

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

In international judicial proceedings, the process of obtaining evidence across borders is often complicated by differences between legal systems, including those based on the civil and common law traditions. The Evidence Convention seeks to overcome these differences by establishing a uniform framework of cooperation mechanisms to facilitate and streamline the taking of evidence abroad. The Convention achieves this with two separate and independent systems: (1) Letters of Request and (2) diplomatic officers, consular agents, and commissioners.

### Principal features of the Convention

#### *Chapter I – Letters of Request*

A judicial authority of one Contracting Party may request another Contracting Party to obtain evidence, or perform some other judicial act, using a Letter of Request sent to the Central Authority of the other Contracting Party. The request must relate to evidence for use in judicial proceedings that are commenced or contemplated (Art. 1).

The judicial authority which executes a Letter of Request shall apply its own law to the methods and procedures to be followed (Art. 9), including in relation to the use of any appropriate measures of compulsion (Art. 10). However, the requesting authority may ask that a special method or procedure be followed (Art. 9).

This method of taking of evidence under Chapter I is available to all Contracting Parties to the Convention.

#### *Pre-trial discovery*

Pre-trial discovery is a procedure in common law countries covering requests for evidence submitted after the filing of a claim but before the final hearing on the merits. Under Article 23 of the Convention, Contracting Parties may, by way of declaration, choose not to execute Letters of Request for the purpose of obtaining pre-trial discovery of documents. While some Contracting Parties have made a general declaration against all Letters of Requests relating to pre-trial discovery of documents, others have made particularised declarations that impose certain requirements to ensure a request is sufficiently substantiated and the evidence sought is clearly specified. This information is available on the status table on the [Evidence Section](#) of the HCCH website.

#### *Chapter II – Diplomatic officers, consular agents, and commissioners*

A diplomatic officer or consular agent of a Contracting Party may, without compulsion, take evidence of nationals of the State they represent (Art. 15). This may be subject to permission from the appropriate authority in the State where the evidence is taken. A diplomatic officer, consular agent, or commissioner may also, without compulsion, take evidence of other nationals if permission to do so has been granted by the competent authority of the Contracting Party in which evidence is to be taken (Arts 16 and 17). The Convention also provides a mechanism to obtain evidence by compulsion (Art. 18).

Under Chapter II, the diplomatic officer, consular agent, or commissioner shall apply the law of the court before which the action is pending, unless incompatible with the law of the Contracting Party where the evidence is taken or contrary to permission granted (Art. 21).

Contracting Parties may exclude, in whole or in part, application of this Chapter of the Convention (Art. 33). This information is available on the status table on the [Evidence Section](#) of the HCCH website.

### **Role of authorities**

The Convention provides for a system of Central Authorities in all Contracting Parties. A Central Authority's main role is to receive Letters of Request under Chapter I and transmit them to the relevant authority competent for their execution. Contracting Parties may also designate authorities from which permission must be sought for the purpose of taking evidence under Chapter II. The Convention also provides for the designation of additional authorities and leaves Contracting Parties free to determine the extent of their competence.

### **The use of technology**

The technology-neutral language of the Convention allows Contracting Parties to use modern technology in the transmission and execution of requests. This includes the use of video-link to assist in the taking of evidence under both Chapter I and II of the Convention, with approaches varying between Contracting Parties. For a comprehensive guide on the use of these new technologies in the taking of evidence, see the *Guide to Good Practice on The Use of Video-Link*.

### **Additional resources**

The [Evidence Section](#) of the HCCH website contains the latest information about the Evidence Convention. This includes:

- Text of the Convention
- Status table of Contracting Parties
- List of Central Authorities and practical information by Contracting Party
- Explanatory Report on the Evidence Convention
- Practical Handbook on the Operation of the Evidence Convention
- Guide to Good Practice on the Use of Video-Link
- Recommended Model Form for Letters of Request