

**Compilation of Responses to an American Bar Association (ABA),
Section of International Law, Questionnaire on Access to Foreign Law,
circulated to members – September 2010**

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1) Practitioner information:

A. How many years have you been practicing law?

#	Answer	Response	%
1	1-5 years	33	16%
2	6-10 years	19	9%
3	11-15 years	16	8%
4	16-20 years	19	9%
5	21-25 years	25	12%
6	More than 25 years	89	44%
	Total	201	100%

B. Where are you based (i.e., which city or cities)?

Washington, DC; Washington, DC (USA); Seattle; New Orleans; Lake Worth, Florida; Champaign, Illinois and Miami, Florida; Philadelphia, PA Denver, Colorado and Copenhagen, Denmark; Detroit; Greenville North Carolina; Calabasas, California; Boston, MA and Washington, D.C.; Boston, Mass; Connecticut, New York, Massachusetts; Dallas, Texas; Zug, Switzerland; Sisak, Croatia; Zawiercie, Poland; Boston and New York; Grand Forks, North Dakota, USA; New York City; Boston; San Francisco; Washington,DC, New York, Salem,OR; Birmingham, MI; Chicago, IL; Fairfax, VA; New York City; New York City; Seattle in Washington; San Diego, California, USA; Miami, Florida, USA; Ann Arbor, Michigan; Boston; Houston; Orange County/Los Angeles County California; Seattle, Washington; Washington, DC; El Paso, Texas, USA; Denver, Colorado; Pittsburgh, PA; firm has a total of 25 offices, mostly in US, but also London, Singapore, Hanoi and Ho Chi Minh City; NYC; San Francisco; Pittsburgh, Pennsylvania; Philadelphia, PA, USA; Atlanta; Austin, Texas; Davie, Florida, United State of America; Miami, Florida; New York, NY; Houston, Texas, U.S.A.; Beverly Hills, CA, New York, NY, Sacramento, CA; new york; Honolulu Hawaii; Miami, Florida; Los Angeles; Chicago; Seattle, Washington, USA; San Francisco; Fairfax, VA (Washington, DC); Seattle, Jakarta; Federal Way Washington; San Francisco, CA; Boulder, Colorado; Richmond Virginia. Travel worldwide;Brooklyn, NY; Miami, Florida USA; Los Angeles, California; Paris; New York, Sao Paulo Brazil; Chicago, IL; Washington,DC USA; Washington, D.C.; Miami; San Francisco; Miami, FL; Philadelphia, PA; Ada, OH, Washington, DC; NYC; Washington, D.C.; Atlanta; Atlanta; Chicago, IL; Washington, DC; Mount Pleasant, SC and New York, NY; Washington, D.C.; Montgomery County, Maryland, USA; Minneapolis; Houston; Mexico City, Mexico and Los Angeles, California; San Juan, Puerto Rico; Denver; New York; aix en provence France; Santo Domingo, Dominican Republic; Massachusetts, New Bedford; Beverly, MA; Stuttgart, Germany; Ridgefiled Park, Nw Jersy; Los Angeles; Washtington, DC; Greensboro, NC; Washington, DC; Riverside, CA, USA; Charlotte, NC; Cincinnati.

C. Does your practice focus on (please check all boxes that apply):

#	Answer	Response	%
1	Transactional legal practice	117	59%
2	Litigation practice	76	38%
3	Arbitration practice	47	24%
4	Other, please specify:	74	37%

Other Practice:

Lobbying and regulatory practice; corporate; securities regulation; International Family Law; Employment Law; Law School Professor; Mediation; Intellectual Property; Consulting; Compliance; corporate & securities; maritime and admiralty; International legal education; nonprofit law; Family Law; Estate, trusts; Mediation, Collaborative Law, dispute resolution; None of the Above; Immigration & Citizenship; A foreign law research service for the US Congress, Federal Agencies and the Legal Profession; Family Law-Int'l; law reform; policy; foreign law information for the U.S. Government; Public International Law; Mediation, Alternative Dispute Resolution; Criminal, Administrative, Appellate & Regulatory Law; Academic; Inheritance, real estate; International Law; Military family law; REgulatory compliance; risk assessment; Customs Compliance/Administrative Law/Export Issues; Taxation; Government; IP counselling; regulatory; Technical legal assistance; Law teaching and consulting; Lobbying; Corporate/M&A; US and International Business Law; Law school teaching; Governmental/public; College teaching re IB transactions and int'l trade; consultant in int'l trade/investment; Family Law; Mediation and ADR; Family law in trial and appellate courts; Immigration; Information Management Counsel; legal reform; legislative; Comparative Law; Administrative; Human Rights; admiralty; immigration; Immigration; Int'l Trade and Market Access; Corporate; International Family Law; Not currently practicing; Family Law; consultant; Trade Policy; Customs, export controls, OFAC ;I am a legal academic; full range of domestic and int'l IP law; Academic Import/Export; Regulatory Compliance.

2) In which areas of law do you most often have to deal with foreign law?

#	Answer	Response	%
1	Commercial contracts	71	35%
2	Sale of goods	10	5%
3	Securities transactions	6	3%
4	Property	7	3%
5	Inheritance	6	3%
6	Bankruptcy	2	1%
7	Marriage and nullity of marriage	3	1%
8	Divorce and legal separations	4	2%
9	Parental responsibility	0	0%
10	Parent-child relationship	7	3%
11	International child protection including child abduction and child adoption	10	5%
12	Protection of adults	0	0%
13	Maintenance (child support and other forms of family support)	2	1%
14	Traffic accidents	0	0%
15	Products liability	3	1%
16	Other types of tort	3	1%
17	Consumer protection	2	1%
18	Other, please specify:	65	32%
	Total	201	100%

Other areas:

Employment; government contracts; sale of goods, secured transactions, distribution law, debt collection; Corporate Governance; Procedural issues; EU regulations; commercial contracts; Employment issues and cross-border litigation; sec. regulation/investment/reg. of capital markets; Enforcement of foreign judgments; Employment Law; Sovereignty for Native Americans; Currently NA; Regulatory compliance; Energy-related interests and contracts; charter parties, marine insurance and other shipping documents; human rights; establishment of legal entities; loans; financial; tax; interstate and international child custody; International conferences and colleagues; None (yet); Corporate; Virtually all; aviation regulatory; international trade; antitrust; public law; Maritime Law; human rights; Gov't; Alien Tort Claims Act litigation; Family and business; Mergers and acquisitions/joint ventures; antitrust; Tax; extradition; Corporations; Competition Law; Investment treaty law; Trade and regulatory law; Government contracts; Transnational energy projects ;multi-national transactional work; Tax; All family law matters; Labor and employment; privacy and data protection; Intellectual Property; Immigration; intellectual property access; coproratie governance; maritime; immighration&citizenship; Admiralty; Market Entry Regulations; Labour and Employment; All above except family & children matters The question reads "areas" but only one answer was allowed; Anti-bribery; Corporate, commercial contracts and sale of goods; health/fam/biz; Internet Law; investment

disputes; intellectual property; Import/Export; service contracts; Intellectual Property Licensing; Customs Clearance; antitrust.

3) Where do you obtain your information on foreign law? (please rank in order of priority, 1 being the highest)

#	Answer	1	2	3	4	5	Responses
1	Free Internet sites (official / government or academic websites)	115	33	26	6	2	186
2	Internet sites with a subscription fee (private online databases, including Westlaw and LEXIS)	24	54	28	46	11	165
3	Local or personal library (printed material or local electronic databases)	25	64	45	25	3	164
4	Other external print libraries (printed materials in public or academic libraries)	9	22	55	44	9	141
5	Other:	21	13	11	5	6	56
	Total	194	186	165	126	31	-

Other:

Outside counsel; Contacts with Foreign Lawyers; Local counsel; outside counsel; local counsel; Local Counsel; foreign colleagues; Law library; Friends; Martindale/See above also ;Foreign law firms; correspondent counsel; local attorneys; Attorney in foreign countries ;foreign lawyers ;News articles/ABA/etc; newsletters; list serves; Other Attorneys; Lawyer in Country; Law Library of Congress, Washington D.C.; foreign counsel/consultants; INCADAT; International colleagues; Colleagues or Peers Printed Materials; attorney licensed in jurisdiction; Other counsel; correspondent counsel; Outside counsel in foreign country; other practitioners; Foreign Lawyers; local counsel; Multinational Law and Accounting Firm Free Publications; foreign sources; local contacts; professionals; colleagues; personal correspondence; Overseas law firms; foriegn counsel with whom I work; GLIN; Foreign Law Firms; Outside counsel ;Seminars and conferences; local counsel; networking; advice of local lawyer; Foreign lawyers; Counsel in foreign jurisdiction; expert on foreign law; Local Counsel ;Contacts in foreign country; Multiple Sources.

4) For what countries or regions do you most often seek foreign legal information?

#	Answer	Response	%
1	Canada	9	4%
2	Mexico	5	2%
3	Latin America	28	14%
4	Europe	81	40%
5	Russia and Commonwealth of Independent States countries	8	4%
6	Asia	30	15%
7	The Middle East / Gulf region	6	3%
8	Africa	3	1%
9	Australia	4	2%
10	Other:	28	14%
	Total	202	100%

Other Countries:

Canada, Mexico, Latin & South America; Europe and Asia Global; Hard to designate as I have cases from all over the world; Cuba; all common law countries --primarily UK, Canada, South Africa, Australia, New Zealand, Singapore, Hong Kong; Global; Canada; Asia; Russia; Middle East; All of above; All and many other jurisdictions; Europe, Middle East; all countries; Specially, Latin America (including Mexico) and Europe; United States of America; Greece; Saudi Arabia; All of above; Multiple; all; most of the above; Africa, Mexico, Middle East; UK; Caribbean; England; All except Africa; North America/Asia; Latin America/Europe.

5) In your opinion, are there already sufficient resources available to find and ascertain foreign law for your legal practice (for instance, on the Internet or in libraries) or are more resources needed? (please check all boxes that apply)

#	Answer	Response	%
1	Yes, there are already sufficient resources available	42	21%
2	No, there is not enough information available	109	54%
3	No, the information available is of inadequate quality	59	29%
4	No, there is inadequate organization / accessibility of such information (including language barriers)	91	45%
5	No, there are other barriers for practitioners (please specify:)	20	10%

No, there are other barriers for practitioners:

Martindale does not intend to publish its International Law Digest after 2011. It should be continued or an acceptable alternative should be developed; although there are resources available, it is sometimes difficult to ascertain whether the cases found in the

internet are still good law; Information from overseas sources often lags developments by several months or years; It is important not to interpret foreign law thru the prism of American/English tradition; it is much better than before but English language versions are not always available; Cost; Need to translate and interpret what is found; It is very difficult for a non U.S. trained attorney to obtain information online; high costs for access to official source materials; Language; Translations not always available; Cost; Applying local law requires local counsel.; Depends on the country; Usually local foreign lawyers are needed to enable a US alwyer to provide responsible amd competent advice on foreign law; Informa has stopped allowing Lloyds Reports to be offered to American subscribers to Westlaw and Lexis; custom/faith; Difficulty in knowing if law is up to date

6) What kind of foreign legal information would be useful for you in your practice:

#	Answer	Response	%
1	1. Copies of actual laws, statutes, and cases without editorial commentary;	41	20%
2	2. A narrative description of the law in a particular subject area, without applying to a set of facts;	33	16%
3	3. A legal opinion written by an expert applying foreign law to a set of facts;	13	6%
4	4. A certification on the state of the foreign law applied to facts by the applicable foreign judicial authority;	3	1%
5	All or a combination of the above options (please specify:); or	102	51%
6	Another type of foreign legal information (please specify:).	9	4%
	Total	201	100%

All or a combination of the above options (please specify:); or	Another type of foreign legal information (please specify:).
1 and 2	See answer to 5 above
2 and 3	shepardized cases
1 & 2 above	Network of foreign law firms
all of the above	international court jurisdictions/cases/public/private
Options 1 and 2.	copies of laws, with annotations or commentary
2 and, very occasionally, 3.	1 and 2 plus guidelines, notices, speeches and the like
copies of actual laws, statutes, cases, with editorial content - something similar to legal encyclopedias like Am. Jur.	copies of laws, statutes with editorial comment that included transnational issues, eg service of process/discovery issues vis a vis foreign laws
1 and 2	arbitral decisions
1,2,4	opinions of data protection authorities
All would be helpful, items 3 & 4 would be most useful	
1,2 & 4	
1 & 2	
1, 2, 3	
1,2,3	
2, 1, 3	
2, 3, 4	
1 and 2	
1, 2, 3, 4	
all of the above options	
2 and 3	
copies of actual laws, statutes and cases plus a summary of recent developments	
2 and 4	
1, 2	
actual laws, general explanation, are 3 or 4 feasible?	
1, 2, 3, 4	
2, 4	
1, 2, 3	
1 2 and 3	
1, 2 and 3	
1, 2 & 3	
all of the above	
1 and 2	
#1, but with the editorial commentary from local practitioners	

1 and 4	
Numbers 2, 3 and 4, combined	
1,2	
in English	
1 & 4	
2 and 3	
1 and 2	
All of the above	
All	
1 & 2	
all	
1 and 2	
Include all of the above plus monograph/treatise-style treatment by foreign practitioners (English-language version, preferably)of both what the law is stated to be, and also how it is actually interpreted and applied in particular areas	
#1, #3	
1-4	
annotated publications with practical advice	
All are useful	
1 and 4	
1 and 2 and translations	
2 and 4	
2 and 3 combined in English	
1, 2	
1 and 2	
Narrative + actual copies	
1,2,3	
4, 2, 1	
issue/friendly process	
(1) and (3)	
1 & 2	
1,2,3,4	
1 and 2	
1 and 2, and 3 in certain circumstances	
1 and 2	
1,2,3	
2 and 3	

7) Within what time frame do you need information on foreign law?

#	Answer	Response	%
1	One day	36	18%
2	Several days	94	47%
3	One week	31	15%
4	Two to three weeks	21	10%
5	One month	15	7%
6	Several months	2	1%
7	Six months	2	1%
	Total	201	100%

8) Is locating / hiring an adequate expert on foreign law difficult (e.g., costs, time spent, quality of the expert, etc.)?

#	Answer	Response	%
1	Yes	116	59%
2	No	80	41%
	Total	196	100%

9) What percentage of your practice involves cross-border (international) issues?

#	Answer	Response	%
1	Under 10%	20	10%
2	10-20%	34	17%
3	21-50%	45	23%
4	Over 50%	87	44%
5	Too difficult to quantify	13	7%
	Total	199	100%

10) In your practice, have you needed to find information on foreign law with respect to the operation of the following Hague Conventions:

#	Answer	Response	%
1	The Hague Apostille Convention	101	62%
2	The Hague Service Convention	106	65%
3	The Hague Evidence Convention	79	48%
4	The Hague Child Abduction Convention	43	26%
5	The Hague Adoption Convention	16	10%

11) Did you find sufficient information on foreign law available on the Hague Conference website (www.hcch.net) or otherwise?

#	Answer	Response	%
1	Yes	92	52%
2	No	86	48%
	Total	178	100%

12) Please share any other comments you may have on the topic of cross-border access to foreign legal information:

Text Response:

Note: survey did not permit multiple selections; there is a need for access to original and translated versions of statutes and regulations; summaries of foreign laws as well as overviews of legal systems and litigation/court process/procedure in multiple jurisdictions.

The lack of sufficient information regarding the international treaties and foreign law had resulted in widely divergent judicial opinions in the various jurisdictions in the U.S., sometime within the same court system.

I can find adequate resources on Conventions and Treaties. What I do not find enough of are English translations and commentary on foreign commercial and civil laws and regulations.

I always prefer to discuss foreign law with foreign lawyers instead of doing my own research; that's what they are there for and I hope that they view my expertise in NY law in the same way.

I found Martindale good for a basic understanding, and if more was necessary, I would contact local counsel.

This is a much-needed project.

Even when dealing with reliable foreign counsel, I often feel that I cannot truly participate in fundamental analysis relating to foreign law because I do not have access to actual statutes, laws, cases etc. My stock-in-trade is analysis. Better materials will help me do my work.

It is time to develop the means to hold hearings internationally through means available using modern technology.

The timing of my needs varies tremendously. Sometimes I can wait. Sometimes I cannot. I usually contact local counsel and get the answers I need instead of trying to use my own resources. (I'll sometimes review resources first, just so I know how to frame a question, but....)

This firm belongs to three networks of independent business law firms covering about 80 countries. Many personal relationships have developed among lawyers in these firms. Thus, obtaining a timely opinion in one of these countries is relatively easy for us.

access to foreign law is not perfect, and it can always be improved.

There is a need for data bases like CLOUT about recent developments concerning the construction and application of multilateral conventions

Dual training in common and civil law, plus language abilities, leads me often to want to consult primary sources directly, so as to engage more effectively with local counsel.

Many nations do an amazing job of having English language materials available; the problem are the gray area nations: China, UAE, to name recent examples where the law and practice do not match.

Better quality and more comprehensive official government websites with authoritative texts would be most helpful. It would also be extremely helpful if a (non-authoritative, but "official") translation into at least one major international language was also available.

The World Legal Information Institute, <http://www.worldlii.org/>, and the Canadian version, <http://www.canlii.org/>, are what I usually use for my academic research.

Hague website is comprehensive however links to country legal resources would be helpful

I don't actually use the Hague website because I am usually limited to authentication by the U.S. Counsel or the U.S. Department of state. If the Consulate will not certify, I'm stuck

Access is limited by our knowledge of existing local databases (free or subscription based), costs and language barrier. It would be extremely helpful to have a one stop place where we could research the law, treatises and legal opinions even if at a first moment the information would be provided in the local language (to have everything in English is too far fetched of a dream?)

I'm never totally confident that I have located precise/complete material. We are a two-person firm, and we cannot spend freely on web-based databases.

An organization of the kind envisaged many years ago by a draft international convention on foreign law, needs to be promoted, perhaps in the Law Library of Congress in Washington, D.C. (Disclosure: I am a senior supervisory attorney in the Law Library of Congress in charge of the work of nine foreign law specialists). The Law Library's team of Foreign Law Specialists, who have foreign law qualifications, provide a unique foreign law research service to the US Congress and Federal Agencies. An arrangement should be considered to fund a special unit within the Law Library of Congress to provide similar assistance to the legal profession. Presently, the Foreign Law Specialists do respond to questions from the public, but only reference assistance can be provided. A special team of specialists, devoted to providing fuller assistance to the American legal profession, could be funded from external resources. I will be happy to further discuss this issue, in my personal capacity.

With respect to the Hague Convention (service and evidence), a more fulsome country-by-country analysis is necessary. Much of the information is too brief or out of date.

The ABA should train foreign lawyers and foreign Judges on how to find reliable information, to increase the respect and application of the rule of law and to minimize corruption or lack of knowledge and ignorance of foreign legal information.

While access to raw data is always useful, there is no substitute for conferring with skilled practitioners in the foreign jurisdiction, so would recommend you consider how making access more available be coupled with advice from experts.

Information is also needed to cover Oceania states, where access is much more difficult and incomplete than for Europe.

Some brief information about the legal system, the specific statutes, the interaction between the law and the government would be helpful ie. you need to register a prenuptial agreement in France, how is the registration done, can a US prenuptial be registered in France etc.

I am an academic so many of these questions didn't seem applicable. There were some were I would have liked to have been able to select multiple answers.

The questionnaire does not seem to take into account the rather common practice of consulting directly with competent foreign counsel through a network of correspondents or even a network of law firm offices.

Dual language texts of actual materials (local/official language, plus at least ONE of: English, French, Spanish would be the most helpful.

I prefer to do a majority of the research myself and come to my conclusions, however, I always consult local counsel to obtain an opinion that my conclusions are legally sound

The foregoing comments are based largely on my active law practice, from which I retired at the end of 1992. Since that date my professional activities have been only conducting arbitrations and teaching transnational business law in law schools. Consequently my comments on information access are out of date.

The US Library of Congress should maintain up to date information concerning all countries' private laws.

Obtaining information on European Union law is quite easy and well documented; Member States are generally accessible, but with substantial variation per country. The chief area where improvements are needed is access to information regarding laws of Asian countries (e.g., China/Japan) and Latin American countries.

Information needs to be current, in English language and organized in a vocabulary that is usual for U.S.-trained lawyers. But for serious and high value legal work, it is imperative to seek the aid of local counsel in relevant foreign countries.

With respect to #11, often the information is somewhat dated.

It would help if HCCH set up a website to summarize court decisions under the Apostille, Service and Evidence Conventions. SIL could help by urging its members to send such summaries, or if that is too much trouble, the full texts of such cases to HCCH.

official translations would be helpful

It is sometimes difficult to find trustworthy sources of the statutes. Even less accessible are judicial opinions interpreting those statutes.

Hauser, International Estate Planning: A Reference Guide, has the right touch for tax treaties, but I'd also like something on nonprobate transfers in other jurisdictions, which is as much commercial custom as law.

The Hague Conference on Private International Law is an excellent resource!

Much more needs to be done.