

## GUIDELINES FOR COMPLETING THE MODEL FORM

**Filling out the fields:** Complete this form electronically using a word processor. Use plain language and avoid using unnecessary legal or technical language. Spell out dates in full (e.g., “1 January 2014”). If the [Letter of Request](#) is being prepared by a party to the proceedings, consider engaging counsel in the [Requested State](#) to advise on the drafting of the [Letter of Request](#). If a particular item does not apply, insert “not applicable” or “n/a” or otherwise indicate that this item is not applicable. The notes accompanying this form provide further information on filling out each field.

These Guidelines are to be used when completing [Letters of Request](#), however, they may also be useful when applying for permission to take evidence under Chapter II of the Evidence Convention. In such cases, the Model Form should be adapted accordingly.

**Content:** This form is designed to ensure that the [Letter of Request](#) complies with the minimum content requirements set out in Art. 3(1) of the [Convention](#). It also makes provision for additional content to be specified that may assist the execution of the [Letter of Request](#).

**Attachments:** Attachments may be used. The notes accompanying this form indicate some situations in which it might be convenient to do so. Attachments should be clearly identified and referenced in the [Letter of Request](#), and they should be securely fastened to the completed form.

**Language:** The completed form (including attachments) must be in the language of the [Requested State](#), or must be accompanied by a translation into that language (Art. 4(1)). However, the [Requested State](#) may permit or require a different language to be used (Art. 4(2)-(4)). To find out the particular language requirements for the [Requested State](#), check the [practical information chart](#) for that State.

**Format:** The [Letter of Request](#) may be issued in paper or electronic form in accordance with the law of the [Requesting State](#). If the [requesting authority](#) wishes to issue the [Letter of Request](#) in electronic form (e.g., as a PDF file), it should first check with the [Central Authority](#) of the [Requested State](#) that such a form will be accepted.

**Copies:** In general, a [Letter of Request](#) should be furnished in duplicate, except if it is issued in electronic form. If in doubt, contact the [Central Authority](#) of the [Requested State](#). To find out the contact details of the [Central Authority](#), check the [practical information chart](#) for the [Requested State](#).

**No legalisation:** The [Letter of Request](#) does not need to be legalised (or apostilled) (Art. 3(3)).

**Terminology:** In this form:

[Central Authority](#) means the authority designated by a Contracting State to receive Letters of Request from the Requesting State, and to transmit them to the requested authority.

[Convention](#) means Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, the full text of which is available on the [Evidence Section](#) of the Hague Conference website.

[Hague Conference on Private International Law](#) (or [Hague Conference](#)) means the intergovernmental organisation under whose auspices the Convention was negotiated and adopted.

[Letter of Request](#) means the device used to request the obtaining of evidence or the performance of some other judicial act under the Evidence Convention.

Practical information chart means the chart for a given Contracting State, which is available on the Evidence Section of the Hague Conference website under “Central and other Authorities”.

Requested authority means the authority that executes the Letter of Request.

Requested State means the State to which the Letter of Request is addressed.

Requesting authority means the authority that issues the Letter of Request.

Requesting State means the State from which the Letter of Request is issued.

**Further information:** For further information on obtaining evidence abroad under the Convention, visit the Evidence Section of the Hague Conference website < [www.hcch.net](http://www.hcch.net) >. Detailed explanations on the operation of the Convention are provided in the Practical Handbook on the Operation of the Evidence Convention, which may be ordered via the Evidence Section.

## NOTES

**Item 1:** The law of the Requesting State determines which authority sends the Letter of Request to the Requested State. In some States, the requesting authority itself sends the Letter of Request abroad, or arranges for it to be transmitted abroad (e.g., by the moving party or its representative). In other States, the Letter of Request is first transmitted to a centralised authority (generally the Central Authority of the Requesting State designated to receive Letters of Request from abroad), which itself sends the Letter of Request abroad.

**Item 2:** In some States, a Letter of Request may be sent directly to the requested authority, thereby bypassing the Central Authority. If this is the case, insert the name of the requested authority instead of the name of the Central Authority. To find out whether Letters of Request may be transmitted directly to the requested authority, check the practical information chart for the Requested State.

**Item 3:** The documents establishing the execution of a Letter of Request are sent to the requesting authority by the same channel that the requesting authority used to send the Letter of Request.

**Item 4:** The Requested State is required to execute the Letter of Request expeditiously. In some cases, the Letter of Request may need to be executed and returned within a particular timeframe. Use this item to specify any such timeframe and explain the urgency. In some States, the authorities will endeavour to give special expedited processing to urgent requests, although there is no guarantee that the Letter of Request will be executed within the specified timeframe. To find out how long it generally takes for a Letter of Request to be executed in the Requested State, check the practical information chart for that State. Alternatively, contact the Central Authority of the Requested State. Bear in mind that execution may be delayed due to factors that are beyond the control of the authorities of the Requested State (e.g., the availability and willingness of a person to give evidence).

**Item 5a:** A Letter of Request may only be issued by a judicial authority. The law of the Requesting State determines which judicial authorities are competent to issue Letters of Request.

**Item 5b:** The requesting authority is not expected to identify the requested authority. This will be done by the Central Authority of the Requested State. The law of the Requested State determines which authority is competent to execute the Letter of Request. In most States, Letters of Request are executed by judges, magistrates or other judicial officers. In other (typically common law) States, Letters of Request are often executed by court-appointed examiners, which are typically private legal practitioners. Competence to execute the Letter of Request may depend on the place of execution (e.g., the location of the person giving evidence, or the location of the property).

**Item 5c:** The case may be cited using the style of the Requesting State.

**Item 6:** If there is only a single party to the proceedings, only item 6a needs to be completed. Consider including an e-mail address for the parties and/or their representatives to facilitate future correspondence with the requested authority (particularly if the parties and/or their representatives are to be present at execution – see item 14). If there are multiple plaintiffs or defendants, consider specifying only the lead plaintiff or defendant, using the style of the Requesting State.

**Item 7a:** The amount of information provided depends on the proceedings and the evidence being sought. As far as possible, describe the nature of proceedings in a precise manner, and in such a way as to ensure that a foreign authority unfamiliar with litigation practices in the Requesting State would understand the request.

**Items 7b and c:** Pay close attention to describing the pleadings that give rise to the Letter of Request (i.e., the pleadings in support of which the evidence is sought). Detailed information may be necessary where a person is sought to be examined about a particular subject-matter (see item 10).

**Item 7d:** Other documents may include judicial decisions that specify the nature and details of the evidence being sought. Remember that any attachment to the [Letter of Request](#) will need to comply with the language requirements.

**Item 8a:** Where evidence is to be obtained, use **items 9 to 11** to specify the evidence sought. Obtaining particular material or performing particular acts may be outside the functions of the judiciary of the [Requested State](#), in which case the [Letter of Request](#) risks being refused execution. If in doubt, refer to the [practical information chart](#) for the [Requested State](#), or contact the [Central Authority](#) of the [Requested State](#).

**Item 8b:** This item is particularly important for [Letters of Request](#) issued in proceedings in common law jurisdictions, in cases where (a) the production of documents is sought, and (b) the [Requested State](#) has declared that it will not execute [Letters of Request](#) issued for the purpose of pre-trial discovery of documents. To find out whether the [Requested State](#) has made such an “Article 23 declaration”, refer to the “[Table Reflecting Applicability of Articles 15, 16, 17, 18 and 23 of the Hague Evidence Convention](#)”. Where metadata of documents stored electronically is sought, specify clearly what type of information is needed, e.g., the authorship of a specific document, the number of times a document has been accessed and by whom, etc. In such cases, avoid requesting as evidence a hard drive or another computer device as that would likely be considered as a “fishing expedition”.

**Item 9:** Providing complete and accurate information on the person to be examined is important to allow the [requested authority](#) to readily identify and notify that person. For a **natural person**, specify a residential address. The nationality, profession, date of birth of the person and the identification number may also be specified (if known). Where evidence is sought from a **legal person**, specify an authorised office and/or officeholder and the registration number. Where evidence is sought from **multiple persons**, a separate [Letter of Request](#) may need to be issued for each person. If in doubt, contact the [Central Authority](#) of the [Requested State](#) to check whether separate [Letters of Request](#) are needed.

**Item 10:** Questions should be drafted in a clear and concise manner, and should avoid vague and uncertain concepts that may not be understood by the [requested authority](#). In addition, questions should be precise and sufficiently specific. Vague or imprecise questions needlessly complicate the task of the [requested authority](#) in examining the witness or expert and may elicit unhelpful responses. The subject-matter of the examination should be clearly defined, bearing in mind that the [requested authority](#) is unlikely to know more about the case than that which is specified in the [Letter of Request](#) (see item 7). The wider the scope of the subject-matter, the greater the need to give particulars. Questions may be specified in an attachment, in which case, ensure that the attachment is clearly identified and insert a reference to the attachment. Remember that any attachment to the [Letter of Request](#) will need to comply with the language requirements.

**Item 11:** Documents and property should be specifically identified. For documents, specify the author, recipient, subject-matter, and date (where known), as well as the name and address of the person from whom the documents or property are to be produced. Avoid describing the documents as any and all documents within a class. The [Requested State](#) may have declared that it will not execute a [Letter of Request](#) issued for the purposes of pre-trial discovery of documents. To find out whether the [Requested State](#) has made such an “Article 23 declaration”, refer to the “[Table Reflecting Applicability of Articles 15, 16, 17, 18 and 23 of the Hague Evidence Convention](#)”. Further information may also be available on the [practical information chart](#) for that State.

**Item 12:** The law of the [Requesting State](#) may require evidence to be given on oath or affirmation. It may also require a special form of oath or affirmation (e.g., the use of particular words, or the use of a particular person to administer the oath). The [requested authority](#) is required to follow a request that evidence be given on oath or affirmation, and that a special form be used, unless it is (a) incompatible with the internal law of the [Requested State](#), or (b) impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties. To avoid delays from the request not being followed, use this item to specify whether evidence may be taken in accordance with domestic procedure in the [Requested State](#). If in doubt as to whether a particular oath or affirmation may be administered, contact the [Central Authority](#) of the [Requested State](#).

**Item 13:** Evidence will be obtained applying the methods and procedures prescribed by the law of the Requested State, which may be significantly different to those prescribed under the law of the Requesting State. Nevertheless, the requesting authority may ask the requested authority to follow a special method or procedure, to ensure that the evidence is obtained in a form that can be used in the proceedings; in such a case, the Convention requires that the requested authority follow this special method or procedure requested by the requesting authority, unless that method or procedure is (a) incompatible with the internal law of the Requested State, or (b) impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties. Examples of common requests include the taking of a written witness statement, the production of a verbatim transcript of oral examination, and the examination and cross-examination of a witness by the parties or their representatives. Pay close attention to clearly specifying the method or procedure to avoid delays in execution. It may be useful to provide an extract of the relevant law or guidelines of the Requesting State by way of an attachment to the Letter of Request. Remember that any attachment to the Letter of Request will need to comply with the language requirements.

**Item 14:** This item facilitates the implementation of Article 7 of the Convention, which entitles the parties and their representatives to be present at the execution of the Letter of Request, either in person or by video-link.

**Item 15:** This item facilitates the implementation of Article 8 of the Convention, which provides that members of the judicial personnel of the requesting authority may be present at the execution of the Letter of Request if (a) the Requested State has made a declaration to that effect, and (b) prior authorisation by a competent authority designated in the declaration is granted (if such authorisation is required by the Requested State). Judicial personnel may be present at the execution of a Letter of Request either in person or by video-link. To find out whether the Requested State has made a declaration and the content of that declaration, check the practical information chart for that State.

**Item 16:** This item facilitates the implementation of Article 11(1)(b) of the Convention, which provides that a person may invoke a privilege or duty to refuse to give the evidence under the law of the Requesting State if the privilege or duty has been specified in the Letter of Request. Pay close attention to clearly specifying the privilege or duty to avoid delays in execution. It may be useful to provide an extract of the relevant law of the Requesting State by way of an attachment to the Letter of Request. Remember that any attachment to the Letter of Request will need to comply with the language requirements.

**Item 17:** The execution of the Letter of Request only gives rise to reimbursement of particular costs, such as fees paid to experts and interpreters, costs occasioned by the use of a “special method or procedure” (Art. 14(2)), and certain costs for which the Requested State is required to request reimbursement because of constitutional limitations (Art. 26). To find out whether the Requested State requires reimbursement for these costs, check the practical information chart for that State.