

## A Quick Guide To Depositions In Japan

By **Lauren Randell, BuckleySandler LLP**

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You have a case involving a witness in Japan. Maybe the witness is a corporate custodian, or a key executive of a party. For whatever reason — a witness's inability to travel, discovery rules, or simple agreement of the parties — the witness is going to be deposed in Japan.[1] Now what? Based on our own experience, our team offers the following practical observations and suggestions to make your own experience smoother, whether you are taking or defending a Japanese deposition.[2]



Lauren Randell

Unlike, for example, in China, it is at least possible to take a deposition in Japan for later use in U.S. litigation. But the process is nowhere near as simple as holding a deposition in the U.S., or even in many foreign locations. Which brings us to our first suggestion — if you can, secure agreement of the parties and witness to have the deposition in Hong Kong. This is not to say that depositions cannot be taken in Japan with successful results, and there are situations, including our own, where Japan really was the only option. But the savings in effort, time and money, and potentially additional deposition time on the record, warrant at least a closer look at an alternative venue.

The primary reason depositions in Japan can be more complicated than elsewhere is that depositions for use in U.S. litigation can only be taken in three conference rooms in the entire country. That's it. The depositions must occur in either (1) the U.S. Embassy in Tokyo, or (2) the U.S. Consulate in Osaka. Tokyo's lone conference room can hold eight people. Osaka has one larger conference room — although even that will only hold 15 people — and another eight-person room. Depositions cannot be moved, even with agreement of the parties, to a hotel, or law firm, or anywhere other than these three rooms. There are no telephonic depositions, and while we did not try this, video-conference depositions are reported to be only available via special request to the Japanese government and rarely granted.[3]

In part because of the scarcity of the most basic resource, a room to hold the deposition, our second suggestion is to plan ahead. Depositions in Japan cannot be scheduled and taken in a month or two. Among the many items that need to be arranged well ahead of time, even putting aside hotels and flights, are:

- Book the embassy's single conference room in Tokyo, or one of the two conference rooms in the Osaka Consulate. The available dates are shown on the embassy's website, and can book up months in advance. Don't agree with a witness on dates before verifying those dates are

available, and then immediately reserve them.[4] Be flexible, both on location and timing. You will need to build in time to get a formal court order or commission from the originating court of your lawsuit, and submit it to the embassy at least six weeks before the deposition date.[5] Fairly substantial fees have to be paid at the same time.[6]

- Get a deposition visa. While U.S. passport holders usually can travel to Japan for short-term business without a visa, one of the few exceptions is for depositions. Any U.S. participant in a deposition in Japan must apply for and receive a deposition visa from the Japanese government.[7] The visa application can take weeks to process, and requires set dates and travel plans, as well as the court order or commission approving the Japanese deposition. Consider using a visa expediter service to ensure you get the visa in time; you won't be traveling to Japan without it.
- Attendee and electronics information. The embassy and consulate are secure locations. That means you have to inform the embassy/consulate weeks ahead of time about all attendees at the deposition, including any interpreters, court reporters, or videographers. You must also provide identifying information about electronics that are going to be carried into the building, including laptop serial numbers and information about stenographic, videography and interpretation equipment.[8] In our experience, though, serial numbers weren't checked by the security guards in Osaka.

As part of the planning process, keep in mind our third suggestion — be prepared to get less done than in a domestic deposition. A deposition day in a domestic deposition may be seven hours on the record, going as late into the evening as you need to, or perhaps starting early instead. Not so in Japan. The embassy and consulate each have very strict hours in which the deposition rooms can be used — start times, end times and mandatory lunch periods where everyone has to leave the building.[9] The deposition room in Tokyo, for example, is only open for six hours 15 minutes a day, and depositions cannot start until a U.S. consular officer begins the proceedings (although the officer does not need to stay throughout). The Osaka hours are slightly longer, but still would not permit a full seven-hour deposition day unless no breaks are taken. So either plan to get what you need done in those limited hours on the record, or get everyone's agreement (and possibly court approval depending on your jurisdiction) to book a second day.

Our fourth suggestion is to pare down what you need — don't expect to do your deposition with every bell and whistle. The embassy and consulate prohibit using any electronic device to connect to a network and wireless functionality must be turned off, so don't expect to connect to any document or testimony databases, do quick Google research, or stream the live transcript to anyone not attending.[10] What you bring into the room is what you'll be using. On the same note, though, the rooms themselves are tiny, so bringing many boxes of exhibits each day is not practical.[11] And most importantly, don't plan on having lots of backup. The eight- or 15-person rooms need to include your court reporter and videographer, as well as any interpreters and check interpreters. That's four people, minimum, before the witness and any lawyers. In a multiparty case, space runs out quickly and needs to be negotiated among the parties.

The logistics and planning are, thankfully, the biggest hurdles. Once you're actually there, our final suggestion is to treat it like a deposition in any other government building: Give yourself extra time to get through security (but flash your passport and say "deposition" when you approach the line, and you'll be waved to the front); make sure everyone brings identification each day; and plan to bring your own water in (if allowed) or buy drinks from the ever present vending machines.[12] Explore the nearby

areas during the mandatory lunch hour. And try to ignore the noise. These conference rooms, at least in Osaka, are in the middle of a very busy consulate, right off a crowded waiting room.

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*Lauren Randell is a partner in BuckleySandler LLP's Washington, D.C. office.*

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[1] Only voluntary depositions can take place in Japan. U.S.-Japan Consular Convention of 1963, Art. 17(e)(ii). If a witness will not appear willingly, the party desiring the examination has to convince the relevant U.S. court to issue a Letter Rogatory to the Japanese government, asking a Japanese court to force the witness to answer a set list of pre-prepared questions. Letters Rogatory will be the subject of a future companion article.

[2] We presented two witnesses for four days of depositions in Japan in a recent case. Both depositions took place in the U.S. Consulate in Osaka, in the 15-person conference room. This article is based on our own experiences, as well as information provided by the U.S. Embassy in Japan, which has a very helpful website at <https://japan.usembassy.gov/e/acs/tacs-7116.html>.

[3] <https://japan.usembassy.gov/e/acs/tacs-7116.html#dep>.

[4] A nonrefundable reservation fee is required within three weeks of the booking. <https://japan.usembassy.gov/e/acs/tacs-7116.html#fee>.

[5] <https://japan.usembassy.gov/e/acs/tacs-7116.html#cou>.

[6] <https://japan.usembassy.gov/e/acs/tacs-7116.html#fee>.

[7] <https://japan.usembassy.gov/e/acs/tacs-7116.html#dev>.

[8] <https://japan.usembassy.gov/e/acs/tacs-7116.html#ove>.

[9] The Tokyo deposition room can only be used between 8:45 am – 1 pm, and 2 pm-4 pm. <https://japan.usembassy.gov/e/acs/tacs-tokyodepositions.html>. Osaka's deposition rooms stay open a bit longer, between 9 am – 12:30 pm, and 1:30 pm – 5 pm. <https://japan.usembassy.gov/e/acs/tacs-osakadepositions.html>.

[10] <https://japan.usembassy.gov/e/acs/tacs-7116.html#sec>. Phones are left with security and can be retrieved on lunch breaks and at the end of the day.

[11] You also cannot compel a witness to bring documents with him. Consular officers are not given that power under the U.S.-Japan Consular Convention.

[12] The official rules prohibit bringing in any outside food or drinks. <https://japan.usembassy.gov/e/acs/tacs-7116.html#sec>. We found that as long as they went through entry screening, unopened drinks purchased from a nearby convenience store were allowed in.

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