



United States Department of State

Washington, D.C. 20520

October 16, 1991

Dear Mr. Matsumoto:

I refer to your recent telephone conversation with Miss Monica Gaw of my staff regarding the taking of depositions of willing witnesses in Japan.

The taking of depositions of willing witnesses in Japan for use in the United States is governed by Article 5(f) of the Vienna Convention on Consular Relations (to which Japan and the United States are parties); Article 17(1)(E)(II) of the U.S. - Japan Consular Convention, 15 U.S.T. 768. It is our understanding that Articles 3 and 72 of the Japanese Lawyer Law prohibit the taking of depositions in Japan by private attorneys not admitted to practice law in Japan.

After extensive discussions between the Department of State and the Embassy of Japan, it is our understanding that Japan's interpretation of the U.S. - Japan Consular Convention and applicable Japanese laws and regulations, limits the circumstances under which depositions may be taken. Japan permits the taking of a deposition of a willing witness for use by a court in the United States only if the deposition is presided over by a U.S. consular officer pursuant to a U.S. court order or commission, and is conducted on U.S. consular premises. Persons travelling from the United States to Japan to participate in the depositions must obtain a special Japanese deposition visa from the Japanese Embassy or Consulate in the United States. Any effort to conduct a deposition in Japan in any other way could be viewed as a violation of the judicial sovereignty of Japan and might result in the arrest and/or deportation of the person attempting to take a deposition in Japan outside these procedures.

As you can appreciate, the American Embassy at Tokyo keeps its own calendar of depositions and, given your request that this office answer you immediately, we have not been able to check with the Embassy concerning the availability of dates for the taking of depositions. The most recent information I have seen, however, indicates that the Embassy is unable to schedule further depositions until Spring of 1992 because the sole deposition room at the Embassy has been reserved for that period. Similarly, we understand that the Consulate General in Osaka Kobe is heavily scheduled through the end of 1991. Both

Mr. Naoki Matsumoto
600 Hansen Way
Palo Alto, California 94306

the Embassy and the Consulate General in Osaka Kobe have occasional cancellations, and frequently have a day or two available which might be useful for your purposes if your depositions are not protracted. I note, that in addition to the Embassy and the Consulate General in Osaka Kobe, there are U.S. consular offices located in Sapporo, Fukuoka and Naha. These offices rarely have a heavy deposition schedule.

During the course of your conversation with Ms. Gaw, you apparently questioned the validity of our understanding of Japan's position regarding the taking of depositions in Japan by American litigants. You explained that your own interpretation of Japanese laws and regulations would not support our understanding. Your own analysis to the contrary notwithstanding, you should be aware that our information is based on specific guidance from the Government of Japan. I know of no "informal" procedure for taking a deposition in Japan for use in U.S. courts. Moreover, we caution against travelling to Japan as a tourist to conduct a proceeding similar to a deposition without fully disclosing to Japanese consular authorities in the United States the nature and purpose of the travel.

Enclosed are copies of our flyers "Obtaining Evidence in Japan", "Obtaining Evidence Abroad", and "Preparation of Letters Rogatory" which you may find helpful.

Should you have any additional questions, please do not hesitate to contact Ms. Gaw of my staff at (202) 647-3675.

This is an informational letter, not a legal opinion and it is not our intention to take a position on any aspect of litigation.

Sincerely,

Edward A. Betancourt

Edward A. Betancourt
Chief
East Asia and Pacific Division
Office of Citizens Consular Services

Enclosures:

As stated



OBTAINING EVIDENCE IN JAPAN

DISCLAIMER: THE INFORMATION IN THIS CIRCULAR RELATING TO THE LEGAL REQUIREMENTS OF SPECIFIC FOREIGN COUNTRIES IS PROVIDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE TOTALLY ACCURATE IN A PARTICULAR CASE. QUESTIONS INVOLVING INTERPRETATION OF SPECIFIC FOREIGN LAWS SHOULD BE ADDRESSED TO FOREIGN COUNSEL.

PROVISO: THE PURPOSE OF THIS FLYER IS TO PROVIDE GENERAL INFORMATION ABOUT PROCEDURES FOR OBTAINING EVIDENCE IN JAPAN, INCLUDING THE TAKING OF DEPOSITIONS OF WILLING WITNESSES AND THE COMPULSION OF TESTIMONY AND DOCUMENTARY EVIDENCE. THE INFORMATION IN THIS FLYER IS BASED ON EXTENSIVE DISCUSSIONS BETWEEN THE DEPARTMENT OF STATE AND THE JAPANESE EMBASSY REGARDING JAPAN'S INTERPRETATION OF APPLICABLE TREATIES AND OTHER INTERNATIONAL CONVENTIONS, AND JAPANESE LAW AND REGULATIONS. THIS IS AN INFORMATIONAL FLYER, NOT A LEGAL OPINION, AND IS NOT INTENDED TO TAKE A POSITION ON ANY ASPECT OF LITIGATION.

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GENERAL SUMMARY

It is our understanding that **Japanese law permits the taking of a deposition of a willing witness for use by a court in the United States only if the deposition is presided over by a U.S. consular officer pursuant to a court order or commission, and is conducted on U.S. consular premises**, Rule 28 Federal Rules of Civil Procedure; Rule 15, Federal Rules of Criminal Procedure notwithstanding. This understanding is based on extensive discussions between the Department of State and the Japanese Embassy in Washington, and between the American Embassy in Tokyo and the Japanese Ministry of Justice.

Persons travelling from the United States to Japan to participate in depositions must obtain a special Japanese deposition visa from the Japanese Embassy or Consulate in the United States. Any effort to conduct a deposition in Japan in any other way could be viewed as a violation of the judicial sovereignty of Japan and might result in the arrest and/or deportation of the person attempting to take a deposition in Japan outside these procedures. These procedures have been established pursuant to the U.S. - Japan Consular Convention, as a result of extensive discussions between the Department of State and the Embassy of Japan.

Please inform all attorneys, for both the plaintiff and the defense of the above requirements, particularly the special deposition visa.

AUTHORITY

The taking of depositions of willing witnesses in Japan is governed by:

Article 5(f) and 5(j) of the Vienna Convention on Consular Relations (to which Japan and the United States are parties);

Article 17(1)(E)(II) of the U.S. - Japan Consular Convention, 15 U.S.T. 768;

22 U.S.C. 4215; 22 USC 4221; 18 U.S.C. App. Fed. R. Civ. P., Rules 15 and 17; 28 U.S.C. Fed. R.Civ. P., Rules 28-31; 22 CFR 92.55 - 92.66 (general authority)

It is our understanding that **Articles 3 and 72 of the Japanese Lawyer Law prohibit the taking of depositions in Japan by private attorneys not admitted to practice law in Japan.**

DEPOSITIONS OF WILLING WITNESSES

Article 17 of the Japan-United States Consular Convention authorizes American consular officers to take depositions in

Japan, "on behalf of the courts or other judicial tribunals or authorities of the sending state (United States), voluntarily given, in accordance with the laws of the the sending state (U.S.) and in a manner not inconsistent with the laws of the receiving state (Japan)". Therefore, depositions may be taken in Japan:

(1) pursuant to a commission [28 U.S.C. App. Fed. R. Civ. P. Rule 28(b)(2)] to take a deposition issued by a court to any Consul or Vice-Consul of the United States at (Tokyo, Naha, Osaka-Kobe, Sapporo, Fukuoka) or

(2) on notice, provided an order issued by a court in the United States specifically authorizes an U.S. consular officer to take the deposition on notice.

Sample Suggested Text for Court Order or Commission

We suggest that the court order or commission contain the following information:

NAME OF COURT

CAPTION)
)
)
)

TO ANY CONSUL OR VICE CONSUL OF THE UNITED STATES
UNITED STATES (EMBASSY/CONSULATE) (NAME OF CITY)

UPON THE APPLICATION OF (PLAINTIFF, DEFENDANTS), AND
PURSUANT TO ARTICLE 17 OF THE UNITED STATES - JAPAN CONSULAR
CONVENTION,

YOU HAVE BEEN DULY APPOINTED AND YOU ARE HEREBY
AUTHORIZED TO TAKE ORAL DEPOSITIONS AT THE UNITED STATES
(EMBASSY/CONSULATE) IN (NAME OF CITY), JAPAN, OF THE FOLLOWING
WITNESSES WHO WILL APPEAR VOLUNTARILY:

OR

IT IS ORDERED THAT THE DEPOSITIONS ON NOTICE OF THE
FOLLOWING WITNESSES BE TAKEN AT THE UNITED STATES
(EMBASSY/CONSULATE) IN (NAME OF CITY), JAPAN

(NAMES, ADDRESSES, AND EMPLOYER OF WITNESSES) COMMENCING ON OR
ABOUT (DATE), (TIME) AND TERMINATING ON OR ABOUT (DATE),
(TIME), AND TO MARK ANY DOCUMENTARY EXHIBITS IN CONNECTION
THEREWITH.

COUNSEL FOR DEFENDANTS WHO WILL PARTICIPATE IN SAID DEPOSITIONS
ARE (NAMES); AND COUNSEL FOR PLAINTIFFS WHO WILL PARTICIPATE IN

SAID DEPOSITIONS ARE (NAMES). THE PROCEEDINGS WILL BE REPORTED BY (NAME OF AMERICAN COURT REPORTER, IF ONE IS TRAVELLING FROM UNITED STATES TO JAPAN). PLEASE CAUSE THE TESTIMONY OF SAID WITNESSES TO BE REDUCED TO WRITING AND THE DEPOSITIONS SIGNED BY SAID WITNESSES AND ANNEX SAID DEPOSITION TESTIMONY TO YOUR COMMISSION AND CLOSE THE SAME UNDER YOUR SEAL AND MAKE RETURN THEREOF TO THIS COURT WITH ALL CONVENIENT SPEED.

DATE

SIGNATURE OF JUDGE
NAME OF JUDGE

SEAL

Oral Depositions

American attorneys may travel to Japan to participate in depositions on U.S. consular premises (as described in 22 CFR 92.57) provided they have obtained the "special deposition visa" required by Japan. Any effort to conduct a deposition in Japan in any other way might be viewed as a violation of the judicial sovereignty of Japan. The procedure for scheduling a deposition at the U.S. Embassy or one of the U.S. Consulates in Japan and obtaining the "special deposition visa" is outlined below.

U.S. Federal, State or Local Government Participants

If a U.S., state or local Government official is to participate in a deposition before a U.S. consular officer in Japan, special host country clearance (in addition to the deposition visa) must be obtained for the travel. Such Government officials should contact the Office of Citizens Consular Services, Department of State, (202) 647-3675, fax (202) 647-6201 to initiate the process of obtaining the host country clearance.

Depositions on Written Questions

Depositions can also be taken on written interrogatories and cross interrogatories [28 USC Fed. R. Civ. P., Rule 31]. The court order or commission from a court in the United States is still required as in procedures for oral depositions in Japan.

ARRANGING THE DEPOSITION

Scheduling

(1) Contact the U.S. Embassy or Consulate and make arrangements to schedule the availability of U.S. consular premises and a U.S. consular officer to conduct the deposition. Note: The American Embassy in Tokyo is generally booked six months in advance.

Please note that for administrative and security reasons, the embassy/consulate's deposition room and consular staff are not available for deposition taking outside of working hours 8:30 a.m. to 5:00 p.m. or on weekends or holidays.

The embassy/consulate cannot schedule a deposition until both court order/commission and non-refundable scheduling fee (\$250.00) are received at the embassy/consulate. We suggest that the court order be worded "on or about" a date for maximum flexibility in scheduling. The court order/commission should be addressed to "any consul or vice consul at (Tokyo; Naha; Osaka Kobe; Fukuoka; Sapporo), Japan".

The embassy/consulate does not schedule the appearance of deponents or make arrangements for court reporters/stenographers or interpreters for private attorneys.

Court Order/Commission

(2) Obtain a Commission or Court Order as noted above. The Commission or Court Order should include the name of the case, docket number, names of the witnesses to be deposed, the fact that they are willing (voluntary) witnesses, the dates on which the depositions will be conducted and the fact that the depositions will be attended by counsel before "any consul or vice consul of the United States, at the (United States Embassy (Consulate) in (name of city), Japan. Send the original order, or a certified copy to the U.S. Embassy or Consulate where the deposition is to be conducted by the fastest available means.

In addition, names of lawyers and other participants should be provided to the U.S. Embassy in Tokyo since the Japanese Foreign Ministry checks with the Embassy before approving visa issuance.

Special Deposition Visa

(3) Apply for a "special deposition visa" at the Japanese Embassy or Consulate in the United States nearest you. You will be required to present a certified copy of the commission or court order to the Japanese consular officer when you apply for the "special deposition visa".

This special visa must be applied for at least two weeks before departure for Japan. The request should be made

on letterhead stationery and include the following information: (a) the name and location of the court; (b) name and occupation of each witness; and (c) a

summary of the case. The original or a certified copy of the commission or order for a U.S. consular officer to take the deposition must accompany the request. Special visas may also be required of deposition participants other than attorneys (American stenographers, interpreters, parties, etc.). Inquiries should be made of the appropriate Japanese consular officer.

(4) The Japanese Embassy or Consulate in the United States will contact the Japanese Foreign Ministry for permission to issue the "special deposition visa".

(5) The Japanese Foreign Ministry will contact the U.S. Embassy or Consulate to confirm whether the U.S. consular officer has received a certified copy of the American court order and whether the deposition has been scheduled.

(6) The Japanese Foreign Ministry will authorize the Japanese Embassy or Consulate in the United States to issue the "special deposition visa".

FEES:

Non-Refundable Deposition Scheduling Cost

The prescribed statutory fee for consular services in connection with depositions is 90 dollars per hour for consular officer time plus 50 dollars per hour for consular clerical time. A flat fee of \$250.00 must be paid to the embassy or consulate before a deposition can be scheduled. **The fee is not refundable if the deposition is later canceled.** The fee covers consular officer and staff time in scheduling the deposition, communicating with requesting counsel by telephone or fax, and coordinating with Japanese authorities to confirm the scheduling of a deposition before Japanese authorities will issue the special deposition visa to persons travelling to Japan to participate in a deposition.

Pre-paid Hourly Rate for Consular Time During the Deposition

In addition to the non-refundable scheduling fee, there is a fee of \$90.00 per hour for consular officer time plus \$50.00 per hour for consular clerical time for the length of the deposition. You should notify the embassy/consulate of the estimated length of time necessary to take the deposition, allowing for the additional time required for translating questions and answers. Be aware that if the witnesses will be deposed in Japanese, the use of interpreters will approximately double the time required. The Embassy or consulate must receive a deposit (\$90.00 x the number of hours required for the deposition plus \$50.00 clerical fee), which must be deposited in full prior to the taking of the deposition. [22 CFR 22.5(c)]

Deposition Closing Certificate Fee and Postage

In addition, the embassy/consulate requires a 50 dollar deposit to cover clerical time involved in consular certification of the completed deposition and for postage. Any unused portion from your deposit will be refunded. As federal regulations prohibit the performance of consular services in advance of payment of statutory consular fees, depositions cannot be convened until all the required funds have been deposited.

Payment of Fees

Payment should be made by international money order or certified check payable to the American Embassy, Tokyo, Japan or to the appropriate American consulate.

COURT REPORTERS/STENOGRAPHERS/INTERPRETERS:

Since the embassy/consulate does not provide interpreters or stenographers, American attorneys must arrange directly with such persons for their services and payment of their fees. If you are bringing an American court reporter from the United States this fact and the name of the court reporter should be included in the court order/commission. Remember that the witness may be testifying in Japanese, not English, so you may wish to retain the services of a court reporter/stenographer in Japan who can record the deposition in Japanese. Having an interpreter/translator translate the Japanese responses into English for the purpose of recording the deposition would take considerably more time than having the Japanese transcript translated into English at a later time.

Fees for interpreters in Japan range from 70,000 to 80,000 yen per day and stenographic services from 50,000 to 60,000 yen per day plus transcript fees of 1,500 to 2,000 yen per page. The exchange rate fluctuates daily; on August 10, 1991 it was 137.90 yen to one U.S. dollar.

LIST OF INTERPRETERS AND STENOGRAPHERS

Disclaimer: The Department of State and the U.S. Embassy in Tokyo and Consulate General in Osaka Kobe assume no responsibility for the professional ability and integrity of the interpreters and stenographers whose names appear in this list from the consular districts. However, they are selected with care and include only those who have indicated a willingness to accept requests on behalf of United States citizens and firms, and have done so in the past.

Tokyo

Interpreters:

English Services (Hotel Okura Secretarial Service), South Wing Arcade, Hotel Okura 2-10-4 Toranomon, Minato Ku, Tokyo 107.
tel: 408-5452;

Interlanguage Service System (ISS), Nihon Seimei Ichibancho
Bldg., 7F, 23-3 Ichibancho, Chiyoda Ku, Tokyo 102. tel:
230-4731;

Multilingua Inc., Kawamura Bldg., 5F, 21-6 Akasaka 3-chome,
Minato Ku, Tokyo 107, tel: 583-0791;

Mrs. Kaoru Ikeda, 5-3-11 Kinuta, Setagaya Ku, Tokyo 157, tel:
417-7949;

Deposition Stenographers:

Mrs. Doreen Anderson, 101 Homat Avon, 5-15-2 Higashi Gotanda,
Shinagawa Ku, Tokyo 141, tel: 440-9527;

Mrs. Mary Reagan Kagami, Apt 605, 1-9-11 Meguro Honcho, Meguro
Ku, Tokyo 152, tel: 712-3176;

Mrs. Kimiko Seki, 2-31-5 Matsugaoka, Nakano Ku, Tokyo 165, tel:
952-1542.

Osaka Kobe

The following are the names and addresses of some companies in
the Osaka Kobe Consular District with whom persons in the
United States can make arrangements for interpreter and
stenographic services. They will provide a cost estimate upon
request.

Interpreters:

Mrs. Yasuko Kawakami HAMADA
2-10-1 Takakuradai, Suma-ku
Kobe 650, Japan
Tel: (81) (78) 734-0515

Inter Osaka
Shohaku Bldg
28 Tsuruno-cho
Kita-ku
Osaka 530, Japan
Tel: (81) (6) 372-8048

Kokusai Communication Service
1 B Center Bldg, No. 505
4-22 Isogami-dori
Chuo-ku
Kobe 650, Japan
Tel: (81) (78) 251-8821

Nihon Convention Service, Inc.
Sumitomo Seimei Midouji Bldg. 13th Floor
4-14-3 Nishitenma
Kita-ku
Osaka, Japan
Tel: (81) (6) 311-2131

Simul International, Inc.
Kogin Bldg, Annex 5-45 Koraibashi
Higashi-ku
Osaka 541, Japan
Tel: (81) (6) 223-0313

Deposition Stenographers:

The following deposition stenographers are located in Tokyo, but willing to travel to Osaka for depositions.

Mrs. Mary Regan KAGAMI
1-9-11 Meguro Honcho Apt 605
Meguro-ku
Tokyo 152, Japan
Tel: (81) (3) 3712-3176

Mrs. Kimiko Keki
2-31-5 Matsugaoka
Nakano-ku
Tokyo 165, Japan
Tel: (81) (3) 3952-1542
FAX: (81) (3) 3223-0313

A list of interpreters and stenographers outside the Tokyo and Osaka Kobe consular districts is available directly from the U.S. consulates.

Video/Audio Tapes and Other Equipment:

The embassy/consulate does not provide tapes, taping equipment or equipment operators. If a video taped deposition is planned, please inform embassy immediately so that embassy can provide commercial rates. **After the video arrangements are completed, please so notify the U.S. Embassy a few days in advance of the actual deposition, so that the Embassy can obtain the necessary clearance from the Security Office for the entry of the equipment and the operators into the Embassy premises.**

Signing, Certifying and Mailing Depositions:

After the deposing of witnesses is completed, the stenographer transcribes the testimony and delivers the original transcript to the embassy/consulate. Witnesses then come to the embassy/consulate to initial pages, make any necessary corrections and sign in the presence of a consular officer. Once all witnesses have signed, consular certification is made and the deposition, along with any exhibits, is sent by registered air mail to the clerk of the court that requested the deposition. If you plan to have the deposition taped without subsequent transcription, the embassy/consulate asks that the court order or commission specify whether audio or video tape is to be used. Tapes are sent direct the by

embassy/consulate via registered air mail directly to the court clerk immediately following completion of the deposition. Any change in the above procedures would have to be agreed to by both parties in the dispute and, if necessary, covered by an amended court order. As an alternative, transcripts/tapes may be sent by the U.S. embassy/consulate directly to requesting counsel on written stipulation of the parties.

U.S. Consular Offices in Japan:

American Embassy
ATTN: Consular Section/American Citizen Services
10-1, Akasaka 1-chome
Minato-ku (107)
Tokyo, Japan
tel: 011-81-33-224-5000
fax: 011-81-33-5820892; 5051862
telex: 2422118 AMEMB J

American Consulate General
ATTN: Consular Section/American Citizen Services
254 Nishihara
Urasoe City
Okinawa 901-21
Naha, Okinawa, Japan
tel: 011-81-98-876-4211
fax: 011-81-98-764-243

American Consulate General
ATTN: Consular Section/American Citizen Services
11-5 Nishitenma
2-chome
Kita Ku
Osaka 530
Osaka, Japan
tel: 011-81-6-315-5900
fax: 011-81-6-361-5397
telex: 5233037 AMCONJ

American Consulate General
ATTN: Consular Section/American Citizen Services
Kita 1-Jo
Nishi 28-chome
Chuo Ku
Sapporo 064
Sapporo, Japan
tel: 011-81-11-641-1115
fax: 011-81-11-641-0911
telex: 935338 AMCONS J

American Consulate General
ATTN: Consular Section/American Citizen Services
5-26 Ohori 2-chome
Chuo Ku,
Fukuoka 810
Fukouka, Japan
tel: 011-81-92-751-9331
telex: 725679

OTHER INFORMAL EVIDENCE GATHERING

Interviews, Inspections and Investigations

It may be necessary to obtain a special visa for travel to Japan to conduct informal interviews, inspections or other investigations. Contact the Japanese Embassy or Consulate and the Department of State, Office of Citizens Consular Services for assistance on a case-by-case basis.

COMPULSION OF EVIDENCE

Japan is not a party to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. There is not in force between the United States and Japan any other treaty or international agreement on judicial assistance.

Compulsion of evidence in Japan from an unwilling witness can only be achieved on the basis of comity, pursuant to a letter rogatory. See Rule 28(b), Fed. R. Civ. P.; 4 Moore's Federal Practice 28.05-28.8 (2d ed. 1950); Ristau, International Judicial Assistance (Civil and Commercial), Vol. I, 3-36 et seq., International Law Institute, 1984; Article 5(j) of the Vienna Convention on Consular Relations [1963], 21 UST 77 to which the United States and Japan are both parties.

PREPARATION OF LETTER ROGATORY FOR USE IN JAPAN

A letter rogatory is a request from a court in one country for assistance from a court in another country. Such requests are executed by Japanese district courts in accordance with the laws of Japan and generally take six months to a year to execute. The Japanese court will compel the witness to appear before a Japanese judge to respond to written questions annexed to the letter rogatory. All proceedings will be conducted in the Japanese language. The letter rogatory should be written in clear, simple language and should be written in the form of a request, not a demand for assistance. Japan requires that requests for international judicial assistance be processed through the diplomatic channel. This means that a request must be transmitted to the Department of State by the requesting court, or by counsel.

The Department of State understands that the following conditions must be met before such a request will be honored:

- A. The request must be made through diplomatic channels (as mentioned);
- B. The letter of request should have attached documents showing parties to be examined, the type of evidence to be examined, the name, nationality and address of the persons to be examined and the items with respect to which they should testify [Law W relating to Reciprocal Judicial Aid to be Given at the Request of Foreign Courts - Law 63 of March 13, 1905, as amended];
- C. The letter of request and all attachments must be translated into Japanese;
- D. The letter of request must assure the Japanese court that compensation for all expenses incurred by the Japanese court will be paid;
- E. The letter of request must assure the Japanese court that the requesting court will honor similar requests from the Japanese court.

Moreover, Japan requires that any document annexed to the letter rogatory must bear the seal of the requesting court and the signature of the judge. Japan will reject a request if the letter rogatory or accompanying documents bear the signature of the clerk of the court. Japanese authorities do not honor amendments to a letter rogatory which are not under the seal of the requesting court.

PARTICIPATION OF AMERICAN COUNSEL IN JAPANESE PROCEEDINGS

Most American attorneys would prefer to participate in the proceeding before the Japanese court. This may well pose a problem in that it appears generally prohibited by Articles 3 and 72 of the Japanese Lawyer Law.

The Japanese judge, however, may permit American counsel to participate on a case-by-case basis. For this reason, it may be preferable for you to prepare the letter rogatory in a way which offers the Japanese court alternative ways of executing the request. For example, the letter rogatory could request that:

- (a) American counsel be permitted to participate in the proceedings before the Japanese court;
- (b) If this is not possible, the letter rogatory could ask that local Japanese counsel representing the American client be permitted to participate in the proceedings;

(c) Finally, if this alternative is not possible, the letter rogatory could enclose written questions to be put to the witness by the Japanese court.

You may wish to retain local Japanese counsel for more detailed information about Japanese procedures. Lists of attorneys in Japan are available from the Department of State, Office of Citizens Consular Services, (202) 647-3675 and from the U.S. Embassy and consulates in Japan. You may also wish to contact the Office of Citizens Consular Services for a more detailed general information flyer on preparation of letters rogatory.

TRANSMITTAL OF LETTER ROGATORY

The letter rogatory and any accompanying documents should be translated into Japanese and transmitted in duplicate (a certified original in English and a photocopy; a certified translation in Japanese and a photocopy) to the Office of Citizens Consular Services, East Asia and Pacific Division, Department of State, Room 4817, 2201 C Street N.W., Washington, D.C. 20520-4818. The Department will transmit the request to the American Embassy in Tokyo, which will transmit the request to the Japanese Ministry of Foreign Affairs. The Ministry of Foreign Affairs will forward the request to the Japanese Ministry of Justice which will send the letter rogatory to the appropriate Japanese Court. The Japanese Court will execute the letter rogatory and send the evidence back through the same channel to the American Embassy in Tokyo which will forward the evidence to the Department of State for transmittal to the requesting court in the United States. Requesting counsel in the United States will be advised by the Department of State when the evidence is forwarded to the court in the United States.

COMPULSION OF DOCUMENTS AND OTHER PHYSICAL EVIDENCE

As in the taking of depositions United States consular officials have no authority to compel the production of any document or other article. However, production of documents and other physical evidence may be compelled through the Japanese courts by letters rogatory.

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QUESTIONS

Should you have further questions about the procedures for holding depositions overseas, please contact the Office of Citizens Consular Services, U.S. Department of State, (202) 647-3675, fax: (202) 647-6201.