

The following Questionnaire addressed to the Members of the Organisation has been prepared for that purpose. Conscious of the short delay to respond to this Questionnaire, the Permanent Bureau invites Members of the Organisation to bring to the attention of their judicial authorities Questions Nos 15 to 28.

The Permanent Bureau would very much appreciate receiving your answers (in either English or French) **before 11 January 2008** in order to have sufficient time to prepare, before the end of February 2008, a Report summarising the results of this consultation for the attention of the Council of early April 2008. Answers should be sent by e-mail to < [secretariat@hcch.net](mailto:secretariat@hcch.net) > with the following heading and indication in the subject field: "Questionnaire concerning the Treatment of Foreign Law – [name of the Member of the Organisation]". Your cooperation in responding to this Questionnaire is very much appreciated.

**Identification**

**Name of the Member State:** \_\_\_\_\_ J A P A N \_\_\_\_\_

**For follow-up purposes**

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## **Part I – General Questions**

(1 部—一般的質問)

Please answer the following general questions with regard to the *European Convention of 7 June 1968 on Information on Foreign Law* (the “London Convention”), the *Inter-American Convention of 8 May 1979 on Proof of and Information on Foreign Law* (the “Montevideo Convention”), the *Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters* (the “Minsk Convention”) and any bilateral treaty on proof of and / or information on foreign law (“bilateral treaty”).

In this Questionnaire, the term “foreign law” encompasses both foreign internal (substantive) law and foreign private international law.

1) Is your State Party to:

- a) The London Convention<sup>8</sup> [ ] YES [X] NO
- b) The Montevideo Convention<sup>9</sup> [ ] YES [X] NO
- c) The Minsk Convention<sup>10</sup> [ ] YES [X] NO
- d) Any bilateral treaty [ ] YES [X] NO

(Please indicate the number of bilateral treaties concluded: \_\_\_\_)

2) If not, does your State intend to become in the near future a Party to:

- a) The London Convention [ ] YES [X] NO
- b) The Montevideo Convention [ ] YES [X] NO
- c) The Minsk Convention [ ] YES [X] NO
- d) or conclude any bilateral treaty [ ] YES [X] NO

3) Please indicate (if applicable) the number of requests received in 2006 and the average number of weeks taken to respond to the requests under:

- a) The London Convention No of requests: \_\_\_\_ No of weeks: \_\_\_\_
- b) The Montevideo Convention No of requests: \_\_\_\_ No of weeks: \_\_\_\_
- c) The Minsk Convention No of requests: \_\_\_\_ No of weeks: \_\_\_\_
- d) Any bilateral treaty No of requests: \_\_\_\_ No of weeks: \_\_\_\_

4) Please indicate (if applicable) the number of requests that emanated from the judicial authorities in your State in 2006 and the average number of weeks taken to respond to these requests under:

- a) The London Convention No of requests: \_\_\_\_ No of weeks: \_\_\_\_
- b) The Montevideo Convention No of requests: \_\_\_\_ No of weeks: \_\_\_\_
- c) The Minsk Convention No of requests: \_\_\_\_ No of weeks: \_\_\_\_
- d) Any bilateral treaty No of requests: \_\_\_\_ No of weeks: \_\_\_\_

<sup>8</sup> This Convention is not restricted to Member States of the Council of Europe (Art. 18). See Prel. Doc. No 21 C, *supra*, note 2, for the text of that Convention.

<sup>9</sup> This Convention is not restricted to Member States of the Organisation of American States (Art. 13). See Prel. Doc. No 21 C, *supra*, note 2, for the text of that Convention.

<sup>10</sup> The Minsk Convention states in Art. 15 that “[t]he central judicial authorities of the Contracting States shall provide one another upon request with information about the internal legislation in effect or which was in effect on their territories and about the practices of its application by the judicial authorities”. This Convention is not restricted to Member States of the Commonwealth of Independent States (Art. 86). The text of the Minsk Convention can be found in Prel. Doc. No 27 of April 2005, “The Relationship between the Judgments Project and certain Regional Instruments in the arena of the Commonwealth of Independent States”, prepared by E. Gerasimchuk for the Permanent Bureau, for the attention of the Twentieth Session of June 2005 on Jurisdiction, Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, Ann. II. This document is available at: < www.hcch.net >, under “Conventions”, then “Convention No 37”, and “Preliminary Documents”.

- 5) Do you foresee an increase in the number of requests referred to in:
- a) Question No 3 (incoming requests)
    - YES
    - NO
  - b) Question No 4 (outgoing requests)?
    - YES
    - NO
- 6) If so, in which areas of the law? Please specify for each of the sub-questions:
- a)
  - b)
- 7) Please indicate, if applicable, in bullet form to what extent you are satisfied with the instruments referred to in Question No 1:
- 8) Please indicate, if applicable, in bullet form any shortcomings of these instruments:<sup>11</sup>

**Part II – Free public access to information on the content of the law**

- 9) Does your State and / or Regional Economic Integration Organisation (“REIO”) provide online access to its legislation<sup>12</sup> through an official (governmental) website?
- YES. Please specify whether this information is also provided in a non-official language and, if so, in which language(s):
- Japanese Government provides translations of Laws and Regulations in English through the following website.
- <http://www.cas.go.jp/jp/seisaku/hourei/data2.html>
- NO. Does another, non-governmental body or organisation provide this information online (please specify which organisation or body)?
- 10) Does your State and / or REIO respond to written or oral requests for information on the content and / or application of its law?<sup>13 14</sup>

<sup>11</sup> A list of Recommendations regarding day-to-day operations of the London Convention can be found in Prel. Doc. No 21 A, *supra*, note 2, Ann. 2, paras 62-63.

<sup>12</sup> In force or which was in force.

<sup>13</sup> In this Part, and questions related thereafter in Part IV, the term “law” encompasses both internal (substantive) law and private international law, including relevant provisions in treaties and Conventions.

<sup>14</sup> The areas could include the following subjects: the legal order in general; organisation of the courts of justice system; organisation of the administrative tribunals system; legal professions; access to justice including legal aid; jurisdiction of the courts / administrative tribunals; bringing a case to a court / an administrative tribunal; alternative dispute resolutions; procedural time limits; applicable law; service of documents; taking of evidence and modes of proof; interim measures and precautionary measures; enforcement of judgments; simplified and accelerated procedures; marriage and nullity of marriage; divorce and legal separations; parental responsibility; parent-child relationship; international child protection including child abduction and child adoption; protection of adults; maintenance (child support and other forms of family support); traffic accidents; products liability; other types of torts; consumer protection; commercial contracts; sale of goods; securities transactions; property; secured interests; inheritance; bankruptcy; choice of court agreements; or legalisation and / or certification of documents.

YES. Please specify for which areas of the law:

Each ministry usually responds to written or oral requests for information on the law of which the ministry takes charge.

NO. Does another, non-governmental body or organisation provide this service (please specify which organisation or body)?

11) Are the services in Question No 10 available to people in other States?

YES. Is this service offered in any non-official language and, if so, in which?

Ministries can respond to written requests in English.

NO

12) If yes, do people in other States have access to this service at the same costs as residents?

YES

Ministries provide such service for free.

NO

13) Do you foresee the proportion of people in other States using these services increase in the future?

YES

NO

Please specify:

### **Part III – Access to information on the content of foreign law at the litigation stage**

14) Please indicate, where possible, a rough estimate of the percentage of civil and commercial law cases heard by the judicial authorities of your State in 2006 which required the application of foreign law and whether this percentage is likely to increase. If no estimate can be obtained for 2006, please refer to another year.

Percentage: no data% (year: \_\_\_\_). Likely to increase:  YES  NO

15) Please indicate, if possible, the most common areas of foreign law applied by or invoked before the judicial authorities of your State.

No data is available.

Marriage and nullity of marriage

Divorce and legal separations

Parental responsibility

Parent-child relationship

International child protection including child abduction and child adoption

Protection of adults

Maintenance (child support and other forms of family support)

Traffic accidents

Products liability

Other types of tort

Consumer protection

Commercial contracts

Sale of goods

Securities transactions

Property

Inheritance

Bankruptcy

Choice of court agreements

Other, please specify:

16) Please identify, if possible, the States whose laws are most frequently applied by or invoked before judicial authorities in your State:

**No data is available.**

17) In your State, a judicial authority ascertains foreign law (check more than one box if applicable):<sup>15</sup>

- a)  *ex officio* without the assistance of an expert<sup>16</sup> (e.g. law firm, specialised institute,<sup>17</sup> university, government (i.e. specialised department or embassy), etc.)
- b)  *ex officio* with the assistance of an expert
- c)  by submitting, *ex officio*, a request for information under a bilateral or multilateral treaty (where applicable)
- d)  as the result of an (express) agreement of all parties, without the assistance of an expert
- e)  as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- f)  as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by all parties
- g)  by submitting, as the result of an (express) agreement of all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- h)  at the request of a party (without the objection of the other or another party) or all parties, without the assistance of an expert
- i)  at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- j)  at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by one or all parties
- k)  by submitting, at the request of a party (without the objection of the other or another party) or all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- l)  by any other method (please specify):  
***ex officio with the assistance of the parties***

18) Please rank in order of priority (1 being the highest) the sources consulted by judicial authorities in your State to ascertain the content of foreign law under any of the methods described in a), d) and h) of Question No 17:

- Internet (official legislation, case-law and legal publications websites)
- Internet (legislation, case-law and legal publications from private databases (as opposed to official databases))
- Local or personal library (local electronic databases)
- Local or personal library (printed legislation, case-law and legal publications)
- Other:

**No data is available. This matter is left to judge's discretion.**

<sup>15</sup> See Prel. Doc. No 21 A, *supra*, note 2, Ann. 2, paras 4-15, and Prel. Doc. No 21 B, *supra*, note 2, for a description of the status of and mechanisms to access foreign law in a sample of jurisdictions.

<sup>16</sup> In this Questionnaire the term expert is used in its broadest sense; see also Questions Nos 21 to 23 for possible qualifications that may apply.

<sup>17</sup> For example, the Swiss Institute of Comparative Law in Lausanne, the Max Planck Institute in Hamburg, the *Deutsches Notarinstitut* in Germany, the *Internationaal Juridisch Instituut* in The Hague, the CRIDON in France, or any relevant institute / office attached to a University.

19) Please explain whether and, if so, how the judicial authorities in your State verify the reliability and / or authenticity of these sources and the information provided therein:

Judges verify the reliability of these sources and information on case-by-case basis.

20) Where these sources and the information provided therein are not available in a language understood by the judicial authority, please describe the mechanisms used to address this difficulty. Description:

There is no special mechanism. Incidentally, Japanese law and rules of civil procedure provide that Japanese language shall be used in the court and that Japanese translation should be attached to the documentary evidence written in foreign language.

21) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of your State? In the case of a specialised institute, does it need to meet certain requirements?

YES

NO

22) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of the State whose laws are being ascertained? In the case of a specialised institute, does it need to meet certain requirements?

YES

NO

23) Please specify which individuals and / or institutions may provide expertise under any of the methods described in b), e) and i) of Question No 17:

a) Local private expert (e.g. law professor, lawyer and / or jurist in private practice)

YES

NO

b) Foreign private expert (e.g. law professor, lawyer and / or jurist in private practice)

YES

NO

c) Local specialised institute

YES

NO

d) Foreign specialised institute

YES

NO

e) Local government (including embassies abroad)

YES

NO

f) Foreign government (including embassy in your State)

YES

NO

g) Member of the local judicial authority

YES

NO

h) Member of a foreign judicial authority

YES

NO

i) Other(s):

j) Which of the above is most often used? No data is available.

24) Please indicate who bears the costs of the expertise provided under any of the methods described in b), e) and i) of Question No 17:

- The requesting judicial authority
- The party that raised the application of foreign law
- The party(ies) against whom costs will be awarded
- All parties
- Other:

25) Would your answers to Questions Nos 21-24 be the same for the expert referred to under f) and j) of Question No 17?

- YES
- NO, please explain:

26) Please describe, if possible, the common characteristics of requests for information on foreign law submitted under any of the methods described in c), g) and k) of Question No 17: The type of question asked; who most frequently asks questions (*e.g.*, parties with too little or no resources to afford an expert); the reasons why questions are asked (*e.g.*, no material available in a language understood by the judicial authority seized of the matter); etc.

Description:

27) Please indicate whether judicial authorities in your State can transmit the request for information directly to a receiving agency in the State addressed under any of the methods described in c), g) and k) of Question No 17?

- YES
- NO, please explain:

28) If so, can the request be transmitted by regular non-secured e-mail?

- YES
- NO, please explain:



**Part IV – Future development of an instrument and / or mechanisms to access information on the content of foreign law**

29) In the light of your answers to this Questionnaire, are you of the view that the Hague Conference should develop a global instrument and / or mechanisms to access information on the content of foreign law?

YES

NO

Please explain:

We are of the view that the usefulness of such instrument or mechanisms should be considered carefully in comparison with other efficient tools such as internet.

30) If the Hague Conference were to develop a global instrument to access information on the content of foreign law:

a) Would you be in favour of a flexible instrument in particular with respect to:

i) the availability of several channels through which information on foreign law can be sought and in relation to experts from whom information can be obtained?

YES

NO

Please explain:

ii) the use that may be made of each such channel and expert?

YES

NO

Please explain:

iii) the availability of information technologies to ensure a speedy process of the requests and to alleviate language barriers?

YES

NO

Please explain:

b) Should the information received provide an objective and general description of the law in the foreign State, including references to relevant case-law (as opposed to a specific answer as to how the foreign law should be applied to the issue(s) at stake)?

YES

NO, please explain:

c) Should the information received be non-binding (as opposed to binding)?

YES

NO, please explain:

d) Should this instrument and / or these mechanisms be general in order to permit access to different areas of foreign law (as opposed to being limited to certain area(s) of the law)?

YES

NO, please explain:

e) Should this instrument and / or these mechanisms contain provisions on legal assistance to accommodate individuals with little or no resources?

YES

NO, please explain:

f) Should this instrument and / or these mechanisms be extended to notaries and other professionals who need to have access to the content of foreign law in contexts other than litigation (*e.g.* in relation to successions)?

YES

NO, please explain:

31) If this is not yet the case for your State / REIO, are you of the opinion that it would be useful to make information on the content of the law of your State / REIO available online in a central database?

YES

NO

Please explain.

32) Are you of the opinion that it would be useful to have information on the content of the law of your State / REIO available online in a standard electronic format (*e.g.* in the form of country profiles that are based on a pre-established, harmonised structure) available in English and French (or other language(s)) in addition to its language of origin?

YES

NO

Please explain.

It is burdensome for the States whose official language is not English or French to provide legal information both in English and in French. It is preferable not to burden the States with mandatory obligation to provide in both languages.

33) If information on the content of the law of your State were to be made available worldwide in either of the forms mentioned in Questions Nos 31 and 32, please identify for which of the following subjects it would be most valuable?

- Legal order in general
- Organisation of the courts of justice system
- Organisation of the administrative tribunals system
- Legal professions
- Access to justice including legal aid
- Jurisdiction of the courts / administrative tribunals
- Bringing a case to a court / an administrative tribunal
- Alternative dispute resolutions
- Procedural time limits
- Applicable law
- Service of documents
- Taking of evidence and modes of proof
- Interim measures and precautionary measures
- Enforcement of judgments
- Simplified and accelerated procedures
- Marriage and nullity of marriage
- Divorce and legal separations
- Parental responsibility
- Parent-child relationship
- International child protection including child abduction and child adoption
- Protection of adults
- Maintenance (child support and other forms of family support)
- Traffic accidents
- Products liability
- Other types of tort
- Consumer protection
- Commercial contracts
- Sale of goods
- Securities transactions
- Property
- Secured interests
- Inheritance
- Bankruptcy
- Legalisation and / or certification of documents
- Notarial acts or certificates
- Other, please specify: その他

34) Are you of the opinion that the instrument identified under Question No 29 should be developed in combination with either of the instruments described under Questions Nos 31 and 32?

YES

NO

Please explain.

35) Other comments on the models proposed in Preliminary Document No 21 A, any other model, or on a possible future instrument in this field:<sup>18</sup>

<sup>18</sup> See Prel. Doc. No 21 A, *supra*, note 2, for a description of the models: "Information Sheets and Country Profile Model"; "Network of Experts and Specialised Institutes Model"; "Direct Judicial Communications Model"; and, "Revision of the Co-operative Mechanisms of the London and Montevideo Conventions". See also *ibid.*, Ann. 2, paras 54-65.