

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

Responding State:

Viet Nam

I. General Feedback

1. How does your State rate the general operation of the Evidence Convention?

(c) Satisfactory.

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)?

*“- Facilitating direct communication between Central authority and new Contracting Parties (especially when new Contracting Parties have not provided their contact details yet
- Sending reminder routinely (e.g: every 2 years) to Member States which have not accepted the accession of new Contracting Parties”*

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?

(f) Other.

“The Ministry of Justice of Viet Nam uses Mutual Legal Assistance Request Management Software for both incoming and outgoing requests. However, this software mainly focuses on following up the work done by the Ministry of Justice. Thus, the input are based on requests or results of the requests received by the MOJ”.

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 Mutual Legal Assistance Request Management Software has some functions such as reminding and alerting when there is no reply for outgoing requests which were sent after a specific time (usually more than 6 months)”.

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.

- (b) Yes, regarding the interpretation of “commenced or contemplated” (Art. 1).
“The criteria to ascertain the contemplation are unclear. Therefore, the taking of evidence might be exploited for other purposes rather than being used in judicial proceedings. Moreover, there is no measure to secure that the evidence obtained for contemplated judicial proceedings is not used for other purposes”.

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)?

- (a) Yes.
(i) The provisions or implementing legislation, and the date of entry into force.
“The provision of information relating to state secret is limited and must be authorized by the competent authorities (Article 16 Law on State Secrets Protection 2018- entered into force on 1/7/2020). In addition, the provision of information relating to work secret of governmental entities or organizations is also limited. The provision of the above-mentioned information without permission may face administrative fines (E.g: Decree no. 144/2021/ND-CP dated 31/12/2021 entered into force on 1/1/2022) or contribute to crimes in the Penal Code 2015 (entered into force on 1/1/2018) (E.g: Article 337 Deliberate disclosure of classified information; appropriation, trading, destruction of classified documents; Article 361 Deliberate revelation of work secrets; appropriation, trading, destruction of work secret documents; Article 404 . Deliberate disclosure of military secrets, Article 405 Appropriation, trading, or destruction of military secret documents Article 110 Espionage, Article 289 Illegal infiltration into the computer network, telecommunications network, or electronic device of another person)”.

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?
- (b) Via the Central 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?
- (c) No.
“The judicial authorities of Viet Nam use national form which is basically similar to the recommended Model Form”.
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.
- (b) Revision is not required.
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?
- (h) Other.
“Unclear request : the scope of evidence was too broad and the purpose of the evidence was unclear, information of the nature of the proceedings was insufficient”
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 Ministry of Justice of Viet Nam can review the Letter of Request sent via email and require amendments or supplements (if necessary) before the paper Request sent via post”.
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 Ministry of Justice of Viet Nam can review the Letter of Request sent via email and require amendments or supplements (if necessary) before the paper Request sent via post”.

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.
19. As the **requested State**, can the execution of a Letter of Request that has been received be challenged?
- (b) No.
- 19.1. If the answer to Q19 above is "yes", is the requesting authority or the interested party permitted to respond to the challenge?
- N/A
20. As the **requesting State**, can the sending of a Letter of Request abroad be challenged?
- (b) No.
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.
- (b) No.
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))
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?
- (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.
 - (e) Other.
“There is no official hearing for taking of evidence. The appointment for taking of evidence can be held at the courthouse or other places when the witness cannot appear at the courthouse due to legitimate reasons.(Article 99 (1) Civil Procedure Code)”.
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.
“As stipulated above, the appointment for taking of evidence is not a hearing. It is not considered as relevant to other person than the witness. Thus, the Civil Procedure Code does not require the judge or the court to inform relevant persons or the public to participate in the appointment”.
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?
- (c) No.
30. In your State, what are the requirements for documents that are to be presented to a witness?
- (c) Other.
“The judge may provide the witness the Letter of Request and other related documents (if attached). All documents including the Letter of requests must be translated into Vietnamese language. If the witness is not a Vietnamese citizen, in addition to the Vietnamese translation, the documents should be written or translated into the language that the witness can understand”.
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.
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 a case brought before Vietnamese court, the witness duly summoned by the Court but does deliberately not appear at the meeting or trial without legitimate reasons and their non-appearance obstructs the taking or verifying of the evidence or solving the case, they will be imposed administrative fine (Article 490 Civil Procedure Code 2015, entered into force on 1/7/2016, Ordinance on Administrative Sanctioning of Acts Obstructing Proceedings 2022, entered into force on 1/9/2022). However, it is unclear whether these provisions apply to the procedure of taking of evidence based on request of foreign courts”.

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?

(e) Other.

“The formal way of obtaining witness testimony is verbatim recording through written (Article. 99 and 98 of Civil Procedure Code). The judge asks questions and he himself or has the court clerk to write down the answer of the witness on a minute. The minute must be seen by or read to the witness and the witness must sign or put his fingerprint on the minute. The minute must have the signatures of the judge and court clerk and the seal of the court. If the minute contains several pages, each page must bear the signatures and an affixed seal at the joining edges of pages is required. If the taking of evidence is outside courthouse, it must also bear the signature of person witnessing the taking of evidence or the affirmation of ward People’s Committee or ward Police or organization where the minute was made. There is an informal way of obtaining witness testimony based on the request of foreign judicial authorities. The judge may provide the witness the questionnaires of the foreign court and the written affidavit of the witness – written and signed testimony may be accepted for this purpose”.

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?
- (a) Yes.
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.
(d) Implementation challenges (e.g., lack of resources, lack of infrastructure).
(e) Cost.
(f) System interoperability / compatibility.
(g) Security concerns.
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.
"The Central Authority of Viet Nam can accept the Letter of Request sent via official emails of the foreign Central Authorities rather than the paper Request".
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?
- "Legal value/ Legitimacy of the evidence taken by the use of information technology under the Evidence Convention".*
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.
"Model Law on taking of evidence abroad via videoconference".
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.
"Viet Nam has signed 18 bilateral Agreements on mutual legal assistance in civil matters with the following countries: Slovensko - Czech and Slovakia succeed (12 October 1982); Cuba (30 November 1984); Bulgaria (03 October 1986); Poland (22 March 1993); Lao PDR (06 July 1998 – newly signed on 11/1/2023 – not yet into force); Russia (25 August 1998); People's Republic of China (19 October 1998); France (24 February 1999); Ukraine (06 April 2000); Mongolia (17 April 2000); Belarus (14 September 2000); North Korea (3 May 2002); Chinese Taipei (12 April 2010); Kazakhstan (31 October 2011); Kingdom of Cambodia (21 January 2013); Hungary (10 September 2018), Thailand (16 November 2022 – not yet into force)".

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?

(b) No.

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

N/A

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. *“The participation of litigants (plaintiffs, defendants, relevant persons) and/or witnesses, experts in the hearing for taking of evidence: practice and challenges”*
2. *“Security protection in taking of evidence via videoconference”*
3. *“Cooperation between the requesting and requested authorities when taking of evidence via videoconference”*

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	-
2018	-
2019	-
2020	0
2021	0
2022	2
Unknown – <i>please explain.</i>	
-	

2. Which three States made the most requests?

Requesting State	Number
The United States of America	2
-	-
-	-

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

“The Requests were returned without execution.”.

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	-	-	-	-	-
2018	-	-	-	-	-
2019	-	-	-	-	-
2020	-	-	-	-	-
2021	-	-	-	-	-
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	-
2018	-
2019	-
2020	0
2021	0
2022	0
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	0
2021	12
2022	17
Unknown – <i>please explain.</i>	
-	

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

Requesting State	Number
Korea	13
The United States of America	11
Australia	3

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	0
2021	1
2022	2
Unknown – <i>please explain.</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	-
2018	-
2019	-
2020	0
2021	0
2022	0
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>	
-	

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.

“Handbook to guide mutual legal assistance in civil matters in Viet Nam and notes on gender sensitivity (Vietnamese only) <https://moj.gov.vn/tttp/thongbao/Pages/thong-bao.aspx?ItemID=23> Webpage on mutual legal assistance of the Supreme People's Court <https://tttp.toaan.gov.vn/webcenter/portal/tttp/home>”

PUBLICATION OF RESPONSES

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

- (a) Yes.