

# 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

## 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)?  
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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.  
(c) No.

## 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?  
(a) 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)?
- (a) Yes.  
 (i) The provisions or implementing legislation, and the date of entry into force.  
*“Article 284(3) of Civil Procedure Law of the People’s Republic of China, which entered into force on April 9, 1991 and revised on December 24, 2021”.*
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.  
*“(a) Directly from a judicial authority to the Central Authority of the requested State.(b) Via the Central Authority to the Central Authority of the requested State”.*  
*“Beijing, Shanghai, Zhejiang, Jiangsu, Fujian, Jiangxi, Shandong, Guangdong, Guangxi, Hainan High People’s Courts can also transmit request to othert State’s Central Authority”.*
12. As the **requesting State**, do the authorities of your State use the recommended Model Form?
- (a) Yes, always.
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.
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?

- (a) The matter was not “civil or commercial”.
- (b) The request was not issued by a judicial authority.
- (c) The request did not relate to judicial proceedings.
- (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.  
“sometimes”.

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.  
“sometimes”.

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”)?

(b) No.  
*“In the process of implementing the Convention in China, where the method of obtaining evidence required by the requesting party is inconsistent with the provisions of our domestic law, our courts have resorted to alternative means of assistance according our domestic law”.*

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

(a) Yes.  
*“If the requesting State believes that the results of our evidence do not meet their domestic needs for handling the case, they can continue to make additional requests and we will also cooperate in continuing taking evidence”.*

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.

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

(a) Yes.

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.

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

(b) Yes, sometimes.

*"If professional institutions such as translation and appraisal are involved, the requesting state shall bear the costs".*

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))

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

(a) Requesting authority.

(b) Representative of the parties.

(c) Parties.

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.

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

(b) No.

*"In practice, the evidence to be obtained can be listed directly in the request, or list of questions can be attached".*

28. In your State, are hearings public or private?

(a) Public, unless otherwise ordered by a judge.

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?
- (b) Yes, sometimes.
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.  
(b) Any document presented to a witness must be approved by the authority taking evidence.
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?
- (b) No.
33. In your State, is an oath or affirmation administered to the witness before the taking of evidence?
- (a) Yes.  
*“Chinese law does not require a witness to take oath, but according to the requirements of Articles 119 and 120 of the Judicial Interpretation of the Civil Procedure Law, the court executing the request will inform the witness of his/her obligation to testify truthfully and the legal consequences of perjury before taking evidence and oblige him/her to sign a pledge”.*
34. In your State, can the witness be subject to further examination?
- (b) No.
- 34.1. If the answer to Q34 above is “yes”, is a second Letter of Request required?
- N/A
35. Does your State have sanctions for the non-appearance of a witness?
- (b) No.
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.
- (c) No.
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?

(b) Verbatim recording through written.

*"In practice, Chinese courts question the witness according to the request, and make a written record of the inquiry, which is confirmed and signed by the judge, the clerk and the witness".*

#### 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.

*"We are carrying out research on obtaining evidence by video means".*

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

(d) Not applicable.

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?

(b) Internal law limitations.

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.

*"We have established a system. <https://www.hcch.net/en/states/authorities/details3/?aid=243>".*

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?

*"It is recommended that legislation and practice on issues related to obtaining evidence by video means be extensively collected by contracting States and more seminars relating to the use of technology in evidence-taking".*

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?

- (a) Yes.  
*“Bilateral MLA treaties in civil and commercial matters with foreign countries”.*

*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.  
*“more acceding countries”.*

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. *“Mandatory character of the Convention”*
2. *“Taking of Evidence by Video-link”*
3. -

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?

- (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	16
2018	21
2019	27
2020	19
2021	38
2022	30
Unknown – <i>please explain.</i>	
-	

2. Which three States made the most requests?

Requesting State	Number
USA	71
Turkey	31
Sweden	10

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

*“6 months”*

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)	-	-	-	-	-
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	0
2020	4
2021	15
2022	3
Unknown – <i>please explain.</i>	
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**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	0
2019	0
2020	0
2021	0
2022	2
Unknown – <i>please explain.</i>	
<i>“Outgoing requests usually do not go via Chinese Central Authorities”.</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> “Not available”.	

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

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### 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.

*"[http://www.moj.gov.cn/pub/sfbgw/jgsz/jgszsdw/zsdwsfxzjlzx/sfxzjlzxxwdt/202206/t20220624\\_458335.html](http://www.moj.gov.cn/pub/sfbgw/jgsz/jgszsdw/zsdwsfxzjlzx/sfxzjlzxxwdt/202206/t20220624_458335.html)"*

## PUBLICATION OF RESPONSES

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

- (a) Yes.