



REQUESTS FOR INTERNATIONAL JUDICIAL ASSISTANCE SEEKING EVIDENCE IN CIVIL LITIGATION

I. Means Of Requesting Evidence Located In The United States

Obtaining evidence located in the United States for use in a legal proceeding pending in another country frequently requires the assistance of courts and governmental agencies particularly when the obtaining of evidence must be compelled. In support of foreign civil litigation, evidence in the United States can be obtained or compelled as necessary through the following means:

- 1) within the jurisdiction where the evidence is located through a request for voluntary compliance or by compulsion through a direct application pursuant to 28 U.S.C. § 1782 to the cognizant court with jurisdiction over the evidence;
- 2) through formal Letters Rogatory issued by judicial officers of a foreign court and sent through diplomatic channels to the United States Department of State; or
- 3) pursuant to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, T.I.A.S. No. 7444, 23 U.S.T. 2555 (“Hague Evidence Convention”).

II. Direct Application

Witnesses in the United States may voluntarily provide evidence without authorization from a United States court or the United States government. See 28 U.S.C. § 1782(b). If evidence must be compelled, a Request can be sent directly to the United States district court where the witness resides or is found. 28 U.S.C. § 1782(a). That statute allows foreign tribunals to transmit requests directly to a district court in this country without invoking the assistance of the Departments of State or Justice. The Office of International Judicial Assistance (OIJA), the United States Central Authority, 28 C.F.R. § 0.49, plays no role in the execution of such requests.

III. Letters Rogatory Through Diplomatic Channels

Letters Rogatory submitted to the United States through diplomatic channels (i.e., through the Department of State under 28 U.S.C. § 1781(a)(1)) are executed by the Department of Justice as a matter of comity or reciprocity. (The same is also true of requests submitted directly to a United States district court. See 28 U.S.C. § 1782(a)(1).) Letters Rogatory are typically, but not exclusively, sent when the requesting state is not a party to the Hague Evidence Convention. The Department of State forwards to the OIJA such requests for evidence for use in foreign civil matters. When the Departments of State and Justice have determined that it is in the foreign policy interests of the United States for the Executive Branch to honor such requests, they will be executed by the United States on the basis of international courtesy and comity and

in a fashion similar to the execution of a Letter of Request under the Hague Evidence Convention.

IV. Letters of Request Pursuant To the Hague Evidence Convention

Letters of Request submitted pursuant to the Hague Evidence Convention should be sent directly to the OIJA. The Convention can be found as an annotation to 28 U.S.C. § 1781 and at http://www.hcch.net/index_en.php?act=conventions.text&cid=82. The text of the treaty is self-explanatory, but please note the reservations and declarations each country made on accession to the treaty. **The Hague Evidence Convention applies only to civil and commercial matters.** Requests that arise out of a foreign criminal proceeding are handled by the Criminal Division's Office of International Affairs ("OIA"). The Hague Evidence Convention is reciprocal, and is operative only between states that have ratified it. Significantly, the countries ratifying the Convention assume a treaty obligation to honor foreign evidence requests in instances covered by the Convention, and they may not decline to honor evidence requests from other ratifying countries except under the limited conditions specified in Article 12 of the Convention (*viz.*, if the execution of the letter does not fall within the functions of the judiciary or if the requested state's sovereignty would be prejudiced). As of 2013, fifty-seven states are parties to the Hague Evidence Convention. http://www.hcch.net/index_en.php?act=conventions.status&cid=82.

V. OIJA Procedures For Executing Requests

Whether made pursuant to the Hague Evidence Convention or through diplomatic channels, each Request is reviewed carefully for compliance with the Convention (if applicable), is accompanied by required English translations (or Spanish translations if going to Puerto Rico), emanates from and is intended for use in judicial proceedings in civil litigation, and calls for the performance of procedural acts that can, in fact, be executed under our domestic laws. Examples of requests that typically cannot be executed under our procedures include requests to hire experts on behalf of foreign courts to provide opinions about United States domestic law, conduct factual investigations, perform audits, or search for assets. In addition, neither Letters Rogatory nor the Hague Evidence Convention can be used to obtain the recognition and enforcement of foreign judgments or orders.

The United States Central Authority strongly encourages requesting authorities utilize the Hague Evidence Convention Model Letter of Request. In accordance with Article 3 of the Hague Evidence Convention, the Letter of Request must specify the following:

- (1) The requesting judicial authority and, if possible, the requested authority;
- (2) The names and addresses of the parties, and, if applicable, of their representatives;
- (3) The nature and the purpose of the proceedings, and a summary of the case;
- (4) The evidence to be obtained or other judicial act to be performed.

If appropriate, the Request shall also specify:

- (A) The names and addresses of the persons to be questioned;
- (B) The questions to be put to these persons, or a statement of the subject matter about which the persons are to be questioned;
- (C) The documents or other property to be inspected;
- (D) Any request for the evidence to be given on oath or affirmation and, if necessary, any special form to be used;
- (E) Any applicable privileges in the requesting state that the witness may assert;
- (F) Whether the parties or their representatives wish to be present; and
- (G) Any special procedures required in accordance with Article 9 of the Hague Evidence Convention;

Non-conforming Requests will be returned without execution. The OIJA will forward compliant requests to the applicable United States Attorney's Office for execution. Once a Request has been executed, the Request will be returned, generally with a record of the evidence taken to the requesting authority through the United States Central Authority. Where additional costs assessed by third parties are incurred in executing a Request, e.g., stenographer fees or costs, reimbursement will be sought from the requesting judicial authority.

VI. Contact Information

Questions relating to the execution of requests for international judicial assistance in civil proceedings should be addressed to the OIJA at OIJA@usdoj.gov. The OIJA can also be reached by phone at +1 (202) 514-6700, by fax at +1 (202) 514-6584, or by mail at:

Office of International Judicial Assistance
Department of Justice
Ben Franklin Station
PO BOX 14360
Washington, DC 20004.