

**(Annex 5)**

**If a non-Contracting State of the CP Convention requests taking evidence concerning a civil trial**

If a non-Contracting state of the CP Convention requests Japan to take evidence, the state should do so pursuant to the Japanese national law called the “Law Relating to the Reciprocal Judicial Aid to be Given at the Request of Foreign Courts” (hereinafter, the “Reciprocal Aid Law”). The request shall be made through the diplomatic channel (Art. 1-2, para. 1, item 1 of the Reciprocal Aid Law).

**1. Documents to be submitted to the Ministry of Foreign Affairs of Japan**

- (1) Embassy’s note verbal to the Ministry of Foreign Affairs of Japan
- (2) One copy of the foreign court’s letter of request to a court in Japan
- (3) One copy of a Japanese translation of the letter of request (Art. 1-2, para. 1, item 4 of the Reciprocal Aid Law)

**2. Items to be entered in the documents**

- (1) Embassy’s note verbal to the Ministry of Foreign Affairs of Japan
  - (A) The State to which the Court making the request belongs shall guarantee the payment of the expenses incurred in the execution of the letter of request.(Art. 1-2, para. 1, item 5 of the Reciprocal Aid Law)
  - (B) The State to which the Court making the request belongs shall assume that it could render judicial aid in the same or similar matters if so requested by the Japanese Courts. (Art. 1-2, para. 1, item 6 thereof)
- (2) Foreign court’s letter of request to a court in Japan (Art. 1-2, para. 1, item 3 of the Reciprocal Aid Law)
  - (A) Authority that issued the request for taking evidence
  - (B) Requested type of taking evidence (witness interrogation, investigation, etc.) (Art. 1-2, para. 1, item 3 thereof)
  - (C) Name of the person undergoing the taking of evidence (Art. 1-2, para. 1, item 3 thereof)
  - (D) Nationality of the person (Art. 1-2, para. 1, item 3 thereof)
  - (E) Domicile or residence of the person (Art. 1-2, para. 1, item 3 thereof)
  - (F) Parties to the litigation (Art. 1-2, para. 1, item 3 thereof)
  - (G) The matters to be investigated (interrogation items in the case of the interrogation of witnesses; inquiry items in the case of an investigation) (Art. 1-2, para. 1, item 3 thereof)
  - (H) Summary of the case (Art. 1-2, para. 1, item 3 thereof)

**3. Demand for reimbursement of costs**

The embassy of the requesting state should reimburse the costs that the court in Japan spent on executing the letter of request. (Art. 1-2, para. 1, item 5 thereof).

#### **4. Points that require attention when requesting to take evidence**

- A court in Japan cannot issue an order to produce documents to a person located in Japan based on the request from 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]

#### LAW RELATING TO THE RECIPROCAL JUDICIAL AID TO BE GIVEN AT THE REQUEST OF FOREIGN COURTS

##### Article 1.-(2)

The said judicial aid shall be rendered under the following conditions:

1. The request shall be made through the diplomatic channel.
2. The request for the service of papers shall be made in writing stating the name, nationality, and domicile or residence of the person on whom the papers are to be served.
3. The request to take evidence shall be made in writing stating the names of the parties to the litigation, the manner in which the evidence is to be taken, the name, nationality, and domicile or residence of the person to be examined, and the matters to be investigated. In regard to criminal matters, the request shall be accompanied by a statement of the essential facts of the case.
4. In case the letter of request and documents annexed thereto are not written in the Japanese language, translation thereof into Japanese shall be appended to the original.
5. The State to which the Court making the request belongs shall guarantee the payment of the expenses incurred in the execution of the letter of request.
6. The State to which the Court making the request belongs shall assure that it could render judicial aid in the same or similar matters if so requested by the Japanese Courts.

In case where treaties or other documents of similar nature provides otherwise than as mentioned in the preceding paragraph, such provisions shall prevail.