

Responses from the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR) to the Questionnaire to assess the practical difficulties in accessing the content of foreign law and the need for the development of a global instrument in this area

Part I – Not Applicable

None of the international instruments mentioned in Part I is applicable to the HKSAR and the HKSAR has no comment on Part I.

Part II

Q9) Yes, we provide online access to the legislation of the HKSAR at <http://www.legislation.gov.hk/index.htm> in both Chinese and English. Some judicial decisions may also be accessed at http://www.judiciary.gov.hk/en/legal_ref/judgments.htm.

Q10) No, the HKSAR Government generally do not provide advice on the interpretation or application of the law to people outside the Government. However, such information could be obtained from a private lawyer in the HKSAR. (Please refer to the Law Society of Hong Kong's website: http://www.hklawsoc.org.hk/pub_e/default.asp and the Hong Kong Bar Association's website: <http://www.hkba.org/>.)

Q11) The answer to question 10 equally applies to people outside the HKSAR.

Q12) Not applicable.

Q13) Not applicable.

Part III

Q14) We do not have the required statistical information.

Q15) We do not have the information on the most common area of foreign law invoked before the judicial authorities.

Q16) We do not have the information on the most frequently invoked foreign law.

Q17) In the HKSAR, in general, a judicial authority ascertains foreign law as a question of fact with assistance by the expert witnesses called by the parties.

Q18) No priority is given to the sources of information on foreign law. An expert witness who, in the opinion of the court, is qualified to give evidence on foreign law will be allowed to give evidence on the foreign law by reference to foreign statutes, decisions and textbooks. If the views of the experts conflicts, the judge will look into the sources of knowledge from which the experts have drawn in order to decide between the conflicting views.

Q19) The judicial authority will rely on the expert witnesses on the reliability and authenticity of the sources and the information provided on the foreign law.

Q20) The judicial authority will rely on the information provided by the expert witnesses in Chinese or English (with translation where appropriate).

Q21/Q22/Q23) The expert witnesses called by the parties need not be qualified lawyers in the HKSAR and can be anyone who are properly qualified, in the opinion of the court, in the subject calling for expertise.

Q24) The party calling for the expert witness would need to bear the cost but may eventually recover such costs by an order of the court.

Q25) The answers to Q21-24 apply generally to a case where proof of foreign law is required.

Q26) We do not keep any statistical information on the request for information on foreign law.

Q27/Q28) Since our judicial authorities rely on the evidence given by expert witnesses, we do not see a need to transmit request for information on foreign law to a foreign State.

Part IV

Q29) We do not consider it necessary for the Hague Conference to develop a global instrument or a mechanism to access information on the content of foreign law.

Q30) We have no comment since we do not find it necessary for the Hague Conference to develop such an instrument.

Q31) We have already provided online access to information about the legislation and judgments in the HKSAR. Please refer to the answer to Q9.

Q32) It would be very difficult for the law of the HKSAR including case law (under our common law system) to be made available in a standard electronic format since case law based on the decisions of the court would not be given in a particular format.

Q33) The legislation of the HKSAR and some decisions of the court have already been made available worldwide and may be useful in respect of any subject matter involving the law of the HKSAR.