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Step-by-Step Process of Applying For and Taking a Deposition at the U.S. Embassy or U.S. Consulate in Japan

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In 2020, Japan imposed strict COVID-19 measures which, among other things, has since prevented most Americans from entering Japan. Japan's border closings created a dilemma for litigators who needed to depose a witness *in situ* in the country. Unlike many other countries, Japan requires that all depositions take place at either the U.S. Embassy (Tokyo) or the U.S. Consulate (Osaka). It is illegal to take a deposition in Japan at a law firm, hotel, or any other venue in Japan, even if done by video. Rather, any witness in Japan who is being deposed must be physically present in a U.S. Embassy or Consulate deposition room. When Japan finally opened its borders in 2022, many litigators were in a position to schedule in-person depositions of witnesses in Japan.

If you are a litigator planning to take a deposition in Japan, before you book your travel, be mindful that unlike many other countries, it takes a lot of advance planning.

Key Considerations for Depositions

Planning ahead is essential because numerous documents must be submitted and approved in advance in order to: (1) reserve a deposition room; (2) obtain approval for specific electronic equipment to be brought into the U.S. Embassy/Consulate; and (3) obtain a special deposition visa from the Japanese Embassy/Consulate in the United States. One will also need to make arrangements with a court reporter/videographer and, if necessary, a neutral interpreter. The U.S. Embassy/Consulate in Japan does not make arrangements for court reporters, videographers, or interpreters, nor does it schedule the appearance of any witnesses for deposition.

The following step-by-step process in taking depositions in Japan is designed to provide a practical resource drawn from the first-hand experience of a litigator who has taken depositions at the U.S. Embassy (Tokyo) both in 2022 and 2023.

Step 1: Identify deposition room availability at U.S. Embassy/Consulate

To begin the process of taking a deposition in Japan, one should first find available dates for a deposition room at either the U.S. Embassy or the

U.S. Consulate. The availability for each is typically posted on the following website: <https://jp.usembassy.gov/services/depositions-in-japan/>.

Before putting in your room request, it is wise to familiarize yourself with a few circumstances unique to booking deposition rooms in the Japanese U.S. Embassy/Consulate. Under the Federal Rules of Civil Procedure, unless otherwise stipulated or ordered by the Court, “a deposition is limited to one day of 7 hours.” FED. R. CIV. P. 30(d)(1). However, it is unlikely litigators will be able to get 7 hours “on the clock” during a single day because the depositions rooms at the U.S. Embassy/Consulate are only available during specified hours, and the time involved in deposition setup and breakdown. As of February 2023, parties can only make use of the deposition room between 8:30 am to 1:00 pm and 2:00 pm to 4:30 pm. While the deposition room is technically available for a total of 7 hours, litigators must also take into account the following formalities that eat into the two time frames these rooms are available: (i) it generally takes at least 15 to 20 minutes for the court reporter to set up/take down the equipment; (ii) a U.S. Consular officer must swear in the witness (and there may be a wait time for the U.S. consular office to become available); and (iii) if a Japanese neutral/primary interpreter is present, it is common for the interpreter to take a break at least every 60 to 90 minutes. Hence, in order to get 7 hours “on the clock” litigators should anticipate having to reserve the deposition room for 2 days.

Step 2: Preparing the paperwork to submit to the U.S. Embassy/Consulate in Japan

After a party has identified available dates to use a deposition room at the U.S. Embassy/Consulate in Japan, litigators should then submit a “Reservation Form for Taking Depositions” via email to the American Citizen Services department (“ACS”) at the U.S. Embassy/Consulate. This form, available on the website listed in Step 1, requires case information about the U.S. lawsuit, including information about the witness to be deposed. It is also advisable at this stage to confirm that the deposition room is still available on the requested dates.

ACS will then request that the parties submit the following:

- (1) desired hours/dates for use of the deposition room;
- (2) a non-refundable reservation fee and a deposition fee in the form of an official bank check or certified check made payable to either the U.S. Embassy or Consulate in Japan. As of early 2023, the non-refundable reservation fee for the deposition room at the U.S. Embassy in Tokyo was \$1,283 and the deposition room fee was \$309 per day;
- (3) a certified court order or commission sent via FedEx (a sample is provided on the website). In our experience, ACS has accepted a stipulation and certified order which includes, at minimum, the following information:

- (i) the location of the deposition - US. Embassy in Tokyo or U.S. Consulate in Osaka;

- (ii) the name and contact information of the witness to be deposed in Japan;
- (iii) dates and times of the deposition; and,
- (iv) names of all persons who will be physically present at the deposition including any alternates.

(4) In addition to the above list in the certified order, litigators should plan to include a list of all participants who will be participating in person and online. This list shall include counsel, witness, court reporter, videographer, and any interpreters.

(5) For those persons attending the deposition in person, litigators will need to submit a form identifying all electronic devices that will be brought into the embassy/consulate (not including cell phones). The device form requires information on the make, type, model number, serial number, and owner of the equipment. There are two important related considerations to note:

- (i) this information must be provided several weeks in advance for security pre-screening purposes, and
- (ii) the deposition rooms do not have any Wi-Fi but they do have one hard wired internet cable. Because of the difficulties in anticipating the electronic equipment to be used by any court reporter/videographer/interpreter weeks in advance, it is advisable to work with a consultant/court reporter/videographer who has experience in this process.

Step 3: Obtaining a Deposition Visa from the Japanese Embassy/Consulate in the United States

All persons traveling to Japan¹ for the deposition at the U.S. Embassy/Consulate must first obtain a special deposition visa from the Japanese Embassy/Consulate in the United States. In our recent experience, it has taken anywhere from 5 to 22 days to receive the deposition visa after mailing the completed application. The deposition visa is required for all foreign parties in order to enter the U.S. Embassy/Consulate for purposes of attending the deposition. The wait times and specific documentation to be submitted along with the visa application may vary depending upon which Japanese consulate office or Japanese Embassy processes the visa application. Most of this specific information can be found on the Japanese Embassy/Consulate website by region. For an example, the Japanese Consulate in San Francisco provides a checklist for deposition visa applications on its website linked here.

The documentation required to apply for a deposition visa (at least for the Japanese Consulate located in San Francisco) include the following:

- (1) a valid U.S. passport with at least one completely blank visa page (for non-U.S. citizens, additional documentation will need to be provided);

- (2) a completed visa application form;
- (3) one passport-style photo taken in the last 6 months;
- (4) a certified sealed/embossed copy of the Court Order/Commission ordering the deposition to proceed in Japan. No photocopies are accepted;
- (5) a letter from the employer of the persons applying for the visa stating that the employer will be responsible for the applicant's travel expenses in Japan, and information concerning the underlying lawsuit giving rise to the deposition;
- (6) flight itinerary or flight reservation that shows the entire trip starting from the U.S.;
- (7) hotel reservation for entire stay in Japan;
- (8) proof of U.S. residence (i.e., state-issued document such as a driver's license); and
- (9) a release of liability.

Additional Considerations for Litigators

In-person and remote attendees

As of early 2023, due to COVID-19 protocols, the U.S. Embassy/Consulate in Japan limits the number of in-person deposition attendees to 5 persons. In a case involving one plaintiff and one defendant seeking to depose a Japanese witness, this generally means that the five attendees comprises the witness, a Japanese neutral interpreter, a court reporter, the Plaintiff's counsel, and the Defendant's counsel. However, to the extent other persons (i.e., check interpreters, videographer, and other counsel) have a need to participate, a laptop computer may be set up in the deposition room to provide a live audio/video feed for remote attendees. To reiterate the electronic preapproval process noted in Step 2, the laptop computer used for remote attendees must be preapproved by the U.S. Embassy/Consulate. As there is only one hardwired line for internet and no Wi-Fi, it is recommended that the court reporter provide the technology to stream the deposition and, if desired, provide real-time transcription to the parties via iPads/tablets connected directly to the court reporter's computer.

Interpretation/Translation Protocols

Due to the unique challenges associated with foreign language exhibits and non-English speaking witnesses, it is recommended that parties enter into an agreed-upon interpretation/translation protocol in advance of taking a deposition of non-English speaking witnesses. It is very common for a party to assert objections to certified translations of exhibits and/or the neutral interpreters' on-the-record interpretation of the deponents' testimony in Japanese. Having a protocol in place prior to the deposition should reduce unnecessary arguments by counsel that take away from the already limited "time on the clock" that parties are given to complete their depositions at the U.S. Embassy/Consulate in Japan.

¹While Japan has recently opened its borders to allow U.S. Citizens to enter Japan under a visa waiver program (short term stay), a Deposition Visa is still required in order to enter the U.S. Embassy/Consulate in Japan

for the purposes of taking a deposition.

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