

ABLI-HCCH Webinar on HCCH 1970 Evidence Convention and Remote Taking of Evidence by Video-link: Summary and Key Takeaways

Written by the Asian Business Law Institute and the Permanent Bureau of the HCCH

It was reported previously that the Asian Business Law Institute (ABLI) and the Permanent Bureau of the Hague Conference on Private International Law (HCCH) were to co-host a webinar titled *HCCH 1970 Evidence Convention and Remote Taking of Evidence by Video-link* on 1 June.

The session has since been successfully held. The organisers would like to share the summary and key takeaways of the session with readers of this blog. Readers who are interested in learning more about the session and requesting access to the video recording may contact ABLI at info@abli.asia.

On 1 June 2021, the Permanent Bureau of the Hague Conference on Private International Law (HCCH) and the Singapore-based Asian Business Law Institute co-hosted webinar *HCCH 1970 Evidence Convention and Remote Taking of Evidence by Video-link*, welcoming attendees from 30 different jurisdictions, including representatives of Central Authorities, HCCH Members, private practitioners, international public service officers and business professionals.

Dr Christophe Bernasconi, Secretary General of the HCCH, opened the webinar with a welcoming address where he underscored that the success of the 1970 Evidence Convention was attributable to not only its simplified transmission procedures and its flexibility to accommodate the needs of different legal traditions, but also the technology-neutral approach adopted by drafters, which has allowed the Convention to remain fit for purpose in the 21st century. Specifically, Dr Bernasconi highlighted that the Convention, with 63 Contracting Parties representing every major legal tradition, facilitated the transmission of

thousands of requests for taking of evidence every year and allowed the use of video-link technology in the taking of evidence abroad.

Professor Yun Zhao, Representative of the HCCH Regional Office for Asia and the Pacific, was next to speak where he gave an overview of the operation of the Evidence Convention. He explained how the Convention provided, in Chapter I, a main channel of transmission under which a judicial authority in a requesting State may send a Letter of Request directly to a Central Authority in the requested State, before elaborating that the Convention also provided, in Chapter II, a streamlined process for the direct taking of evidence by commissioners or consuls, to which Contracting Parties may object upon or after accession. Professor Zhao pointed to the recently published *Guide to Good Practice on the Use of Video-Link under the 1970 Evidence Convention* and outlined a plethora of ways in which video-link technology may be used to take evidence abroad, *e.g.* to facilitate the presence of the parties and their representatives by video-link at the execution of a request or to permit a commissioner located in the State of Origin to take evidence by video-link in the State of Execution.

Following Professor Zhao's presentation, Mr Alexander Blumrosen, Partner at Polaris Law (Paris), provided a historical account of the use of the Evidence Convention in the United States and the significance of the landmark Supreme Court decision *Aéropatiale*. He went on to explain in detail, and by reference to his practical experience, how evidence located in France but needed for U.S. civil or commercial proceedings may be taken through a Letter of Request (under Chapter I) or more swiftly through a commissioner (under Chapter II). Mr Blumrosen highlighted that the execution of a Chapter I Letter of Request in France usually took between six weeks and three months, and that under Article 9 of the Convention, foreign counsel may be allowed to participate in the direct or cross examination of witnesses by video-link provided that such participation was expressly requested in the Letter of Request and allowed by local law and practice as it is in France. Mentioning that the taking of evidence by commissioner under Chapter II could be even faster and more flexible, Mr Blumrosen added that once the Central Authority had authorized a commissioner - which could take between one to ten days, depending on the matter - the evidence may be taken immediately either in person in conference room facilities or using video-link, without needing any further intervention or participation by a local judge. He mentioned the increased use of Chapter II discovery in requests

from the U.S. over the last ten years, and applauded the qualified Article 23 reservation adopted by France to the Convention that allows for pre-trial discovery but requires requests to be “enumerated limitatively” and to be relevant to the underlying dispute in order to avoid overly broad “fishing expeditions”.

Turning attendees’ attention from France to Singapore was Mr Edmund Kronenburg, Managing Partner of Braddell Brothers LLP, who presented a brief overview of the operation of the Evidence Convention in Singapore by looking at the country’s legal framework. In his view, the popularity of the Convention was likely to increase in the coming years in tandem with Singapore’s efforts to reinforce its dispute resolution hub status. Mr Kronenburg then moderated a lively panel discussion among all panelists, including Mr Blumrosen, Justice Anselmo Reyes of the Singapore International Commercial Court, Dr João Ribeiro-Bidaoui, First Secretary at the HCCH and Professor Zhao.

To conclude the session, Dr Ribeiro-Bidaoui spoke of the salient benefits and main features of another HCCH instrument, the 1965 Service Convention, highlighting that the Service Convention, with 78 Contracting Parties, was accessible to almost 70% of the global citizenship who represents more than 80% of the world’s GDP.?

The Permanent Bureau of the HCCH and ABLI are heartened by the positive feedback received after the webinar. Some Singaporean practitioners who were in the midst of preparing for virtual hearings found the session especially timely. One attendee from the business community commented that although not legally trained, he found the discussions useful in understanding the difficulties involved in multi-jurisdictional legal processes from the perspective of running a multinational business. Attendees joining from outside of Singapore said they benefited most from learning about the implementation of the Evidence Convention in places other than their home jurisdictions. Specifically, Matthijs Kuijpers and Sofja Goldstein from Amsterdam-based law firm Stibbe shared that they found it extremely valuable for their international litigation practice to have judges, practitioners and academics from various jurisdictions exchange and discuss experiences and best practices. In particular, they very much appreciated that the organisers actively engaged practitioners during the session as such engagement helped overcome issues that would inevitably rise over time given that the methods of taking evidence today differ significantly from how it was envisioned when the Convention was drafted.

The organisers thank all attendees for their active participation and warm reception and look forward to having more such opportunities for exchange of ideas and sharing of experiences.

The full version of the key panel discussion takeaways can be read [here](#).