

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

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

1. Introduction and analysis

This table reflects the applicability of certain provisions of the *Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* ("Convention").

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

Chapter I of the Convention relates to the taking of evidence by means of a Letter of Request, which is forwarded by a judicial authority in one Contracting State to a Central Authority in another Contracting State for execution.

Pursuant to **Article 23** of the Convention, a State 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 countries. Of the 58 Contracting States to the Convention:

- 26 have made a general declaration ("full exclusion");
- 17 have made a particularised declaration qualifying the circumstances in which they will or will not execute such Letters of Request ("qualified exclusion")¹; and
- 15 have made no declaration under Article 23.

¹ In the case of China, a full exclusion has been made in relation to Macao SAR. The Special Commission on the practical operation of the Convention has invited States that have made a general non-particularised declaration to revisit their declaration by considering an amendment qualifying the circumstances in which a Letter of Request

(b) Exclusion of Chapter II

Chapter II of the Convention relates to the taking of evidence by diplomatic officers, consular agents or commissioners.

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

- **Article 15** – power of diplomatic officer or consular agent to take evidence of own national;
- **Article 16** – power of diplomatic officer or consular agent to take evidence of other nationals;
- **Article 17** – power of commissioner to take evidence; and
- **Article 18** – power to apply to State of execution for assistance in obtaining evidence by compulsion.

Of the Contracting States to the Convention:

- 4 have excluded in whole the application of Chapter II;
- 17 have excluded in part the application of Chapter II; and
- 37 have made no reservation in respect of Chapter II.

Of the Contracting States that have excluded in part the application of Chapter II:

- 1 has excluded the application of Article 15;
- 13 have excluded the application of Article 16;
- 11 have excluded the application of Article 17; and
- 12 have excluded the application of Article 18.

for the purpose of pre-trial discovery will or will not be executed (see Conclusions and Recommendations Nos 29-34 of the 2003 meeting and Conclusion and Recommendation No 51 of the 2009 meeting, available on the Evidence Section of the Hague Conference website < www.hcch.net >).

2. How to interpret the table

(a) Article 23

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

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

(c) Article 16

“**Applicable**” means that the State has made no reservation under Article 33 to exclude the application of Article 16. Permission of the State to take evidence under this provision is required unless the State 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 State has made a reservation under Article 33 to exclude the application of Article 16.

(d) Article 17

“**Applicable**” means that the State has made no reservation under Article 33 to exclude the application of Article 17. Permission of the State to take evidence under this provision is required unless the State 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 State has made a reservation under Article 33 to exclude the application of Article 17.

(e) Article 18

“**Applicable**” means that the State 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 State 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 State has made a reservation under Article 33 to exclude the application of Article 18.

	Contracting State	(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.	Andorra	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
2.	Albania	<u>Full exclusion</u>	Applicable	Applicable	Applicable	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>	Applicable	No declaration of applicability
5.	Australia	<u>Full exclusion</u>	<u>Applicable (permission required)</u>	<u>Applicable</u>	Applicable	No declaration of applicability
6.	Barbados	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
7.	Belarus	No declaration	Applicable	<u>Applicable</u>	<u>Applicable</u>	<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 (PR)	<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>
12.	Colombia	No declaration	Applicable	<u>Applicable</u>	Applicable	No declaration of applicability
13.	Costa Rica	No declaration	Applicable	Applicable	Applicable	No declaration of applicability

Contracting State		(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
14.	Croatia	<u>Full exclusion</u>	Applicable	<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>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>
18.	Estonia	<u>Qualified exclusion</u>	Applicable	Applicable	Applicable	No declaration of applicability
19.	Finland	<u>Qualified exclusion</u>	Applicable	<u>Applicable (no permission required)</u>	<u>Applicable (no permission required)</u>	No declaration of applicability
20.	France	<u>Qualified exclusion</u>	Applicable	<u>Applicable</u>	<u>Applicable</u>	No declaration of applicability
21.	Germany	<u>Full exclusion (see, however, practical information - Germany)</u>	Applicable	<u>Applicable (no permission required in certain circumstances)</u>	<u>Applicable</u>	No declaration of applicability
22.	Greece	<u>Full exclusion</u>	Applicable	Applicable	Applicable	<u>Applicable</u>
23.	Hungary	<u>Full exclusion</u>	<u>Applicable (permission may be required in certain circumstances)</u>	<u>Not Applicable</u>	<u>Applicable</u>	<u>Not applicable</u>
24.	Iceland	<u>Full exclusion</u>	<u>Applicable (permission required)</u>	Applicable	Applicable	No declaration of applicability

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25. India	<u>Qualified exclusion</u>	Applicable	Applicable	Applicable	<u>Applicable</u>
26. Israel	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
27. Italy	<u>Full exclusion</u>	Applicable	Applicable	Applicable	<u>Applicable</u>
28. Kazakhstan	<u>Full exclusion</u>	<u>Applicable (permission required)</u>	<u>Applicable</u>	<u>Applicable</u>	<u>Applicable</u>
29. Korea, Republic of	<u>Qualified exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	No declaration of applicability
30. Kuwait	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
31. Latvia	No declaration	Applicable	<u>Applicable</u>	<u>Applicable</u>	No declaration of applicability
32. Liechtenstein	<u>Full exclusion</u>	<u>Applicable (permission required)</u>	<u>Applicable</u>	<u>Applicable</u>	<u>Not applicable</u>
33. Lithuania	<u>Full exclusion</u>	Applicable	<u>Applicable</u>	<u>Applicable</u>	No declaration of applicability
34. Luxembourg	<u>Full exclusion</u>	Applicable	<u>Applicable</u>	<u>Applicable</u>	No declaration of applicability
35. Malta	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
36. Mexico	<u>Qualified exclusion</u>	Applicable	Applicable	<u>Not applicable</u>	<u>Not applicable</u>
37. Monaco	<u>Full exclusion</u>	Applicable	<u>Applicable</u>	<u>Applicable</u>	No declaration of applicability
38. Montenegro	<u>Full exclusion</u>	Applicable	<u>Not applicable</u>	Applicable	<u>Not applicable</u>

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39.	Morocco	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
40.	Netherlands	<u>Qualified exclusion</u>	Applicable	<u>Applicable (no permission required)</u>	<u>Applicable</u>	No declaration of applicability
41.	Norway	<u>Qualified exclusion</u>	<u>Applicable (permission required)</u>	Applicable	Applicable	No declaration of applicability
42.	Poland	<u>Full exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
43.	Portugal	<u>Full exclusion</u>	<u>Applicable (permission required)</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
44.	Romania	<u>Qualified exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
45.	Russian Federation	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
46.	Serbia	No declaration	Applicable	<u>Applicable</u>	<u>Applicable</u>	<u>Applicable</u>
47.	Seychelles	<u>Full exclusion</u>	Applicable	Applicable	Applicable	No declaration of applicability
48.	Singapore	<u>Qualified exclusion</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
49.	Slovakia	No declaration	Applicable	<u>Applicable (no permission required subject to reciprocity)</u>	Applicable	<u>Applicable (subject to reciprocity)</u>
50.	Slovenia	No declaration	Applicable	Applicable	Applicable	No declaration of applicability
51.	South Africa	<u>Full exclusion</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Applicable</u>	<u>Applicable</u>
52.	Spain	<u>Full exclusion</u>	Applicable	<u>Applicable (no permission required)</u>	<u>Applicable (no permission required)</u>	No declaration of applicability

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				<u>in certain circumstances)</u>	<u>in certain circumstances)</u>	
53.	Sri Lanka	<u>Full exclusion</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
54.	Sweden	<u>Qualified exclusion</u>	<u>Applicable (permission required)</u>	Applicable	Applicable	No declaration of applicability
55.	Switzerland	<u>Qualified exclusion</u>	<u>Applicable (permission required)</u>	Applicable	Applicable	No declaration of applicability
56.	The Former Yugoslav Republic of Macedonia	<u>Full exclusion</u>	Applicable	Applicable	Applicable	No declaration of applicability
57.	Turkey	<u>Full exclusion</u>	Applicable	<u>Applicable</u>	<u>Applicable</u>	No declaration of applicability
58.	Ukraine	<u>Full exclusion</u>	Applicable	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
59.	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>
60.	United States	No declaration	Applicable	<u>Applicable (no permission required)</u>	<u>Applicable (no permission required)</u>	<u>Applicable</u>
61.	Venezuela	<u>Qualified exclusion</u>	Applicable	Applicable	<u>Not applicable</u>	No declaration of applicability