

(Annex 3)

If a Contracting State to the CP Convention requests Japan to take evidence for the civil cases

Any Contracting State to the CP Convention can request Japan's designated authority (MOFA) to take evidence using the following method on the civil cases

- A consul of a requesting state requests the designated authority of Japan (Ministry of Foreign Affairs) to take evidence (Art. 9, para. 1 of the CP Convention).

1. Documents necessary for requesting the designated authority in Japan to take evidence

Forward the following documents to the Ministry of Foreign Affairs, the authority designated for the Convention, through a consular agent of the requesting state:

- (1) One copy of the Letter of Request (Art. 9, para. 1 of the CP Convention)
- (2) One copy of a Japanese translation of the Letter of Request which has been "certified as correct by a diplomatic officer or consular agent of the requesting State of origin or by a sworn translator" in Japan (Art. 10 thereof)

2. Items to be entered in the Letter of Request

Enter the following items in the Letter of Request:

- (1) Authority that issued the Letter of Request for taking of evidence
- (2) Requested type of taking of evidence (interrogation, investigation, etc.)
- (3) Name of the person undergoing the taking of evidence
- (4) Nationality of the person
- (5) Address or residence of the person
- (6) Parties concerned with the case
- (7) Items that require taking of evidence (interrogation items in the case of the interrogation of witnesses; inquiry items in the case of an investigation)
- (8) Summary of the case

3. Demand for reimbursement of costs

Request the requesting state to reimburse the fees paid to witnesses or experts and the costs resulting from following "a special method or procedure" as provided in Art. 14, para. 2 of the CP Convention (Art. 16, para. 2 thereof).

4. Points that require attention when requesting to take evidence

- A court in Japan can not issue an order to produce documents to a person located in Japan based on the request by a foreign court (because a court order to produce documents is issued on the petition of a trial party under the Code of Civil Procedure of Japan).
- A company can only be interrogated as a witness if the name and post of the person to be interrogated are designated concretely.
- Taking of evidence can only be carried out concerning one witness or organization per letter of request. Prepare a letter of request for each reference.

[Reference] the CP Convention

English: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=33>

Japanese:

<https://assets.hcch.net/docs/5d1cca3a-f1bd-4ef0-9af4-718903e72628.pdf#search=%27%E6%B0%91%E4%BA%8B%E8%A8%B4%E8%A8%9F%E3%81%AB%E9%96%A2%E3%81%99%E3%82%8B%E6%9D%A1%E7%B4%84%27>

(Excerpts from the CP Convention)

Article 9

Letters of Request shall be transmitted by the consul of the requesting State to the authority which shall be designated by the State of execution. That authority shall send to the consul the document establishing the execution of the Letter of Request or indicating the fact which prevented its execution.

Any difficulties which may arise in connection with the transmission shall be settled through diplomatic channels.

Any Contracting State may declare, by a communication addressed to the other Contracting States, that it intends that Letters of Request to be executed on its territory be transmitted through diplomatic channels.

The foregoing provisions shall not prevent two Contracting States agreeing to allow the direct transmission of Letters of Request between their respective authorities.

Article 10

Unless there is agreement to the contrary, the Letter of Request must be written either in the language of the requested authority, or in the language agreed between the two States concerned, or else it must be accompanied by a translation, done in one of those languages and certified as correct by a diplomatic officer or consular agent of the requesting State of origin or by a sworn translator of the State of execution.

Article 14

The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed.

However, it will follow a request of the requesting authority that a special method or procedure be followed, provided that this is not contrary to the law of the State of execution.

Article 16

The execution of Letters of Request shall not give rise to reimbursement of taxes or costs of any nature.

However, unless there is agreement to the contrary, the State of execution shall have the right to require the State of origin to reimburse the fees paid to witnesses or experts, and the costs occasioned by the employment of a judicial officer, rendered necessary because the witnesses

did not appear voluntarily, or the costs resulting from any application of the second paragraph of Article 14.