

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

Responding State:

United States of America

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)?

“Organize workshops and trainings for contracting states who recently joined the Convention with existing members in order to share best practices and lessons learned. Continue to work with contracting states on updating and completing Practical Information pages as this is one of the major obstacles to successful application and implementation of the Convention for existing and new contracting states”.

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?

(a) Yes – electronic for incoming only.

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.

(d) Other.

“The U.S. Central Authority does not have oversight for outgoing requests”.

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?

(a) Directly from a judicial authority to the Central Authority of the requested State.

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

(d) Unknown.

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.

(a) Yes.

*“Recommended further work can focus on including a section on video-link testimony.
The Model Form should also be available in additional languages”.*

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

(a) Yes.

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?
- (b) The request was not issued by a judicial authority.
 - (c) The request did not relate to judicial proceedings.
 - (e) The request related to a judicial act that is excluded from scope.
 - (f) The request did not comply with the content requirements under Article 3.
 - (g) The request did not comply with the translation requirements under Article 4.
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?
- (a) Yes.
“The U.S. Central Authority has comprehensive guidance on its website and the Practical Information page on how to submit a proper Letter of Request, what information is need in order to execute a Letter of Request, and the types of evidence the U.S. Central Authority can and cannot obtain. More information is available here: <https://www.justice.gov/civil/evidence-requests>. The U.S. Central Authority will answer inquiries from foreign judicial authorities by phone or email”.
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?
- (a) Yes.
“The U.S. Central Authority has comprehensive guidance on its website and the Practical Information page on how to submit a proper Letter of Request, what information is need in order to execute a Letter of Request, and the types of evidence the U.S. Central Authority can and cannot obtain. More information is available here: <https://www.justice.gov/civil/evidence-requests>. The U.S. Central Authority will answer inquiries from legal representatives by phone or email”.
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.
“The U.S. Central Authority reviews each Letter of Request and attempts to execute the Request in full. The U.S. Central Authority either revises and restructures the Letter of Request as necessary or returns without execution parts of the Request which are not executable”.
19. As the **requested State**, can the execution of a Letter of Request that has been received be challenged?
- (a) Yes.
“A witness or an interested party, such as counsel or a foreign litigant, could raise challenges or object to the Request. If challenges are raised that would impact the U.S. Central Authority’s ability to obtain the evidence, our office may seek guidance or clarification from the foreign judicial authority prior to executing the Request”.

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

(a) Yes.

“If a Request is challenged, the U.S. Central Authority will likely require clarification or guidance from the foreign judicial authority before executing the Request. This is especially true where a witness challenges the Request and will not comply voluntarily. In such cases, the U.S. Central Authority will require additional information from the foreign judicial authority before seeking a U.S. court order pursuant to 28 U.S.C. § 1782 to compel the witness’s response. While an interested party, such as counsel or a foreign litigant, is free to respond to the challenge, if the U.S. Central Authority needs to seek clarification in order to respond to the challenge, the additional information must be provided directly by the foreign judicial authority”.

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

(a) Yes.

“While the U.S. Central Authority does not have oversight for outgoing requests, U.S. law does not prohibit litigants or counsel from challenging a Letter of Request”.

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)?

(a) Central Authority.

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.

“The U.S. Central Authority received Requests seeking oral testimony from witnesses to be transcribed verbatim by a court reporter, also described as depositions. The U.S. Central Authority received Requests asking that the witness attest to a specific oath provided by the foreign judicial authority in the Letter of Request prior to providing their testimony”.

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))

(e) Fees and costs due to constitutional limitations (Art. 26)

(f) Other.

“Costs for production of certain specific categories of documents, such as vital records or medical records”.

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

(a) Requesting authority.

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

(a) Yes.

“A Letter of Request may be rejected for being overly broad and burdensome if it seeks responses to an unreasonable number of questions or seeks extensive documentation. If the witness is unwilling to comply voluntarily, the U.S. Central Authority must proceed with filing an application pursuant to 28 U.S.C. § 1782(a) to compel their response. Under § 1782(a), U.S. district courts have wide discretion to grant, deny or limit discovery requests in foreign litigation matters. Moreover, the United States Supreme Court held “unduly intrusive or burdensome requests may be rejected or trimmed.” Intel Corp v. Advanced Micro Devices, Inc., 542 U.S. 241, 265 (2004) citing In re Application of Esses, 101 F.3d 873, 876 (2d Cir. 1996) and In re Bayer AG, 146 F.3d 188, 196 (3d Cir. 1998). In determining whether a request is burdensome, the U.S. court looks to the Federal Rules of Civil Procedure (FRCP). Mees v. Buiter, 793 F.3d 291, 302 (2d Cir. 2015) (“Rather, a district court evaluating a § 1782 discovery request should assess whether the discovery sought is overbroad or unduly burdensome by applying the familiar standards of Rule 26 of the [FRCP].”); In re Edelman, 295 F.3d 171, 179 (2d Cir. 2002) (“Limits may be proscribed on discovery or an existing order may be quashed under [FRCP] 26(c).”). See also 28 U.S.C. § 1782(a) (“To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the [FRCP].”). The FRCP allow for extensive discovery; however, limitations on discovery do exist. See Fed. R. Civ. P. 26(b). With regard to the breadth of interrogatories, the general rule under the FRCP limits the number of written interrogatories to “no more than 25 written interrogatories, including all discrete subparts.” Fed. R. Civ. P. 33(a)(1). While Courts may grant requests for additional interrogatories, such questions must be consistent with Rule 26(b)(1) and (2). Under Rule 34, a party can be required “to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party’s possession, custody, or control,” such as writings, data compilations, etc.; however, the Rules do not require that parties produce “reports” compiling requested information. Fed. R. Civ. P. 34(a). Additionally, “A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost.” Fed. R. Civ. P. 26(b)(2)(B). Generally, a request for testimony which includes over 100 questions per witness would be considered overly burdensome. A request for documents spanning several decades would also likely be too broad and overly burdensome”.

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?

(e) Other.

“U.S. Department of Justice attorneys obtain the evidence in response to a Letter of Request and formal court hearings in front of U.S. judges are not held to obtain evidence from witnesses pursuant to the Convention”.

27. Does your State require the Letter of Request to include specific questions to be used during the taking of evidence?

(a) Yes.

28. In your State, are hearings public or private?
- (c) Other.
“U.S. Department of Justice attorneys obtain the evidence in response to a Letter of Request and formal court hearings in front of U.S. judges are not held to obtain evidence from witnesses. When a witness will not comply voluntarily with a Letter of Request, the evidence may be compelled pursuant to 28 U.S.C. § 1782(a). Under § 1782(a), a U.S. Department of Justice attorney is appointed commissioner by a U.S. judge solely through written briefings. In the typical proceeding, there is no hearing before a U.S. judge and U.S. judges are not directly involved in the taking of evidence pursuant to the Convention”.
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.
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.
“In limited circumstances, where a foreign judicial authority has specifically asked for a deposition, which involves taking oral testimony with a verbatim transcript by a court reporter and has agreed to pay the cost for the use of a court reporter, representatives may attend the deposition. In such situations, the Department of Justice attorney asks the witness the questions that are provided in the Letter of Request. A representative present at the deposition from the requesting authority or representatives of the parties would only be permitted to ask clarifying or follow-up questions based on those submitted in the Letter of Request. If the U.S. Central Authority is taking the deposition by video-link, the parties’ representatives may participate in the deposition virtually”.
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.
“In rare and limited circumstances, a witness who does not comply with the subpoena issued pursuant to 28 U.S.C. § 1782(a) could be compelled to appear before a U.S. judge and be subject to civil penalties if the witness repeatedly ignores the judge’s orders”.

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.

(b) Yes, under the law of the State of origin (Art. 11(b)).
“Privilege under Turkish and Polish law that a witness can refuse to testify where the witness is the adult or minor child of the litigating parties. Also attorney client privilege”.

37. Does your State require interpreters in the taking of evidence to be certified?

(b) No.

38. In your State, how is witness testimony transcribed?

(d) Written and signed testimony.

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?

(a) Yes.

40. Does your State allow the taking of evidence by video-link under Chapter I?

(b) No.

41. Does your State allow the taking of evidence by video-link under Chapter II?

(a) Yes.

42. Does your State use the Model Form for video-link evidence?

(a) Yes.

43. What challenges has your State faced regarding the use of information technology under the Evidence Convention?

(h) Other.
“Files providing the requested evidence or initial Letters of Request are too large to transmit electronically by email and there is no alternative way to transmit files electronically”.

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?

(a) Yes.

“During the COVID-19 pandemic, the U.S. Central Authority shifted the majority of its processes online and relied mostly on electronic transmission of Letters of Request, correspondence, and documents. The U.S. Central Authority strongly encourages electronic submission of Letters of Request from foreign judicial authorities. When a Request is received by email, receipt of the Request is acknowledged solely by email. Upon execution of the Request, evidence obtained is transmitted electronically by email (so long the file size permits email transmittal) and by FedEx. When possible, Requests are transmitted electronically to witnesses, and the U.S. Central Authority asks that evidence be returned by email to facilitate expeditious handling of Requests. If Requests are executed with the assistance of U.S. Attorney’s Offices (USAO), the Request is referred to the USAO electronically. In addition, the U.S. Central Authority introduced a tracking feature to its internal database to account for Requests received by email”.

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?

“Promoting a shift to a purely electronic procedure for the entirety of the process for executing Letters of Request, starting with a focus on electronic transmission of Letters of Request. Switching the Practical Information pages to a portal that allows Central Authorities to directly update and edit their information”.

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

(b) Other.

“Continue to encourage electronic transmission of Letters of Request and continue to encourage all contracting states to complete the Questionnaire on Taking of Evidence by Video-link”.

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?

(a) Yes.

“Bilateral Consular Conventions: <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/intl-treaties/Bilateral-Consular-Conventions.html>.”

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)?

(b) No.

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?

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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?

(a) Yes.

“Regional workshops or seminars where contracting states can exchange lessons learned and best practices; trainings for contracting states who have recently joined the Convention; continued promotion to encourage contracting states to update and complete their Practical Information pages; quarterly meetings by video-link for Central Authorities to network and discuss current issues with the operability of the Convention”.

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

(a) Yes.

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?

1. *“How contracting states implement Chapter II of the Convention. For example, how are commissioners defined and how are they appointed under Article 17; how is permission requested under Article 16 and 17. Re-evaluating voluntary remote depositions in light of contracting states who have objected to the applicability of Chapter II”.*
2. *“Keeping Practical Information pages updated and completed; better direct communication between Central Authorities; encouraging electronic transmission of Letters of Request and obtained evidence”.*
3. *“How contracting states define „civil or commercial“ and how that definition has changed over time”.*

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

(a) Yes.

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?

(a) Yes.

“-Proper and improper Letters of Request. As Art. 3 of the HCCH 1970 Evidence Convention requires that the witness’s name and address be provided, the Convention cannot be used for general investigations. For example, the U.S. Central Authority consistently rejects requests for investigations of financial assets, the socio-economic status of an individual, investigation of assets and heirs, or the current location or address of an individual. - Procedural and practical aspects related to Letters of Request. Requesting Authorities should be encouraged to limit documents included in the Letter of Request to only those necessary for its execution. Specifically, Requests should include the court order or Model Form signed by the foreign judicial authority that provides the required information under the HCCH 1970 Evidence Convention and other information necessary for execution, and the request should include any attachments or exhibits that the witness should review. Requests do not need to include additional court records beyond these essential documents. -The definition of “commissioner” in Article 17 and the various ways contracting states view who can serve as a commissioner within the scope of the Convention. -How various contracting states require prior permission to be obtained, if required, under Articles 15-17. -It would be helpful for the Evidence Handbook to stress the role of Central Authorities, when serving as an intermediary, to promptly transmit the evidence that a Requested State has provided in response to a Request and to ensure that the evidence is transmitted back to the foreign court or the parties to the litigation. -All contracting states should provide responses to the Questionnaire on Taking of Evidence by Video-link. -The Evidence Handbook and the Guide to Good Practice on the Use of Video-link should be combined into one document”.

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

(a) Yes.

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	392
2018	350
2019	419
2020	281
2021	325
2022	444
Unknown – <i>please explain.</i>	
-	

2. Which three States made the most requests?

Requesting State	Number
Argentina	500
Türkiye	378
Germany	197

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

“2 months (60 days)”

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		x			
2018		x			
2019		x			
2020		x			
2021		x			
2022 (if data available)		x			
Unknown – <i>please explain.</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	0
2018	0
2019	3
2020	48
2021	87
2022	142
Unknown – <i>please explain.</i>	
-	

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	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i>	
<i>“The U.S. Central Authority does not have oversight for outgoing Letters of Request and therefore no data can be provided”.</i>	

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

Requesting State	Number
-	-
-	-
-	-

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	-
2018	-
2019	-
2020	-
2021	-
2022	-
Unknown – <i>please explain.</i> <i>“The U.S. Central Authority does not have oversight for outgoing Letters of Request and therefore no data can be provided”.</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	2
2018	0
2019	0
2020	0
2021	3
2022	5
Unknown – <i>please explain.</i> -	

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> <i>“The U.S. Central Authority permits the direct taking of evidence by video-link on a voluntary basis under Chapter II of the Convention, but such arrangements must be agreed upon privately and do not involve the U.S. Central Authority. Therefore, no data can be provided”.</i>	

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).

2 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.

1 file uploaded.

PUBLICATION OF RESPONSES

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

- (a) Yes.