

*HCCH Convention of 18 March 1970 on the
Taking of Evidence Abroad in Civil or Commercial Matters*

**TABLE REFLECTING THE APPLICABILITY OF ARTICLES 15, 16, 17, 18
AND 23 OF THE HCCH 1970 EVIDENCE CONVENTION**

1. Introduction and analysis

This table reflects the applicability of Articles 15, 16, 17, 18 and 23 of the *Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (“Evidence Convention or Convention”).¹

(a) Execution of Letters of Request for the purpose of obtaining pre-trial discovery of documents (Art. 23)

Chapter I of the Evidence Convention comprises Articles 1 to 14 and relates to the taking of evidence or the performance of some other judicial act by means of a Letter of Request. Under Chapter I, a Letter of Request is transmitted from a judicial authority of one Contracting Party to the Convention to a Central Authority of another Contracting Party for execution in the latter.

Pursuant to **Article 23** of the Convention, a Contracting Party may declare that it will not execute Letters of Request issued for the purpose of obtaining *pre-trial discovery of documents* as known in Common Law States. Of the 66 Contracting Parties to the Convention:

- 28 have made a general declaration (“full exclusion”);
- 21 have made a particularised declaration qualifying the circumstances in which they will or will not execute such Letters of Request (“qualified exclusion”);² and
- 19 have made no declaration under Article 23.

(b) Exclusion of Chapter II

Chapter II of the Evidence Convention comprises Articles 15 to 22 and relates to the taking of evidence by diplomatic officers, consular agents and commissioners.

Pursuant to **Article 33** of the Convention, a Contracting Party may, by reservation, exclude in whole or in part the application of Chapter II (*i.e.*, Arts 15-22). The key provisions of Chapter II that are covered in this table are:

- **Article 15** – power of diplomatic officer or consular agent to take evidence without compulsion of a national of the State of origin;
- **Article 16** – power of diplomatic officer or consular agent to take evidence without compulsion of a nationals of the State of execution or of a third State;
- **Article 17** – power of commissioner to take evidence without compulsion; and
- **Article 18** – power to apply to the competent authority in the State of execution for assistance in obtaining evidence by compulsion.

Of the Contracting Parties to the Convention (including Hong Kong and Macao SARs):

- 7 have excluded in whole the application of Chapter II;
- 18 have excluded in part the application of Chapter II; and
- 43 have made no reservation in respect to Chapter II.

¹ For the purpose of this document, Hong Kong and Macao Special Administrative Regions (SAR) were considered individually and separately from China (Mainland).

² The Special Commission (SC) on the practical operation of the Convention has invited States which have made a general, non-particularised declaration under Article 23 to revisit their declaration by considering an amendment qualifying the circumstances under which a Letter of Request for the purpose of pre-trial discovery of documents will or will not be executed (see C&R Nos 29-34 of the 2003 SC and C&R No. 51 of the 2009 SC, available on the HCCH website at www.hcch.net under “Evidence” then “Special Commissions”).

Of the Contracting Parties to the Convention (including Hong Kong and Macao SARs):

- 8 have excluded the application of Article 15;
- 21 have excluded the application of Article 16;
- 19 have excluded the application of Article 17; and
- 55 have excluded the application of Article 18.

2. How to interpret the table

(a) Article 23

“**Full exclusion**” means that the Contracting Party has made a *general declaration* that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents.

“**Qualified exclusion**” means that the Contracting Party has made a *particularised declaration* qualifying the circumstances in which it will or will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents.

“**No declaration**” means that the Contracting Party has made *no declaration* under Article 23. Consequently, a Letter of Request issued for the purpose of obtaining pre-trial discovery of documents may be executed.

(b) Article 15

“**Applicable**” means that the Contracting Party has made no reservation under Article 33 to exclude the application of Article 15. Permission of the Contracting Party to take evidence under this provision is not required unless the Contracting Party has made a declaration that such permission is required. Where permission is required, conditions may be imposed (Art. 19).

“**Not applicable**” means that the Contracting Party has made a reservation under Article 33 to exclude the application of Article 15.

(c) Article 16

“**Applicable**” means that the Contracting Party has made no reservation under Article 33 to exclude the application of Article 16. Permission of the Contracting Party to take evidence under this provision is required unless the Contracting Party has made a declaration that evidence may be taken without its prior permission. Where permission is required, conditions may be imposed (Art. 19).

“**Not applicable**” means that the Contracting Party has made a reservation under Article 33 to exclude the application of Article 16.

(d) Article 17

“**Applicable**” means that the Contracting Party has made no reservation under Article 33 to exclude the application of Article 17. Permission of the Contracting Party to take evidence under this provision is required unless the Contracting Party has made a declaration that evidence may be taken without its prior permission. Where permission is required, conditions may be imposed (Art. 19)

“**Not applicable**” means that the Contracting Party has made a reservation under Article 33 to exclude the application of Article 17.

(e) *Article 18*

“Applicable” means that the Contracting Party has declared that a diplomatic officer, consular agent or commissioner may apply for appropriate assistance to obtain evidence by compulsion under Article 18. Conditions may be imposed on the grant of assistance (Art. 19). The declaration of applicability may contain additional conditions on applying for assistance (Art. 18(1)).

“No declaration of applicability” means that the Contracting Party has not declared that a diplomatic officer, consular agent or commissioner may apply for appropriate assistance to obtain evidence by compulsion. Consequently, there is no power to apply for assistance under Article 18.

“Not applicable” means that the Contracting Party has made a reservation under Article 33 to exclude the application of Article 18.

	Contracting Party	(a) Art. 23 Pre-trial discovery of documents	(b) Art. 15 Diplomatic officer or consular agent taking evidence of own national	(c) Art. 16 Diplomatic officer or consular agent taking evidence of other nationals	(d) Art. 17 Commissioner taking evidence	(e) Art. 18 Applying for assistance to obtain evidence by compulsion
1.	Albania	<u>Full exclusion</u>	Applicable	Applicable	Applicable	No declaration of applicability
2.	Andorra	Full exclusion	<u>Applicable</u> (permission required)	<u>Applicable</u> (permission required under certain circumstances)	<u>Applicable</u> (permission required under certain circumstances)	No declaration of applicability
3.	Argentina	<u>Full exclusion</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
4.	Armenia	<u>Full exclusion</u>	Applicable	<u>Applicable</u> (permission required)	<u>Applicable</u> (permission required)	<u>Applicable</u>
5.	Australia	<u>Full exclusion</u>	<u>Applicable</u> (permission required)	<u>Applicable</u> (permission required under certain circumstances)	Applicable	No declaration of applicability
6.	Barbados	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
7.	Belarus	No declaration	Applicable	<u>Applicable</u> (permission required)	<u>Applicable</u> (permission required)	<u>Applicable</u>
8.	Bosnia and Herzegovina	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
9.	Brazil	<u>Full exclusion</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
10.	Bulgaria	<u>Full exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
11.	China (Mainland)	<u>Qualified exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
	China (Hong Kong SAR)	<u>Qualified exclusion</u>	Applicable	<u>Not applicable</u>	Applicable	No declaration of applicability
	China (Macao SAR)	<u>Full exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>

Contracting Party		(a) Art. 23 Pre-trial discovery of documents	(b) Art. 15 Diplomatic officer or consular agent taking evidence of own national	(c) Art. 16 Diplomatic officer or consular agent taking evidence of other nationals	(d) Art. 17 Commissioner taking evidence	(e) Art. 18 Applying for assistance to obtain evidence by compulsion
12.	Colombia	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
13.	Costa Rica	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
14.	Croatia	<u>Full exclusion</u>	<u>Applicable</u>	<u>Not applicable</u>	Applicable	<u>Not applicable</u>
15.	Cyprus	<u>Qualified exclusion</u>	Applicable	Applicable	Applicable	<u>Applicable (subject to reciprocity)</u>
16.	Czech Republic	No declaration	Applicable	<u>Applicable (no permission required subject to reciprocity)</u>	Applicable	<u>Applicable (subject to reciprocity)</u>
17.	Denmark	<u>Qualified exclusion</u>	<u>Applicable (permission required)</u>	<u>Applicable (permission required)</u>	<u>Not applicable</u>	No declaration of applicability
18.	El Salvador	No declaration	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
19.	Estonia	<u>Qualified exclusion</u>	Applicable	Applicable	Applicable	No declaration of applicability
20.	Finland	<u>Qualified exclusion</u>	Applicable	<u>Applicable (no permission required)</u>	<u>Applicable (no permission required)</u>	No declaration of applicability
21.	France	<u>Qualified exclusion</u>	Applicable	<u>Applicable</u>	<u>Applicable</u>	No declaration of applicability
22.	Georgia	No declaration	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
23.	Germany	<u>Qualified exclusion</u>	Applicable	<u>Applicable (no permission required in certain circumstances)</u>	<u>Applicable (permission required)</u>	No declaration of applicability
24.	Greece	<u>Full exclusion</u>	Applicable	Applicable	Applicable	<u>Applicable</u>

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25.	Hungary	<u>Qualified exclusion</u>	<u>Applicable (permission may be required in certain circumstances)</u>	<u>Not Applicable</u>	<u>Applicable</u> (declared competent authorities)	<u>Not applicable</u>
26.	Iceland	<u>Full exclusion</u>	<u>Applicable (permission required)</u>	Applicable	Applicable	No declaration of applicability
27.	India	<u>Qualified exclusion</u>	Applicable	<u>Applicable (permission required)</u>	Applicable	<u>Applicable</u>
28.	Israel	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
29.	Italy	<u>Full exclusion</u>	Applicable	Applicable	Applicable	<u>Applicable</u>
30.	Kazakhstan	<u>Full exclusion</u>	<u>Applicable (permission required)</u>	<u>Applicable</u> (no permission required)	<u>Applicable</u> (no permission required)	<u>Applicable</u>
31.	Kuwait	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
32.	Latvia	No declaration	Applicable	<u>Applicable</u> (application required)	<u>Applicable</u> (application required)	No declaration of applicability
33.	Liechtenstein	<u>Full exclusion</u>	<u>Applicable (permission required)</u>	<u>Applicable (permission required)</u>	<u>Applicable (permission required)</u>	<u>Not applicable</u>
34.	Lithuania	<u>Full exclusion</u>	Applicable	<u>Applicable</u> (declared competent authority)	<u>Applicable</u> (declared competent authority)	No declaration of applicability
35.	Luxembourg	<u>Full exclusion</u>	Applicable	<u>Applicable</u> (declared competent authority)	<u>Applicable</u> (declared competent authority)	No declaration of applicability
36.	Malta	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
37.	Mexico	<u>Qualified exclusion</u>	Applicable	Applicable	<u>Not applicable</u>	<u>Not applicable</u>

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38.	Monaco	<u>Full exclusion</u>	Applicable	<u>Applicable</u> (declared competent authority)	<u>Applicable</u> (declared competent authority)	No declaration of applicability
39.	Montenegro	<u>Full exclusion</u>	Applicable	<u>Not applicable</u>	Applicable	<u>Not applicable</u>
40.	Morocco	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
41.	Netherlands	<u>Qualified exclusion</u>	Applicable	<u>Applicable</u> (no permission required)	<u>Applicable</u> (permission required)	No declaration of applicability
42.	Nicaragua	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
43.	North Macedonia	<u>Full exclusion</u>	Applicable	Applicable	Applicable	No declaration of applicability
44.	Norway	<u>Qualified exclusion</u>	Applicable (permission required and declared competent authority)	<u>Applicable</u> (declared competent authority)	<u>Applicable</u> (declared competent authority)	No declaration of applicability
45.	Paraguay	<u>Full exclusion</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
46.	Poland	<u>Full exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
47.	Portugal	<u>Full exclusion</u>	<u>Applicable</u> (permission required)	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
48.	Republic of Korea	<u>Qualified exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	No declaration of applicability
49.	Romania	<u>Qualified exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
50.	Russian Federation	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
51.	Serbia	No declaration	Applicable	<u>Applicable</u> (permission required)	<u>Applicable</u> (permission required)	<u>Applicable</u>

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52.	Seychelles	<u>Full exclusion</u>	Applicable	Applicable	Applicable	No declaration of applicability
53.	Singapore	<u>Qualified exclusion</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
54.	Slovakia	No declaration	Applicable	<u>Applicable (no permission required subject to reciprocity)</u>	Applicable	<u>Applicable (subject to reciprocity)</u>
55.	Slovenia	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
56.	South Africa	<u>Full exclusion</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Applicable (no permission required in certain circumstance)</u>	<u>Applicable</u>
57.	Spain	<u>Full exclusion</u>	Applicable	<u>Applicable (no permission required in certain circumstances)</u>	<u>Applicable (no permission required in certain circumstances)</u>	No declaration of applicability
58.	Sri Lanka	<u>Full exclusion</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
59.	Sweden	<u>Qualified exclusion</u>	<u>Applicable (permission required)</u>	Applicable	Applicable	No declaration of applicability
60.	Switzerland	<u>Qualified exclusion</u>	<u>Applicable (permission required)</u>	<u>Applicable (permission required)</u>	<u>Applicable (permission required)</u>	No declaration of applicability
61.	Türkiye	<u>Full exclusion</u>	Applicable	<u>Applicable (permission required)</u>	<u>Applicable (permission required)</u>	No declaration of applicability
62.	Ukraine	<u>Full exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
63.	United Kingdom	<u>Qualified exclusion</u>	Applicable	<u>Applicable (no permission required subject to reciprocity)</u>	<u>Applicable (no permission required subject to reciprocity)</u>	<u>Applicable (subject to reciprocity)</u>

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64.	United States	No declaration	Applicable	<u>Applicable (no permission required)</u>	<u>Applicable (no permission required)</u>	<u>Applicable</u>
65.	Venezuela	<u>Qualified exclusion</u>	Applicable	Applicable	<u>Not applicable</u>	No declaration of applicability (not applicable for Commissioner)
66.	Viet Nam	<u>Qualified exclusion</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>