

INTER-AMERICAN CONVENTION ON THE TAKING OF EVIDENCE ABROAD

The Governments of the Member States of the Organization of American States, desirous of concluding a convention on the taking of evidence abroad, have agreed as follows:

Article 1

For the purposes of this Convention the terms "exhortos" and "cartas rogatorias" are synonymous in the Spanish text. The terms "letters rogatory", "commissions rogatoires", and "cartas rogatorias" used in the English, French and Portuguese texts, respectively, cover both "exhortos" and "cartas rogatorias".

Article 2

Letters rogatory issued in conjunction with proceedings in civil or commercial matters for the purpose of taking evidence or obtaining information abroad and addressed by a judicial authority of one of the States Parties to this Convention to the competent authority of another, shall be executed in accordance with the terms specified therein, provided:

1. The procedure requested is not contrary to legal provisions in the State of destination that expressly prohibit it;
2. The interested party places at the disposal of the authority of the State of destination the financial and other means necessary to secure compliance with the request.

Article 3

The authority of the State of destination shall have jurisdiction over disputes arising in connection with the execution of the measure requested.

Should the authority of the State of destination find that it lacks jurisdiction to execute the letter rogatory but consider that another authority of the same State has jurisdiction, it shall ex officio forward to it, through the appropriate channels, the documents and antecedents of the case.

In the execution of letters rogatory, the authority of the State of destination may apply the measures of compulsion provided for in its law.

Article 4

Letters rogatory requesting the taking of evidence or the obtaining of information abroad shall specify the following information needed for fulfilling the request;

1. A clear and precise statement of the purpose of the evidence requested;
2. Copies of the documents and decisions that serve as the basis and justification of the letter rogatory, as well as such interrogatories and documents as may be needed for its execution;
3. Names and addresses of the parties to the proceeding, as well as of
4. witnesses, expert witnesses, and other persons involved and all information needed for the taking of the evidence;
5. A summary report on the proceeding and the facts giving rise to it, if needed for the taking of the evidence;
6. A clear and precise statement of such special requirements or procedures as may be requested by the authority of the State of origin for the taking of the evidence, except as provided in Article 2. 1 and Article 6.

Article 5

Letters rogatory concerning the taking of evidence shall be executed in accordance with the laws and procedural rules of the State of destination.

Article 6

At the request of the authority issuing the letter rogatory, the authority of the State of destination may accept the observance of additional formalities or special procedures in performing the act requested, unless the observance of those procedures or of those formalities is contrary to the laws of the State of destination or impossible of performance.

Article 7

The costs and other expenses involved in the processing and execution of letters rogatory shall be borne by the interested parties.

The State of destination may, in its discretion, execute a letter rogatory that does not indicate the person to be held responsible for costs and other expenses when incurred.

The identity of the person empowered to represent the applicant for legal purposes may be indicated in the letter rogatory or in the documents relating to its execution.

The effects of a declaration in forma pauperis shall be regulated by the law of the State of destination.

Article 8

Execution of letters rogatory shall not imply ultimate recognition of the jurisdiction of the authority issuing the letter rogatory or a commitment to recognize the] validity of the judgment it may render or to execute it.

Article 9

Pursuant to Article 2. 1, the authority of the State of destination may refuse execution of a letter rogatory whose purpose is the taking of evidence prior to judicial proceedings or "pretrial discovery of documents" as the procedure is known in Common Law countries.

Article 10

Letters rogatory shall be executed in the States Parties provided they meet the following requirements:

1. The letter rogatory is legalized, except as provided for in Article 13 of this Convention. The letter rogatory shall be presumed to be duly legalized in the State of origin when legalized by the competent consular or diplomatic agent;
2. The letter rogatory and the appended documentation are duly translated into the official language of the State of destination.

The States Parties shall inform the General Secretariat of the Organization of American States of the requirements stipulated in their laws for the legalization and the translation of letters rogatory.

Article 11

Letters rogatory may be transmitted to the authority to which they are addressed through judicial channels, diplomatic or consular agents, or the Central Authority of the State of origin or of the State of destination, as the case may be.

Each State Party shall inform the General Secretariat of the Organization of American States of the Central Authority competent to receive and distribute letters rogatory.

Article 12

A person called to give evidence in the State of destination pursuant to a letter rogatory may refuse to do so when he invokes impediment, exception or duty to refuse to testify:

1. Under the law of the State of destination; or

2. Under the law of the State of origin, if the invoked impediment, exception or duty to refuse has been specified in the letter rogatory or has been confirmed by the requesting authority at the instance of the court of destination.

Article 13

Whenever letters rogatory are transmitted or returned through consular or diplomatic channels or through the Central Authority, legalization shall not be required.

Article 14

This Convention shall not limit any provisions regarding letters rogatory for the taking of evidence abroad in bilateral or multilateral agreements that may have been signed or may be signed in the future by the States Parties or preclude the continuation of more favorable practices in this regard that may be followed by these States Parties.

This Convention shall not limit the application of any provisions on the taking of evidence by consuls that may be in force in other conventions or preclude the continuation of accepted practices in this regard.

Article 15

The States Parties to this Convention may declare that its provisions cover the execution of letters rogatory for the taking of evidence abroad in criminal, lab and "contentious-administrative" cases, as well as in arbitrations and other matters within the jurisdiction of special courts. Such declarations shall be transmitted to the General Secretariat of the Organization of American States.

Article 16

The State of destination may refuse to execute a letter rogatory that is manifestly contrary to its public policy ("ordre public").

Article 17

This Convention shall be open for signature by the Member States of the Organization of American States.

Article 18

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 19

This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 20

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 21

If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 22

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other States Parties.

Article 23

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States. The Secretariat shall notify the Member States of the Organization of American States and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession, and denunciation as well as reservations, if any. It shall also transmit the

information mentioned in Article 10 and in the second paragraph of Article 11, and the declarations referred to in Articles 15 and 21 of this Convention.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE AT PANAMA CITY, Republic of Panama, this thirtieth day of January, one thousand nine hundred and seventy-five.