



Conditions for a Commissioner or Diplomatic or Consular Official to Obtain Evidence in Switzerland

In Switzerland, a foreign request for obtaining evidence according to [articles 15 through 17](#) of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters ([Hague Evidence Convention](#)) is subject to prior authorisation by the Federal Department of Justice and Police (FDJP).

Foreign applications must, however, be addressed to the [central authority of the canton](#) where the evidence is to be taken; they (and the enclosures) must be submitted in the official language of this canton. To speed up the procedure, we recommend that you send a copy to the Federal Office of Justice FOJ, Private International Law Unit, 3003 Bern, Switzerland.

After examining the request, the central cantonal authority forwards the application to the FOJ, indicating, whether it supports the granting of the authorisation or whether it would like the authorisation to have certain accompanying conditions. When the procedural conditions and safeguards according to [article 21 Hague Evidence Convention](#) are met, the FDJP grants the authorisation. An advance on procedural costs will, however, be necessary beforehand. The amount of the advance on procedural costs varies between CHF 100 and CHF 5000, depending on the amount in controversy and the complexity of the case.

The application for authorisation must:

- Briefly describe the nature and subject matter of the proceedings;
- Indicate the amount in controversy; this is necessary in order to fix the amount of the advance on procedural costs. The decision on the authorisation will be taken only after payment of the advance on procedural costs.
- Indicate the identity and the address (fax number, e-mail included) of the litigants;
- Indicate the identity and the address (fax number, e-mail included) of the counsels of the litigants;
- Indicate the form of, and the grounds for, the intended procedural formalities; it is recommended to describe in sufficient detail the modalities of the procedural formalities to insure that the authorisation will cover all the procedural formalities envisaged. If possible, the name and address of all participants in the procedural formalities should figure in the application;
- Indicate the name and address of the persons involved in the intended procedural formalities;
- Indicate the name and address of the person or persons who are to supervise the evidentiary proceedings if the application is one under [article 17](#) of the Hague Evidence Convention. Under [articles 15 and 16](#), on the other hand, all consular or diplomatic officials in the relevant embassy or consular agency will be given an authorization to supervise the taking of evidence;
- Propose a date for the intended taking of evidence. The request should be filed two months before the proposed date.

The decision of the foreign court appointing the commissioner must be attached to the application.

Before sending the application, it is recommended that written confirmation is requested from the person involved in the application to the effect that that person is cooperating of its own accord, that it knows it cannot be subjected to any coercive measures, that it cannot be forced to participate or to appear and that it has the right to invoke an exemption or a prohibition to give evidence provided for by the law of the State addressed or of the State of origin ([article 21](#) Hague Evidence Convention). In the event that the person concerned subsequently does not wish to cooperate, the entire procedure will have been unnecessary while having generated costs (court fees).

The application need not be filed by a court; it may be filed by a party or its lawyer. In that case, the application must then include a power of attorney from the party or an authorisation issued by the foreign court. In all cases, the decision of the foreign court appointing the commissioner or commissioners must be attached to the application.

The FDJP will have to notify its decisions. In order to accelerate the process, it is recommended to elect domicile in Switzerland for the purposes of notification. If not, the decisions will be served according to the applicable rules of judicial assistance.

If cross-examination is requested for, there are two possible approaches. First, a sole commissioner can be appointed – for example, a neutral person– who will chair the debates and will see to it that the examination by the lawyers of the parties is conducted in accordance with Swiss law (no coercion, reminder of exemptions or any prohibition from giving evidence). In this case, only one authorisation will be issued. Second, it is also possible that each attorney is appointed commissioner. In this case, authorisation will be granted to each person to conduct the examination.