a request so far as is permissible under local law. In dealing with a request, however, Courts of the Hong Kong SAR, China will first decide whether it has jurisdiction to make an order to give effect to the request (i.e. whether the request complies with the applicable requirements to enable execution), and if so, whether as a matter of discretion it ought to make or refuse such an order. It is also explained in O.70/2/1-4 of the ‘Hong Kong Civil Procedure 2023’”.

19.1. If the answer to Q19 above is “yes”, is the requesting authority or the interested party permitted to respond to the challenge?

-

20. As the **requesting State**, can the sending of a Letter of Request abroad be challenged?

(b) No.

“Note: Leave should be obtained from the Courts in Hong Kong SAR, China for issuance of a letter of request, during which the Courts in Hong Kong SAR, China would consider issues, including whether it is appropriate to issue a letter of request in the particular case, and whether the evidence sought by letter of request is appropriate”.

21. As the **requested State**, which authority is generally responsible for informing the requesting authority of the time and place of the execution of a Letter of Request (Art. 7)?

- (d) Other.
“Private agent of the parties or, in the absence of private agent, Law Officer (International Law) of the Hong Kong SAR, China and/or Judicial authority competent to execute the request”.

22. During the past five years*, as the **requested State**, has your State received a request specifying a particular method or procedure for taking of evidence (e.g., how witnesses are to be examined)? (Art. 9(2))

*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

- (a) Yes.
“There were requests with specific requirements on the method, for instance taking of evidence via video-link, or the procedures, for instance the administering of oath or affirmation or requiring the witnesses to confirm their understanding of the rights and obligations under the requesting jurisdictions before taking of evidence, etc”.

23. As the **requested State**, does your State require the requesting State to reimburse costs?

- (b) Yes, sometimes.

23.1. If the answer to Q23 above is “yes”, please indicate circumstances where reimbursement is sought.

- (a) Fees paid to experts and interpreters (Art. 14(2))
 (b) Costs occasioned by the use of a special procedure (Art. 14(2))
 (c) Fees paid for translation (Art. 4(3))
 (d) Costs incurred by employing an examiner (Art. 14(3))
 (f) Other.
“Reimbursement will be required where costs of a non-recurrent nature or extraordinary amount are incurred, e.g. Costs incurred for renting private premises for conducting examination”.

24. As the **requested State**, who may make a request for a Letter of Request to be withdrawn?

- (d) Other.
“There is no express local legal provision in this regard. As a logical assumption, the requesting authority may make such withdrawal”.

25. As the requested State, does your State reject a Letter of Request seeking discovery if it is too broad?

- (c) Not applicable, Article 23 declaration.

B. Chapter I – Execution of a Letter or Request – Witness Examination

All questions directed towards the Contracting Party operating as the requested State.

26. As the **requested State**, how is a hearing conducted for Chapter I requests?

- (a) Before a Judge, Magistrate, Special Master, or other court official.
 (c) By a private examiner.

27. Does your State require the Letter of Request to include specific questions to be used during the taking of evidence?
- (b) No.
“Note: No such requirement is imposed for letters of request as such. However, where private agents are not appointed in an incoming letter of request, it would be left to the Law Officer (International Law) of the Hong Kong SAR, China to apply to the local courts for execution and to arrange for the evidence to be taken. Given that the Law Officer (International Law) of the Hong Kong SAR, China is not party to the foreign legal proceedings, a list of specific questions is required in practice in order to facilitate the taking of evidence. Furthermore, for outgoing requests, according to Order 39, rule 3 of the Rules of the High Court (Chapter 4A of the Laws of Hong Kong SAR, China) (<http://www.legislation.gov.hk/eng/home.htm>), if evidence is to be obtained by means of written questions, a copy of the interrogatories and cross-interrogatories must be lodged with the letter of request”.
28. In your State, are hearings public or private?
- (b) Private.
29. In your State, is a witness provided with a copy of questions / matters contained in the Letter of Request in advance of a hearing?
- (a) Yes, always.
30. In your State, what are the requirements for documents that are to be presented to a witness?
- (a) Any document presented to a witness must be attached to the Letter of Request.
(c) Other.
“Any document presented to a witness shall not contain information that is in breach of the laws or regulations of the Hong Kong SAR”.
31. In your State, are documents produced by the witness during the taking of evidence authenticated by the court or authority?
- (b) No.
32. In your State, can representatives of the parties who attend the taking of evidence ask additional questions and / or cross examine the witness?
- (a) Yes.
“Provided that the parties’ legal representatives are legal practitioners in the Hong Kong SAR, China, except for cases involving examination by video-link or examination conducted in private premises outside the court’s precinct as the court may sanction. The relevant local law provision is Order 70 rule 4(3) of the Rules of the High Court (Chapter 4A of the Laws of the Hong Kong SAR, China)”.
33. In your State, is an oath or affirmation administered to the witness before the taking of evidence?
- (a) Yes.
34. In your State, can the witness be subject to further examination?
- (a) Yes.
- 34.1. If the answer to Q34 above is “yes”, is a second Letter of Request required?
- (a) Yes.

35. Does your State have sanctions for the non-appearance of a witness?
- (a) Yes.
“A witness who refuses or fails to comply with the order for examination may be liable to pay the costs occasioned by his refusal or failure, and committal for contempt of court. See relevant local law provision at Order 39 rule 5, as applied by Order 70 rule 4(2), of the Rules of the High Court”.
36. During the past five years*, as the **requested State**, is your State aware of a person requested to give evidence invoking privilege?
- *If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.
- (d) Unknown.
37. Does your State require interpreters in the taking of evidence to be certified?
- (a) Yes.
38. In your State, how is witness testimony transcribed?
- (e) Other.
“Verbatim recording through written, written and signed testimony and deposition”.

IV. Use of Information Technology

In 2019, the PB circulated a questionnaire on the use of information technology in relation to the operation of the Evidence Convention. That survey was concluded prior to the start of the COVID-19 pandemic. The questions below seek information from Contracting Parties on the use of technology and in light of the pandemic.

39. Does your State’s Central Authority accept Letters of Request to be transmitted electronically?
- (b) No.
40. Does your State allow the taking of evidence by video-link under Chapter I?
- (a) Yes.
41. Does your State allow the taking of evidence by video-link under Chapter II?
- (c) Unknown.
42. Does your State use the Model Form for video-link evidence?
- (b) No.
43. What challenges has your State faced regarding the use of information technology under the Evidence Convention?
- (h) Other.

44. Has your State adopted any new information technology measures to facilitate the operation of the Evidence Convention, particularly in response to the COVID-19 pandemic?

(b) No.

45. In your State's opinion, what topics could the PB explore further (e.g., for the purposes of training, seminars, or conferences) in relation to the use of information technology under the Evidence Convention?

-

46. In your State's opinion, what further work could the PB do on the use of information technology under the Evidence Convention?

(a) None.

47. In addition to the Evidence Convention, is your State party to any bilateral, regional, or multilateral agreements that provide rules for the taking of evidence abroad?

(b) No.

For Parties that answered yes to Q47 above:

47.1. Do any of these agreements provide for the use of electronic means to assist in the taking of evidence (e.g., video-link)?

-

For Parties that answered yes to Q47 above:

47.2. If yes, what electronic means or information technology does your State use in the taking of evidence?

N/A

V. 2023 Meeting of the Special Commission & Monitoring

48. Does your State have any suggestions that could assist in the promotion, implementation or operation of the Evidence Convention?

(b) No.

48.1. If the answer to Q48 above is "yes", please indicate whether the information provided may be published.

N/A

49. What are the three key topics or practical issues related to the Evidence Convention that your State would like discussed at the 2023 meeting of the Special Commission?

-

49.1. Please indicate whether the information provided in Q49 above may be published.

-

50. The PB is in the process of revising the Evidence Handbook and the Guide to Good Practice – The Use of Video Link, with a view to consolidating these publications. Are there any specific topics, suggestions for presentation or formatting, or any other proposals you recommend for inclusion?

(b) No.

50.1. If the answer to Q50 above is “yes”, please indicate whether the information provided may be published.

N/A

DATA & STATISTICS FOR CONTRACTING PARTIES

I. Statistics under Chapter I

A. Incoming Requests

1. How many incoming Letters of Request for the taking of evidence did your State receive under Chapter I in each of the following years?

2017	23
2018	11
2019	11
2020	11
2021	12
2022	22
Unknown – <i>please explain.</i>	
-	

2. Which three States made the most requests?

Requesting State	Number
USA	43
Korea	7
Switzerland	6

3. What is the average time taken (in months) to execute a Letter of Request in your State?

“Processing time varies in view of complexity of case and other possible logistical concerns”.

4. If possible, please provide a breakdown of how long (in months) it took to execute incoming requests.

	< 1	1-3	3-6	6-12	> 12
2017	-	-	-	-	-
2018	-	-	-	-	-
2019	-	-	-	-	-
2020	-	-	-	-	-
2021	-	-	-	-	-
2022 (if data available)	-	-	-	-	-
Unknown – <i>please explain.</i>					
<i>“Detailed breakdown of processing time is not readily available”.</i>					

5. How many incoming Letters of Request for the taking of evidence did your State receive via **electronic transmission** under Chapter I in each of the following years?

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i> “As electronic transmission is not accepted, we do not have relevant statistics”.	

B. Outgoing Requests

6. How many outgoing Letters of Request for the taking of evidence did your State make under Chapter I in each of the following years?

2017	0
2018	9
2019	0
2020	0
2021	1
2022	0
Unknown – <i>please explain.</i> -	

7. Which States were the subject of the most requests?

Requesting State	Number
Switzerland	6
Singapore	2
Netherlands / USA	1

8. How many outgoing requests for the taking of evidence did your State make via electronic transmission under Chapter I in each of the following years?

2017	0
2018	0
2019	0
2020	0
2021	0
2022	0
Unknown – <i>please explain.</i> -	

C. Video-Link

9. How many incoming Letters of Request for the taking of evidence did your State execute under Chapter I in each of the following years?

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i> “We do not keep figures in relation to Letter of Request for taking of evidence via video-link”.	

10. How many incoming requests for the taking of evidence did your State execute under Chapter II in each of the following years?

2017	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i> “N/A”	

CASE LAW, ADDITIONAL INFORMATION & SUPPORTING DOCUMENTS

I. Case Law

Please list all your State's judicial decisions that have considered the Evidence Convention since 2014, and provide a link to, or upload, the decision (in PDF format only).

HCMP971/2021 AB v. X AND OTHERS; Reported in: [2022] 1 HKLRD 1259

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=142084&QS=%2B%7C%28hcmp971%2F2021%29&TP=JU

HCA2943/2015 DELCO PARTICIPATION B.V. v. CHIHO ENVIRONMENTAL GROUP LTD AND OTHERS

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=133260&QS=%2B%7C%28HCA2939%2F2016%29&TP=JU

HCA942/2013 TANG YI v. EDMOND DE ROTHSCHILD ASSET MANAGEMENT HONG KONG LTD AND ANOTHER

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=115187&QS=%2B%7C%28HCA942%2F2013%29&TP=JU

3 files uploaded.

II. Additional Documents

Please provide links to and / or any additional information or documentation to support your response (in PDF format only). This may include:

- ⇒ resources for the general public or guidelines for Central or other Authorities' staff;
- ⇒ implementation legislations, recent legislative developments; or
- ⇒ books, articles, or other published work.

"Nil"

PUBLICATION OF RESPONSES

Please confirm whether your responses to this questionnaire can be published on the HCCH website.

- (a) Yes.