

7 FAM 920

TAKING VOLUNTARY DEPOSITIONS OF WILLING WITNESSES

(CT:CON-449; 03-25-2013)
(Office of Origin: CA/OCS/L)

7 FAM 921 PROCEDURES FOR ORAL EXAMINATION OF WITNESSES

(CT:CON-449; 03-25-2013)

- a. What is a Willing Witness? Voluntary depositions are taken with respect to the testimony of willing witnesses. Willing witnesses are simply witnesses who are not compelled to testify pursuant to court order. Accordingly, willing witnesses may include witnesses that are actually unhappy or reluctant witnesses (see 22 CFR 92.49, 22 CFR 92.50, and 22 CFR 92.51).
- b. Statutory Function: Consular responsibilities with respect to taking depositions are statutorily recognized.
 - (1) See 22 U.S.C. 4215 and 22 U.S.C. 4221; and
 - (2) Rule 28 of the Federal Rules of Civil Procedure provides:

Persons Before Whom Depositions May Be Taken

(b) In Foreign Countries.

“Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be

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addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath or because of any similar departure from the requirements for depositions taken within the United States under these rules."

- (3) If the host country permits taking depositions, consular officers should try to comply with the request, subject to scheduling issues. Some countries prohibit taking depositions. For example:

The Russian Federation
The People's Republic of China
Brazil

Note: See Department of State, Digest of U.S. Practice in International Law.

Digest of U.S. Practice in International Law

2000

Declaration re Air Crash at Agana, Guam (Korea Judicial Assistance)

Declaration re U.S. v. Jones (China Judicial Assistance)

2001

Declaration re U.S. v. Porecca (Brazil Judicial Assistance)

- (4) Host Country Permission to Take Depositions: Some countries generally permit taking depositions, but require specific permission to do so. For example:

Japan
Switzerland
Germany

- c. Authority Under Local Law: The authority to conduct voluntary depositions may be secured in the host country by local law. Consular officers should be generally familiar with the provisions of local law regarding depositions. See the OCS Intranet Judicial Assistance feature for our questionnaire for host countries regarding judicial assistance.
- d. Treaty Authority: There are a variety of treaty authorities for taking depositions. See Treaties in Force and the Treaties Feature on the OCS Intranet page.

- (1) The Vienna Convention on Consular Relations;

Article 5 f and j

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“(f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State.”

“(j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State.”

(2) Bilateral Consular Conventions:

(3) The Hague Evidence Convention. If a country is a party to the Hague Evidence Convention, it is important to review that country's reservations and declarations to see if it objected to the taking of depositions (Chapter II, Articles 15-22); and

Country or Jurisdiction	Information From Hague Conference Evidence Convention Status Page Unless Otherwise Noted
Albania	Albania will not execute letters of request for pre-trial discovery of documents
Argentina	Excludes all provisions of Chapter II
Australia	Pursuant to Article 15, evidence may be taken by a diplomatic officer or consular agent only if permission to that effect is given upon application to the Secretary of the Attorney-General's Department of the Commonwealth of Australia
Barbados	No declarations or reservations regarding Chapter II.
Belarus	In accordance with Articles 16 and 17 of the Convention the Republic of Belarus declares that a diplomatic officer or consular agent and a person duly appointed as a commissioner may take the evidence in the territory of the Republic of Belarus in civil and commercial matters without compulsion with prior permission by the competent authorities and on the conditions which competent authorities has specified.
Bulgaria	Excludes Articles 16, 17, 18, and 19 of Chapter II of the Convention

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China, People's Republic	<p>Depositions Not Permitted</p> <p>In accordance with Article 33 of the Convention, the provisions of Chapter II of the Convention except for Article 15 will not be applicable."</p>
Croatia	<p>In accordance with Article 8 of the Convention, the Republic of Croatia declares that the judicial personnel of the requesting State may be present at the execution of a Letter of Request, with the prior authorization of the Ministry of Justice of the Republic of Croatia.</p> <p>In accordance with Article 15 of the Convention, the Republic of Croatia declares that a diplomatic officer or consular agent of a Contracting State may in the territory of the Republic of Croatia take evidence without compulsion, in aid of the proceedings commenced before courts of the State he represents, without the prior permission of the Croatian Central Authority, provided that taking evidence is only related to a person who is a national of the State he represents.</p> <p>In accordance with Article 23 of the Convention, the Republic of Croatia declares that it will not execute Letters of Request issued for the purpose of pre-trial discovery of documents as known in Common Law countries.</p>
Cyprus	<p>In accordance with Article 18 the Republic of Cyprus declares that a diplomatic officer, consular agent, or commissioner authorized to take evidence under Articles 15, 16, or 17 may apply to the competent authority for appropriate assistance to obtain such evidence by compulsion as prescribed by the law for internal proceedings, provided that the requesting Contracting State has made a declaration affording reciprocal facilities under Article 18.</p>
Czech Republic	<p>With reference to Article 16 of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, concluded at The Hague on 18 March 1970, that evidence may be taken in accordance with Chapter II without its prior permission provided the principle of reciprocity is applied.</p> <p>The Czech Republic also declares, in connection with Article 18 of the said Convention, that a diplomatic officer, consular agent, or commissioner authorized to take</p>

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	evidence under Articles 15, 16, and 17, may request the competent Czech court or the Czech State notary to carry out procedural action and that such a diplomatic officer, consular agent, or commissioner will transmit the dossier to that court or notary through the intermediary of the Minister of Justice of the Czech Republic in Prague, provided the principle of reciprocity is applied.
Denmark	Article 15: A diplomatic officer or consular agent may take evidence if he has been authorized to do so by the Ministry of Justice. Article 16: The Ministry of Justice gives its permission that evidence may be taken.
Estonia	No reservations or declarations to Chapter II.
Finland	The evidence referred to in Articles 16 and 17 of the Convention may be taken without the prior permission of the Finnish authorities.
France	In accordance with the provisions of Article 17, the Service Civil de l'Entraide Judiciaire Internationale, and Ministère de la Justice, has been designated as the authority competent to authorize persons duly appointed as commissioners to take evidence without compulsion in aid of proceedings commenced in the courts of a Contracting State. This authorization, which will be given for each particular case, accompanied if need be by particular conditions, shall be subject to the following general conditions: <ol style="list-style-type: none">1. The evidence must only be taken within the precincts of the Embassies;2. The Service Civil de l'Entraide Judiciaire Internationale must be given due notice of the date and time at which the evidence is to be taken so that it can make representatives available if necessary;3. The evidence must be taken in a room to which the public has access;4. The persons who are to give evidence must receive due notice in the form of an official summons drawn up in French or accompanied by a translation into French, and stating:<ol style="list-style-type: none">(a) That the taking of evidence for which the

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	<p>person concerned is summoned is based on the provisions of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, and is part of the judicial proceedings taken in a court designated by a Contracting State by name;</p> <ul style="list-style-type: none">(b) That appearance for the giving of evidence is voluntary and that non-appearance cannot lead to prosecution in the requesting State;(c) That the parties to any action consent to it or, if they do not, their reasons for this;(d) That the person who is to give evidence is entitled to legal advice; and(e) That the person who is to give evidence can claim dispensation or prohibition from doing so. <p>A copy of the summonses will be sent to the Ministère de la Justice.</p>
Germany	<p>The taking of evidence by diplomatic officers or consular agents pursuant to paragraph 1 of Article 16 of the Convention which involves nationals of a third State or stateless persons shall be subject to permission from the Central Authority of the Land where the evidence is to be taken. Pursuant to paragraph 2 of Article 16 of the Convention, permission shall not be required if the national of the third State is also a national of the State of the requesting court.</p> <p>A commissioner of the requesting court may not take evidence pursuant to Article 17 of the Convention unless the Central Authority of the Land where the evidence is to be taken has given its permission. Such permission may be made subject to conditions. The local court in whose district official acts would have to be performed by virtue of a Letter of Request in the same matter shall be entitled to control the preparation and the actual taking of the evidence. Under the second sentence of Article 19 of the Convention, a member of the court may be present at the taking of the evidence.</p>
Greece	<p>In terms of article 18, Greece declares that it shall provide the necessary assistance for the execution of evidentiary</p>

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	<p>proceedings as referred to in articles 15, 16, and 17 provided such execution shall be carried out in accordance with the Greek law.</p>
Hungary	<p>In accordance with Article 15 of the Convention the diplomatic officer or consular agent of a Contracting State may in the territory of the Republic of Hungary take the evidence in aid of proceedings commenced in the courts of a state which he represents without prior permission of the Hungarian authorities provided that the person affected is exclusively national of the sending state of the diplomatic officer or consular agent. Taking of evidence shall not involve applying or holding out of the prospect of compulsion or disadvantageous legal consequences.</p> <p>To Article 17 In the Republic of Hungary the Central Authority is entitled to give the permission set out in Paragraph 2 of Article 17 of the Convention.</p>
Iceland	<p>Iceland declares, in accordance with Article 8 of the Convention, that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request if prior permission has been granted by the Ministry of Justice and Ecclesiastical Affairs.</p> <p>In accordance with Article 15, paragraph 2, of the Convention, Iceland declares that evidence may be taken by a diplomatic officer or consular agent only if permission to that effect has been given by the Ministry of Justice and Ecclesiastical Affairs upon application made by him or on his behalf.</p> <p>In accordance with Article 23, Iceland declares that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries.</p>
India	<p>Subject to prior authorization of the Central Authority and the concerned court, members of the judicial personnel of the requesting Contracting Party may be present at the execution of a letter of request.</p> <p>Evidence by diplomatic officers or consular agents of</p>

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	<p>Indian nationals or nationals of a third State under Article 16 of the Convention can be taken with the prior permission of the Central Authority.</p> <p>In accordance with Article 18, a diplomatic or consular officer or a commissioner authorized under Article 15, 16, and 17 may apply for appropriate assistance to obtain the evidence by compulsion to the District Court within whose territory the evidence is to be taken.</p> <p>The Republic of India will not execute Letters of Request issued in pursuance of Article 23 of the Convention for the purpose of obtaining pre-trial discovery of documents, which requires a person to produce any documents other than particular documents specified in the Letter of Request, which are likely to be in his possession, custody or power.</p>
Israel	No declaration or reservation regarding Chapter II.
Italy	The Italian Government declares, in accordance with Article 18, that a diplomatic officer, consular agent, or commissioner who is taking evidence under Article 15, 16, or 17, may apply to the authority designated by the Italian State under (4) paragraph 2 below, for appropriate assistance to obtain the evidence by compulsion.
Korea	<p>Reservations</p> <p>In accordance with Article 33, the Republic of Korea excludes the application within its territory of the provisions of Articles 16 and 17 of Chapter II of the Convention.</p> <p>Declarations</p> <p>1. In accordance with Article 8, the Government of the Republic of Korea declares that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request with prior authorization by the competent authority of the Republic of Korea.</p> <p>2. In accordance with Article 23, the Government of the Republic of Korea declares that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents. The Government of the Republic</p>

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	<p>of Korea further declares that it understands "Letters of Request issued for the purpose of obtaining pre-trial discovery of documents" for the purposes of the foregoing Declaration as including any Letter of Request which requires a person:</p> <p>a. To state what documents relevant to the proceedings to which the Letter of Request relates are, or have been, in his or her possession, custody or power; or</p> <p>b. To produce any documents other than particular documents specified in the Letter of Request as being documents appearing to the requested court to be, or to be likely to be, in his or her possession, custody, or power.</p>
Kuwait	No declarations re reservations.
Latvia	No declarations or reservations regarding Chapter II.
Liechtenstein	<p>Declaration concerning Article 8 of the Convention: Pursuant to Article 35 (2) of the Convention, the Principality of Liechtenstein declares that members of the judicial personnel of the requesting authorities who are part of the proceedings of a Contracting State may be present at the execution of a Letter of Request, if they have received prior authorization by the authorities that are competent for the execution.</p> <p>Declaration concerning Article 11 of the Convention: Pursuant to Article 11 of the Convention, the Principality of Liechtenstein recognizes the privileges and duties of the person concerned to refuse to give evidence in so far as the person has these privileges and duties under the law of his State of origin.</p> <p>Declaration concerning Articles 15, 16, and 17 of the Convention:</p> <p>Pursuant to Article 35 of the Convention, the Principality of Liechtenstein declares that the taking of evidence as referred to in Articles 15, 16, and 17 of the Convention is subject to prior permission by the Government of the Principality of Liechtenstein.</p> <p>Declaration concerning Article 18 of the Convention: The Principality of Liechtenstein does not grant any</p>

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	<p>assistance by measures of compulsion to diplomatic officers or consular agents acting under Articles 15, 16, and 17 of the Convention.</p> <p>Declaration concerning Article 23 of the Convention: Pursuant to Article 23 of the Convention, the Principality of Liechtenstein declares that Letters of Request issued for the purpose of obtaining pre-trial discovery of documents will not be executed.</p>
Lithuania	<p>Whereas it is provided in Article 16 of the Convention, the Republic of Lithuania declares that a diplomatic officer or consular agent of a Contracting State may take evidence, without compulsion, of citizens of the Republic of Lithuania under the Law on Citizenship of the Republic of Lithuania, only under the prior permission of the Ministry of Justice of the Republic of Lithuania. The permission to take evidence issued by the Ministry of Justice of the Republic of Lithuania shall indicate that:</p> <ul style="list-style-type: none">(a) evidence shall be taken by a diplomatic officer or consular agent only within the premises of the embassy or consular institution of the State which he/she represents;(b) the Ministry of Justice of the Republic of Lithuania shall be informed about the time and place of the taking of evidence;(c) evidence shall be taken in the Lithuanian or another language understandable to the person giving evidence or taking of evidence and shall be accompanied by a translation into the Lithuanian or another language understandable for such person;(d) The document concerning the taking of evidence written in the language understandable to the person giving evidence shall be signed by this person. The copy of such document shall be forwarded to the Ministry of Justice of the Republic of Lithuania; <p>And whereas it is provided in Article 17 of the Convention, the Republic of Lithuania declares that a person duly appointed as a commissioner for this purpose may, without compulsion, take evidence in the territory of the Republic</p>

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	<p>of Lithuania from the person which is a citizen of the Republic of Lithuania under the Law on Citizenship of the Republic of Lithuania, if the Ministry of Justice of the Republic of Lithuania has given its prior written permission. The permission issued by the Ministry of Justice of the Republic of Lithuania shall indicate that:</p> <ul style="list-style-type: none">(a) The Ministry of Justice of the Republic of Lithuania shall be informed about the time and place of the taking of evidence;(b) The evidence shall be taken in the Lithuanian or another language understandable to the person giving evidence or taking of evidence shall be accompanied by a translation into the Lithuanian or another language understandable for such person;(c) The document concerning the taking of evidence written in the language understandable to the person giving evidence shall be signed by this person. The copy of such document shall be forwarded to the Ministry of Justice of the Republic of Lithuania;
Luxembourg	<p>In accordance with the provisions of Article 16, the Parquet Général is designated as the authority competent to authorize the diplomatic officers or consular agents of a Contracting State to take, without compulsion, the evidence of persons other than the nationals of that State in aid of proceedings commenced in the courts of the State which they represent. This authorization, which is given in each specific case and to which specific conditions, where appropriate, are attached, is granted under the following general conditions:</p> <ul style="list-style-type: none">1. The evidence shall be taken only within the precincts of an Embassy or Consulate;2. The Parquet Général shall be given reasonable advance notice of the time, date, and place of the taking of evidence so that it can, if it wishes, be represented;3. A request to a person to appear shall, in accordance with the regulations, be in the form of an official document in French or German or accompanied by a translation into one of these languages stating:<ul style="list-style-type: none">(a) That the evidence is to be taken in

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	<p>accordance with the provisions of the Evidence Convention, and in the framework of a judicial procedure followed in a jurisdiction designated by a Contracting State;</p> <ul style="list-style-type: none">(b) That the appearance is voluntary and that no prosecution in the requesting State will result from failure to appear;(c) That the parties to the action, where appropriate, consent to the taking of the evidence or are opposed to it for reasons to be given;(d) That the person requested to appear may be legally represented;(e) That the person requested to appear may invoke a privilege or a duty to refuse to give evidence. <p>In accordance with the provisions of Article 17, the Parquet Général is designated as the authority competent to authorize persons designated in accordance with the regulations as commissioners to take evidence, without compulsion, in aid of proceedings commenced in the courts of another Contracting State. This authorization, which is given in the particular case and to which specific conditions, where appropriate, are attached, is granted under the following general conditions:</p> <ol style="list-style-type: none">1. The Parquet Général shall be given reasonable advance notice of the time, date and place of the taking of evidence so that it can, if it wishes, be represented;2. A request to a person to appear shall, in accordance with the regulations, be in the form of an official document in French or German or accompanied by a translation into one of these languages stating:<ul style="list-style-type: none">(a) That the evidence is to be taken in accordance with the provisions of Evidence Convention, and in the framework of a judicial procedure followed in a jurisdiction designated by a Contracting State;(b) That the appearance is voluntary and that no prosecution in the requesting State will result from failure to appear;(c) That the parties to the action, where
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	<p>appropriate, consent to the taking of the evidence or are opposed to it for reasons to be given;</p> <p>(d) That the person requested to appear may be legally represented;</p> <p>(e) That the person requested to appear may invoke a privilege or a duty to refuse to give evidence.</p>
Macedonia	<p>The Government of the Republic of Macedonia declares, in accordance with Article 8, that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request, provided they have obtained prior authorization from courts of first instance of the Republic of Macedonia.</p> <p>In accordance with Article 23 of the Convention, the Republic of Macedonia declares that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries.</p>
Mexico	<p>The United Mexican States makes a special and complete reservation concerning the provisions contained in Articles 17 and 18 of this Chapter in relation to the "commissioners" and the use of measures to compulsion by diplomatic officers and consular agents.</p>
Monaco	<p>In accordance with Articles 16 and 17, the Directorate of Judicial Services is designated as a competent authority for the purpose of authorizing, as appropriate:</p> <ul style="list-style-type: none">– the consular authorities of a Contracting State to take the evidence without compulsion of persons other than nationals of that State and in aid of proceedings commenced in a court of the State which they represent, or– persons duly designated as commissioners to take evidence without compulsion in aid of proceedings commenced in a court of the Contracting State. <p>Such authorization, which shall be granted for each particular case and may contain specific conditions, shall be subject to the following general conditions:</p> <p>(a) Evidence shall be taken solely on the</p>

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	<p>premises of consulates when the latter are situated within the Principality, and in other cases in the Palais de Justice of Monaco;</p> <p>(b) The Directorate of Judicial Services shall be informed of the date and time of the taking of the evidence in time to permit the Directorate to be represented, and, if necessary, to provide courtroom accommodation at the Palais de Justice of Monaco;</p> <p>(c) The persons concerned in the taking of evidence shall be duly summoned by an official document drawn up in French or accompanied by a translation in that language; this document shall indicate:</p> <p>That the taking of the evidence in question is being conducted in accordance with the provisions of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, and that the procedure constitutes part of legal proceedings pursued under the specially designated jurisdiction of a Contracting State;</p> <p>That appearance is voluntary and non-appearance would not entail legal proceedings in the requesting State;</p> <p>That the person concerned in the taking of evidence may be represented by a lawyer or defense counsel;</p> <p>That the parties in the proceedings, should they be instituted, give their consent, and if not the document shall state the reasons for their opposition;</p> <p>That the person concerned in the taking of evidence may apply to be exempted or barred from testifying.</p> <p>A copy of the summonses shall be sent to the Directorate of Judicial Services, which is also to be kept informed of any difficulties</p>
Netherlands	<p>Article 16. In the Netherlands, no prior permission is required for the taking of evidence as provided for in Article 16. Article 17. The permission referred to in Article 17 must be requested from the President of the District Court in the area in which evidence is to be taken. If evidence is to be taken from witnesses or experts, the area in question will be that in which the witnesses, or experts, or the majority of them, reside. If the President gives permission, he may impose any conditions which he</p>

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	<p>considers necessary to ensure that the evidence is taken in a proper manner. He may decide that the evidence should be taken at the court, under the supervision of a judge designated by him. Permission will only be granted if the following conditions are met: the witness or expert concerned must have been duly summoned; the summons must be in Dutch or must be accompanied by a Dutch translation and must contain:</p> <p>the facts of the case and a summary of the proceedings in connection with which the evidence is to be taken, and details of the court which has requested the evidence; a statement to the effect that there is no obligation for the witness or expert to appear, and that if he refuses to appear, to take an oath, to give his word of honor or to give evidence, he will not incur any penalty or measure of any kind, either in the Netherlands or in the State where the proceedings have been instituted;</p> <p>a statement to the effect that the person concerned may be legally represented; a statement to the effect that in so far as the person concerned has a privilege or duty to refuse to give evidence, he may do so; a statement to the effect that the commissioner will reimburse expenses incurred by the witness or expert in connection with his appearance to give evidence.</p> <p>A copy of the summons must be forwarded to the President. The request for permission must state the reasons why the taking of evidence has been entrusted to a commissioner and it must state the commissioner's official status unless he is a lawyer competent to practice in the Netherlands. The costs of taking the evidence, i.e. the expenses of the witnesses, experts or interpreters, must be reimbursed in full. Article 23. a statement to the effect that in so far as the person concerned has a privilege or duty to refuse to give evidence, he may do so; a statement to the effect that the commissioner will reimburse expenses incurred by the witness or expert in connection with his appearance to give evidence. A copy of the summons must be forwarded to the President. The request for permission must state the reasons why the taking of evidence has been entrusted to a commissioner and it must state the commissioner's official status unless he is a lawyer competent to practice in the Netherlands. The costs of taking the evidence, i.e. the expenses of the witnesses, experts or interpreters, must be reimbursed in</p>
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	full.
Norway	By virtue of Article 15, evidence can be taken by diplomatic officers or consular agent's only if, upon application, prior permission to that effect has been granted.
Poland	No declaration or reservation to Chapter II.
Portugal	In accordance with Articles 15 of the Convention, the Portuguese State makes the following declaration: The Portuguese State declares that the evidence as referred to in Article 15 can only be taken if permission to that effect is given by the appropriate authority designated by it upon application made by the diplomatic or consular agent.
Romania	Romania will not apply the provisions of Articles 16, 17, and 18 of Chapter II of the Convention. Romania declares that Articles 19 and 21 will not be applicable; in as far as that they refer to Articles 16, 17, and 18, to which the reservation was made.
Russian Federation	No declaration or reservations. No Central Authority Named. Depositions Not Permitted (Ask-OCS-L@state.gov)
Seychelles	No declarations or reservations regarding Chapter II.
Singapore	The whole of Chapter II of the Convention shall not apply to the Republic of Singapore.
Slovak Republic	In connection with Article 18 of the said Convention, that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16, and 17, may request the competent Slovak court or the Slovak State notary to carry out procedural action and that such a diplomatic officer, consular agent or commissioner will transmit the dossier to that court or notary through the intermediary of the Minister of Justice of the Slovak Republic in Bratislava, provided the principle of reciprocity is applied.
Slovenia	No declaration or reservation to Chapter II.

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South Africa	Excludes the application of the provisions of Articles 15 and 16 of Chapter II of the Convention.
Spain	In accordance with Articles 16 and 17, the evidence may be taken, without prior permission of the Spanish Authority, in the premises of the diplomatic or consular representation of the requesting State.
Sri Lanka	The Government of Sri Lanka, in terms of Article 33, excludes in whole, the application of the provisions of Chapter II of the Convention.
Sweden	That, in pursuance of Article 15, para. 2, a diplomatic officer or consular agent may only take evidence if permission to do so has been granted by the competent Swedish authority.
Switzerland	Permission of Swiss Ministry of Justice Required In accordance with Article 35, Switzerland declares that evidence may be taken according to Articles 15, 16, and 17 subject to prior authorization by the Federal Justice and Police Department. A request for authorization must be addressed to the Central Authority in the canton where the evidence is to be taken. See Swiss International Mutual Cooperation in Civil Matters
Turkey	The Ministry of Justice has been designated as the competent authority empowered to grant permission envisaged in Articles 16 and 17.
Ukraine	Ukraine excludes the application within its territory of the provisions of Chapter II of the Convention, except for Articles 15, 20, 21, and 22.
United Kingdom	In accordance with Article 18 Her Majesty's Government declare that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16, and 17 may apply to the competent authority designated hereinbefore for appropriate assistance to obtain such evidence by compulsion provided that the Contracting State whose diplomatic officer, consular agent or commissioner makes the application has made a declaration affording reciprocal facilities under Article 18. In accordance with Article 27 Her Majesty's Government

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	declare that by the law and practice of the United Kingdom of the prior permission referred to in Articles 16 and 17 is not required in respect of diplomatic officers, consular agents or commissioners of a Contracting State which does not require permission to be obtained for the purposes of taking evidence under Articles 16 or 17."
Venezuela	"The Republic of Venezuela will not allow commissioners as provided for in Chapter II of this Convention to act in obtaining evidence".

(4) Mutual Legal Assistance in Criminal Matters Treaties (MLATs) (see 7 FAM 960).

- e. Information on the CA Internet, Post and International Organization Web Pages: CA/OCS/L (Ask-OCS-L@state.gov) maintains general information brochures about obtaining evidence and country-specific information brochures about judicial assistance at the Consular Affairs Internet home page. Posts that conduct many depositions also have information on post web pages about judicial assistance.

CA Internet Home Page See:

Travel.state.gov (Law and Policy, Judicial Assistance)

Post Judicial Assistance Home Pages ...For Example:

U.S. Embassy Tokyo Judicial Assistance Page

U.S. Embassy Bern, Switzerland Judicial Assistance Page

International Organization Judicial Assistance Home Pages

Hague Conference on Private International Law

EUROPA Judicial Atlas in Civil Matters

EUROPA Judicial Network in Civil and Commercial Matters

EUROPA Judicial Cooperation Between Member States in Civil and Commercial Matters

- f. Countries that Prohibit Taking Depositions: If a consular officer in a country that prohibits taking depositions receives a court order issued by a Federal court in the United States ordering a consular officer to participate in taking the deposition of a willing witness, you should immediately notify CA/OCS/L (Ask-OCS-L@state.gov), which will coordinate with L/CA in responding to the court order.
- g. Oral and Written Depositions: Depositions may be taken in person (oral depositions) or based on written questions. Procedures for oral and written depositions are similar. 7 FAM Exhibit 921 provides guidelines in

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taking depositions at post. Written depositions are those where counsel are not present, but have provided questions in writing, which are posed by the consular officer and answered orally by the deponent. Oral depositions are those where counsel are present and pose the questions themselves. They are preferred because counsel can adjust questions in light of the deponent's answers. If attorneys agree, the consular officer may withdraw after the necessary oaths are taken.

- h. Scheduling Depositions: A deposition should be scheduled for a date and time mutually agreeable to the consular officer, counsel, and witness(es). Depositions may be taken "on notice" 22 CFR 92.52, or pursuant to a commission issued a court, 22 CFR 92.53.
- i. Arranging for Stenographer, Videographer, or Interpreter:
 - (1) While the duties of a consular officer include contacting the witness(es) and acting as, or retaining, an interpreter/translator and stenographer, resource constraints generally require that requesting counsel arrange for the presence or appearance of the witness, stenographer, and interpreter at the consular section for the taking of the deposition;
 - (2) Consular officers assist only as necessary; and
 - (3) If requesting counsel, citing 22 CFR 92.56, asks the consular officer to make all such arrangements, point out that the consular officer has other statutory duties that must take precedence. In addition, the consular officer is responsible for emergency services. Consequently, arrangements for the logistics of a deposition may take the consular officer more time than it would to request counsel.
- j. Consular Officers Administering Oaths and Withdrawing Subject to Recall: The consular officer administers the oaths to the witness(es), the stenographer or video operator and, if present, the interpreter or translator. After the oaths have been taken, the consular officer must ensure that any withdrawal or objection is recorded, noting the agreement of the attorneys and whether the officer was subject to recall. The names of all persons present should also be included in the record.
- k. Instructing the Stenographer or Video Operator: The consular officer must ensure that the stenographer or video operator is instructed by the parties' counsel to transcribe the proceedings verbatim and to give the transcript to the witnesses for correction and signature. Counsel can waive this requirement by mutual consent in certain cases.
- l. Transcript: When the transcript has been made, the stenographer must execute before the consular officer an affidavit certifying that the record in the matter is a true and accurate transcription from notes made by the stenographer. This affidavit must give the date on which the notes were

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taken and indicate whether the transcribed testimony was given to the witnesses for correction, and, if so, whether any changes were made and in what manner. It must be attached to the testimony.

- m. Consular Closing Certificate: The consular officer must also prepare a certification indicating that the witnesses (listed by name) were duly sworn by the consular officer and that, in accordance with an agreement of the parties, the officer withdrew, subject to recall, as reflected in the attached notice of commission. This certification must also refer to the stenographer's affidavit of accuracy (see section 7 FAM 925.1 e).
- n. Consular Fees: Consular officers must charge the current fees for administering each oath, for handling and returning the deposition, and for performing any other services for which fees are customarily charged. (See Schedule of Fees, 22 CFR 22.1.) Bear in mind that:
 - (1) Scheduling Fee and Deposit for Deposition Fees: A minimum deposit specified in 22 CFR 22.1 must be paid to the Embassy or Consulate before a deposition can be scheduled. If the consular officer believes the fees will far exceed the minimum deposit, a larger deposit should be requested. The fee should be in the form of a certified check or money order payable to the post concerned. It is used to cover consular officer and staff time in scheduling the deposition, and is not refundable if the deposition is canceled. If rescheduled, another deposit should be collected. Submit the deposit to the post's class B cashier for placement in a post SDA (Suspense Deposit Abroad 19x6809) account, to be drawn upon for deposition fees as required;
 - (2) Payment of Fees: Payment in full should be received prior to the departure of the attorneys. Exception: if large sums of money are necessary, a written acknowledgment for the debt should be executed by the requesting counsel in the form of an affidavit; and
 - (3) Fees for Services Outside Consular Premises or After Hours: If depositions are taken outside consular premises at some distance, or after working hours, charge appropriate fees for consular transportation costs. (See Schedule of Fees, 22 CFR 22.1.)
- o. Post Role Regarding Interpreting or Translating:

NOTE: The consular officer, as a rule, may not serve as interpreter or translator. While 22 CFR 92.56 states that consular officers may act as interpreters/translators, few officers are fluent enough in technical aspects of languages to do so.

- (1) When necessary and practicable, the officer may see to it that a qualified interpreter is engaged;
- (2) Counsel must agree about the fees appropriate for such private

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persons and should pay for the services;

- (3) If a U.S. Government agency requests retention of such services, it should furnish a Federal appropriation number and fund code; and
- (4) If no qualified interpreter or translator is available in the host country, the witness being deposed must have the questions posed and the responses translated by a competent person engaged outside the host country by the requesting counsel. In the case of written interrogatories, the questions must always be submitted both in English and in translation in the native language of the deponent. The deponent(s) may record responses in writing in their native language. Funds for translating the questions and the deponent's responses into English must be provided by the requesting party.

p. Stenographer or Video Operator: Requesting parties often bring a stenographer or video operator from the United States in oral deposition proceedings. In the case of written interrogatories, if no stenographer is available locally, the witnesses may write out their own responses. If appropriate, a Foreign Service national employee or Foreign Service secretary may act as stenographer, charging fees set forth in 22 CFR 22.1.

q. Oaths to be used by Consular Officers in Taking Depositions: The consular officer should administer oaths with the appropriate solemnity.

(1) Oath for Witnesses;

Do you solemnly swear (or affirm) that you will tell the truth, the whole truth, and nothing but the truth, in answer to the several questions now to be put to you?

(2) Oath for Stenographer, Court Reporter or Video Recorder Operator; and

Do you solemnly swear (or affirm) that you know the English and (name of appropriate language) languages and that you will truly and impartially reduce to writing or (take down notes and faithfully transcribe, video record) the questions to be asked of the witness and the testimony of (witness' name), a witness now to be examined?

(3) Oath for Interpreter or Translator:

Do you solemnly swear (or affirm) that you know the English and (name of languages and that you will truly and impartially interpret (or translate) the oath to be administered and questions to be asked of (name of witness), a witness, now to be examined, out of the English into the (name of) language, and that you will truly and impartially interpret (or

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translate) the answers of (name of witness) out of the (name of) language, into the English language?

- r. Department of Legal Counsel Participating in Depositions:
 - (1) Counsel for the party requesting an oral deposition has the right to conduct a direct examination of the witness without interruption, except in the form of objection by the opposing counsel;
 - (2) The opposing counsel has the same right on cross-examination;
 - (3) Cross-examination may be followed by re-direct and re-cross-examination until the interrogation is completed; and
 - (4) The consular officer should try to restrain counsel from indulging in lengthy conversations among themselves, digressions from the principal line of argument, or asides, and attempts to mislead the witness. Some witnesses may wish to be accompanied by an attorney to protect their interests.
- s. Objections: The consular officer has no authority to sustain or overrule objections but should ensure that they are recorded, as provided in section 7 FAM 922.

7 FAM 922 PROCEDURES FOR WRITTEN EXAMINATION OF WITNESSES

(CT:CON-130; 03-22-2006)

- a. While written depositions are now only rarely taken by consular officers, it remains important to follow carefully procedures in obtaining testimony (see 22 CFR 92.58). When a witness does not understand the meaning of a question, the consular officer should explain it, if possible, taking special care to elicit an answer strictly responsive to the question.

NOTE: While 22 CFR uses the term "interrogatories", the Federal Rules of Civil Procedure has been changed to use the term "questions". This subchapter reflects the change, which is more easily understood by witnesses.

- b. Do not give the witness a copy of the questions, or allow the witness to examine them, before the questioning. It may be necessary for the officer to indicate the general nature of the evidence being sought, but the officer should not give this information in sufficient detail to permit the witness to formulate answers in advance.
- c. The written questions should not be repeated in the record, but references to them should be made as follows:

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To the first question, the witness responded that. . . .

- d. All written questions must be put to the witness, even if the witness disclaims further knowledge of the subject.
- e. When counsel for all the parties attend an examination conducted on written questions, the consular officer may, if counsel consents, permit oral examination of the witness following the examination on written questions. The oral examination should be conducted in the manner and order as if no written examination had preceded it.
- f. To refresh a faded memory, permit a witness to refer to notes, papers, or other documents. Such occurrences must be noted in the record of the testimony. (See 22 CFR 92.60(b)).
- g. When a witness confers with the accompanying attorney before answering an interrogatory, the consular officer should also include that fact in the record. (See 22 CFR 92.60 (c)).
- h. The consular officer should request the witness not to leave the officer's presence or the presence of the counsel asking the questions during the examination, except during recesses for meals, rest, and similar purposes. Note in the record failure of the witness to comply with this request.
- i. If examination of a witness requires several hours or days, permit recesses for reasonable periods and for sufficient reasons.
- j. The consular officer must mark, by exhibit numbers or letters; all documents identified by a witness or counsel and submitted for the record.

7 FAM 923 ROLE OF U.S. JUDGES

(CT:CON-130; 03-22-2006)

- a. Judges from U.S. Federal, State, or local courts, including administrative law judges, should not perform official functions in foreign countries without the express consent of host country authorities. Such actions may violate the judicial sovereignty of the host country.
- b. Judges occasionally attempt to "hold court" in U.S. embassies and consulates during the taking of depositions. Consular officers should report such incidents to the Department (CA/OCS).
- c. In March 1978 the Judicial Conference of the United States, Committee on Court Administration, disapproved, as a matter of policy, the practice of Federal judges traveling abroad to take testimony or depositions in cases pending before them. (See 7 FAM 942.)

7 FAM 924 ROLE OF SPECIAL MASTERS

(CT:CON-130; 03-22-2006)

- a. A Special Master is an officer appointed by a court to act as its representative in some limited or specific legal function. Federal Special Masters are appointed pursuant to Rule 53 of the Federal Rules of Civil Procedure. Like judges of U.S. Courts, Special Masters should not perform official functions in foreign countries without host country consent.
- b. The use of Masters is to aid judges in performance of special duties as they may arise in a case. Their appointment and activities are only for the purpose of assisting the court to get at the facts in cases of complicated litigation, usually where special knowledge or expertise is required.
- c. The word "Master" includes a referee, an auditor, a commissioner, and an assessor. Participation of a Special Master in depositions in complicated matters can be very helpful to consular officers who generally are not attorneys and who do not have expertise in the subject matter of the deposition.
- d. When a Special Master participates in a deposition, the consular officer should instruct the court reporter/stenographer to include in the record any objection the participants may have to any of the actions of the Master.

7 FAM 925 PREPARATION OF THE RECORD

7 FAM 925.1 Transcription and Signing of the Record

(CT:CON-130; 03-22-2006)

- a. Stenographer, Court Reporter, Or Transcription by Non-Stenographic Means: Depositions are usually recorded by a stenographer or court reporter, but other means, such as tape recording or videotaping, may be used. For information about how to prepare the record in such cases, see 7 FAM 926.3 e, 22 CFR 92.61, and 22 CFR 92.62.
- b. Transcript: After examination of a witness is completed, the stenographic record of the deposition must be fully transcribed, and the transcript attached securely to any document or documents to which the testimony in the record pertains.
- c. Review of Transcript by Witness: The transcription must then be submitted to the witness for examination by and read to or by the

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witness, unless the examination and reading are waived by the witness. Any changes in form desired by the witness must be entered on the record, at the end of the record of the deposition, by the consular officer, with a statement of the reasons given by the witness for the changes. No substantive changes can be made, but additions or clarifications may be added. The deponent, however, may provide a statement correcting previous testimony, or otherwise protect against a charge of perjury.

- d. **Witness Signature:** The witness must then sign the transcript and initial in the margin each correction made at the witness's request. Since the witness may depart before the transcript is completed, the consular officer should request counsel to send the original transcript to the witness with instructions to return it to the consular officer in person to sign it.
- e. **Stenographer, Video Operator and Interpreter Signature:** The stenographer or video operator and interpreter must execute affidavits certifying the accuracy of their work. (See 7 FAM Exhibit 925.1e).
- f. **U.S. State Requirements:** Some U.S. states require the witness and the officer taking the deposition to sign each page. Do so only on the explicit instructions of the requesting counsel. See the sample record of a deposition in 7 FAM Exhibit 925.1f.
- g. **Fees:** Charge appropriate fees (see 22 CFR 22.1) and note them on the statement of account. For a sample statement, (see 7 FAM Exhibit 925.1g).
- h. **Consular Closing Certificate:** The consular officer should prepare a closing certificate of the deposition (see 7 FAM Exhibit 925.1h and 22 CFR 92.62).

7 FAM 925.2 Arrangement of Papers

(CT:CON-130; 03-22-2006)

- a. Unless special instructions to the contrary are received, arrange the papers forming the completed record of the deposition in the following order from the bottom of the packet to the top:
 - (1) Commission to take depositions (or notice of taking depositions), with written questions, if any, exhibits, and other supporting documents fastened to it;
 - (2) Statement of fees charged;
 - (3) Transcript of the deposition of the various witnesses, including any exhibits the witnesses may have submitted;
 - (4) Stenographer/interpreter affidavits; and

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(5) Closing certificate (see 7 FAM Exhibit 925.1h, 22 CFR 92.63.)

- b. Fasten all the above papers together, and affix the consular officer's seal to the closing certificate. Use ribbons and wafer seals only if requested.

7 FAM 925.3 Filing of Depositions

(CT:CON-130; 03-22-2006)

- a. Place the above papers in an envelope and seal it with the wax engraving seal of the post or rubber stamp seal with the signature of the consular officer across the envelope flap. The envelope must be endorsed with the title of the action and marked and addressed to the clerk of the court. Do not mail the documents directly to the court unless specifically instructed by participating counsel to do so.
- b. Send the sealed envelope by registered mail to the counsel for the party that asked for the deposition unless the consular officer is instructed by counsel to send it to the court where the action is pending. If returned to the court, the envelope must indicate the title of the action. (See 7 FAM Exhibit 925.3). When the action is a Federal criminal case, send it to the Department (CA/OCS) for onward transmission or directly to the U.S. Department of Justice, Federal Prosecutor, or defense counsel, when instructed to do so.
- c. Requesting counsel will often request that you transmit the documents by commercial express courier service, for which requesting counsel bears the costs. If international registered mail is unreliable in the host country, return depositions by pouch through the Department (CA/OCS) for relay to the court. Registered APO mail may also be used.
- d. See 22 CFR 92.64.

7 FAM 925.4 Furnishing Copies

(CT:CON-130; 03-22-2006)

- a. The consular officer may provide a copy of a deposition to the deponent or to any party to the action upon payment of the copying fees. Such copies may also be presented to the parties of action directly by the stenographer employed by counsel. If State rules require depositions to be sent to requesting counsel, comply with such a request. (See 22 CFR 92.64).
- b. If a deponent desires certification under official seal that the copy is a true copy, also charge the certification fee prescribed in the Schedule of Fees (see 22 CFR 22.1).

7 FAM 926 MODERN PROCEDURES FOR RECORDING AND TAKING DEPOSITIONS

7 FAM 926.1 Impact of Advancing Technologies

(CT:CON-449; 03-25-2013)

The growing trend toward the use of telephones, videotape, video teleconference, tape recording and other more sophisticated ("High Tech") means of obtaining evidence abroad compels the consular officer to observe carefully the pertinent legal procedures, if any, of the host country. Obtaining evidence under certain circumstances may place additional burdens on the consular officer's time, especially when arrangements must be made for the use of dedicated international telephone lines and special telephone conference systems. When in doubt about recording or taking testimony under unusual circumstances, consult CA/OCS/L (*Ask-OCS-L@state.gov*).

7 FAM 926.2 Taking Depositions by Telephone

(CT:CON-130; 03-22-2006)

a. Rule 30(b)(7) of the Federal Rules of Civil Procedure states that:

"The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1) (of the Federal Rules of Civil Procedure), a deposition taken by such means is taken in the district and at the place where the deponent is to answer questions."

b. Consular officers may be called upon to administer oaths to witnesses, generally on consular premises, who will then be deposed by telephone from the United States. Charge only the fee for administering oaths, since the requesting counsel will ask the questions by telephone and responses will be recorded in the United States by stenographic or other means.

7 FAM 926.3 Recording Depositions by Nonstenographic Means

(CT:CON-130; 03-22-2006)

a. Rule 30(b)(4) of the Federal Rules of Civil Procedure states that:

"Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name

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and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters."

- b. At present, the non-stenographic means referred to in Rule 30(b)(4) of the Federal Rules of Civil Procedure are tape recording and videotaping. The consular officer should amend the wording of the certification to state the means used to record the deposition. 7 FAM Exhibit 926.3 provides guidelines on recording depositions by a non-stenographic method (tape recording, video teleconference, etc.).

See ...

ABA E Technology Report Trends in the Electronic Courtroom

ABA GPSOLO Practice Management Technology

Courtroom 21 Project

National Center for State Courts (NCSC); NCSC Technology

Administrative Office of U.S. Courts Pacer Service Center

- c. Counsel is responsible for providing the tape recording and videotape equipment. Embassy equipment, when available, may be used to make a duplicate recording of the deposition but advise counsel that the consular officer will assume no responsibility for the quality of the recording.
- d. Transporting electronic equipment of the kinds used in recording depositions is not permissible in some foreign jurisdictions. Be prepared to advise requesting counsel of the possibility that the host country government may confiscate the equipment or otherwise require it's pre-clearance into the host country.
- e. In filing depositions executed by non-stenographic means, the consular officer should prepare written certification about both the administration of an oath to the witness and the video camera operator or operator of the recording device. Attach the certification to the videotape or tape recording, place it in an envelope, and seal it similar to the sealing of a deposition. (See 7 FAM 925.2 b.) Then send it to counsel or the court of pending action.

7 FAM 927 LIVE VIDEOCONFERENCE COURTROOM TESTIMONY

(CT:CON-449; 03-25-2013)

In recent years, posts abroad have been called upon to participate in live videoconference testimony directly to a courtroom in the United States. Such requests should be coordinated with CA/OCS/ACS, CA/OCS/L and L/CA. The use of this procedure is dependent on the laws of the host country regarding the taking of testimony. If a Federal court in the United States orders a post to participate in such a proceeding, post should notify CA/OCS/L (Ask-OCS-L@state.gov) immediately. CA/OCS/L will coordinate with L/CA in responding to the court.

See ...

U.S. v. Anita Yates, Anton F. Pusztal, U.S. Court of Appeals for the Eleventh Circuit, No. 02-13654, D.C. Docket No. 00-00109-CR-N-2, November 24, 2004. (Taking testimony by video teleconference from Australia.) The Court of Appeals concluded that the testimony violated the Defendants' Sixth Amendment right to confrontation, and remanded the case for a new trial.

United States v. Nippon Paper Industries, Co., Ltd., Order (D. Mass., July 28, 1998); Order July 28, 1998

The U.S. District Court for the District of Massachusetts has allowed the use of video teleconferencing to take the testimony of a prosecution witness located in Japan. The case involved a criminal antitrust action against several Japanese paper companies accused of attempting to fix prices of thermal fax paper sold in the United States.

In granting the government's motion to allow the use of videoteleconferencing, the Court drew from precedent associated with videotaped testimony under Federal Rule of Criminal Procedure 15, which allows deposition of a witness by videotape under "exceptional circumstances." The Court noted that one of the main constraints on the use of videotape has traditionally been its incompatibility with the Sixth Amendment's Confrontation Clause, which guarantees the right of the accused, "in all criminal prosecutions ... to be confronted with the witnesses against him." An important part of this confrontation is the opportunity for the jury to evaluate a witness's demeanor first hand. The court found that simultaneous video teleconferencing avoided many of these problems, since it allows real-time questioning and cross-examination of a witness in a formal trial setting in the presence of the judge, jury, and counsel.

Despite objections by the defendant, the court in this instance did not take the teleconference testimony in the presence of the jury. Citing time

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differences and concerns over the witness's poor health, Judge Gertner ordered that the teleconference testimony be recorded and replayed for the jury the following day. She ruled that the defendant, having "waived the principle components of its Confrontation Clause rights by agreeing to the appearance of the witness through a video screen ... had also waived his right to confront the accuser in 'real time.'"

Judge Gertner cautioned, however, that although the demands for the use of video teleconferencing in international litigation are likely to increase, the loss of the immediacy of face-to-face contact between the witness and the others present in the courtroom still argues for limiting its use.

7 FAM 928 THROUGH 929 UNASSIGNED

7 FAM Exhibit 921

GUIDELINES FOR TAKING DEPOSITIONS

(CT:CON-130; 03-22-2006)

THINGS TO REMEMBER CONCERNING THE SCHEDULING OF A DEPOSITION:

1. Are depositions permitted by host country law? If so, is notification to the Foreign Ministry required?
2. Is the requesting attorney an official of U.S. State, local or Federal government? If so, obtain host country clearance from the Foreign Ministry as appropriate.
3. Is the witness willing to be deposed?
4. Will the deposition be done with oral or written questions?
5. What date is proposed for taking the deposition? Is the date compatible with the consular officer's schedule?
6. How many people will be attending the deposition?
7. Will the deposition take place on consular premises? If so schedule the use of a room large enough to accommodate the deposition.
8. Will a consular officer be needed to administer oaths to witnesses and others? Will the officer's presence be required throughout the proceeding or can the officer withdraw after administering the oaths, subject to recall?
9. Will the services of a stenographer or interpreter/translator be required? Are such services available in the host country or must they be retained in the United States?
10. Is the evidence to be obtained using non-stenographic means, such as telephone, videotape, or more advanced technology? If so, obtain host country authority, if appropriate.
11. Who will arrange for the witness, stenographer, and interpreter to meet counsel at the post at a designated hour? (Preferably requesting counsel.)
12. Who is paying for the deposition? Obtain a deposit or Federal appropriation number and fund code.

THINGS TO REMEMBER CONDUCTING THE DEPOSITION:

1. Administer oaths to stenographer, interpreter/translator, and witness as appropriate.
2. Consular officer withdraws, if appropriate, after instructing stenographer to record departure, enumerate names of those present, transcribe proceedings, and give transcript to the witness for review.

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3. Stenographer and interpreter/translator execute affidavits of accuracy before consular officer.
4. Witness signs record of deposition before consular officer.
5. At close of deposition consular officer prepares final statement of account and closing certificate.
6. Consular officer collects fees required under the Schedule of Fees for Consular Services (22 CFR 22.1).
7. Deposition documents are arranged and fastened together.
8. Deposition is placed in a sealed envelope correctly endorsed and addressed, bearing the post's seal, and is registered if mailed.

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7 FAM EXhibit 925.1e
AFFIDAVIT OF STENOGRAPHER, COURT
REPORTER OR VIDEO OPERATOR

(CT:CON-130; 03-22-2006)

VENUE.

Japan)	
(Name of Country))	
)	
)	
(Name of County, Province, etc.))	
)	ss:
)	
City of Tokyo)	
(Name of City))	
)	
)	
Embassy of the United States of)	
America)	
(Name of Foreign Service Post))	

Before me, (Name of Consular Officer), (Title of Consular Officer) of the United States of America at Tokyo, Japan, personally appeared the individual named below who, being duly sworn, made the following statements (or, the statements set forth in the attached instrument):

I, (name of stenographer), certify that I am a stenographer; that I faithfully transcribed the responses to the questions posed to the witness, (name of witness), as interpreted from English to Japanese by (name of interpreter), interpreter, and that the responses transcribed accurately record the witness' statements as interpreted.

(Signature of Stenographer)

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(Typed Name of Stenographer)
(Date)
(Signature of Consular Officer)
(Typed Name of Consular Officer)
(Title of Consular Officer) of the United States of America
(SEAL)
(Date)

AFFIDAVIT OF INTERPRETER

VENUE.

Japan)
(Name of Country))
)
)
(Name of County, Province, etc.))
) ss:
City of Tokyo)
(Name of City))
)
Embassy of the United States of)
America)
(Name of Foreign Service Post))

Before me, (Name of Consular Officer), (Title of Consular Officer) of the United States of America at Tokyo, Japan, personally appeared the individual named below who, being duly sworn, made the following statements (or, the statements set forth in the attached instrument):

I, (name of interpreter), certify that I understand the English language and the Japanese language. To the best of my knowledge and belief I did faithfully act as interpreter during the taking of the deposition of (name of witness), translating the English interrogatories into Japanese and the Japanese responses into English; and that the responses transcribed by (name of stenographer), stenographer, accurately record the witness's statements as interpreted by me.

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(Signature of Interpreter)

(Typed Name of Interpreter)

(Date)

(Signature of Consular Officer)

(Typed Name of Consular Officer)

(Title of Consular Officer)

(SEAL)

(Date)

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**7 FAM Exhibit 925.1f
RECORD OF A DEPOSITION**

(CT:CON-130; 03-22-2006)

Japan)
(Name of Country))
))
(State/Province/District))
) SS:
City of Tokyo)
(Name of City))
))
Embassy of the United States of)
America)
(Name of Foreign Service Post)

Deposition of a witness, taken before me, (Name of Consul), Consul of the United States of America at Tokyo, Japan, under a commission (or notice) in a certain cause pending in the United States District Court for the Southern District of New York in the matter of (Name of Plaintiff v. Name of Defendant), (Docket Number)

I examined (name of witness) under oath as follows, at my office in Tokyo, Japan:

“Do you solemnly swear (or affirm) that you will tell the truth, the whole truth, and nothing but the truth, in answer to the several questions now to be put to you?”

Because it appeared that the witness, (name of witness), could not understand the English language (or could not intelligently testify in the English language) but understood well the Japanese language, (name of interpreter), interpreter, who understands both languages well, was sworn in as follows:

“Do you solemnly swear (or affirm) that you know the English and (name of) languages and that you will truly and impartially interpret (or translate) the oath to be administered and questions to be asked of (name of witness), a witness,

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now to be examined, out of the English into the (name of) language, and that you will truly and impartially interpret (or translate) the answers of (name of witness) out of the (name of) language), into the English language?" and interpreted accordingly.

The questions, cross questions, and answers of the witness (or where the questions are written, the answers of the witness to the written questions) were taken down and transcribed by (name of stenographer), stenographer, who was sworn in as follows

"Do you solemnly swear (or affirm) that you know the English and (name of appropriate language) languages and that you will truly and impartially reduce to writing or (take down notes and faithfully transcribe) the questions to be asked of the witness and the testimony of (witness' name), a witness now to be examined?"

The transcript was then read by the witness (or to the witness by interpreter) and was signed by the witness in my presence. (name and address of witness, profession), of lawful age, after being duly sworn by me deposes and says:

To the first question: My name is (Name of witness)

To the second question: I am employed at (name of employer).

(AND SO FORTH)

(If more than one witness is being deposed in a given case, the venue and the first paragraph citing the name of the case need not be repeated. Begin record of deposition of the second witness with repetition of the interpreter/stenographer paragraphs.)

(Witness's Signature)

(Typed Name of Signature)

(Date)

(Seal)

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**7 FAM Exhibit 925.1g
STATEMENT OF ACCOUNT**

(CT:CON-365; 03-07-2011)

STATEMENT OF ACCOUNT		
Schedule of Fees		
Item No.		
52a	Scheduling, Arranging Appointments for depositions, including depositions by video teleconference (@ \$1,283 per daily appointment	\$1,283
52b	Attending or taking depositions or executing commission to take testimony (@ \$309 per hour or part thereof)	\$309
52e	Providing seal and certification of depositions	\$415.00
TOTAL CONSULAR FEES FOR TAKING DEPOSITION		\$2,007.00
Expense for mailing original deposition record to (Name and address)		\$55.00
TOTAL COST OF DEPOSITION		\$2,062.00
STATEMENT OF COST OF ONE COPY OF DEPOSITION		
76	Photocopying or otherwise duplicating a document (@ \$1.00 per copy of each page (75 pages total)	\$75.00
41a	Certifying under official seal that a copy or extract made from a private document is a true copy. (First Service \$50)	\$50.00
TOTAL FEES FOR ONE CERTIFIED COPY OF SEVENTY FIVE PAGE DEPOSITION		\$125.00

22 CFR 22.1 Schedule of Fees for Consular Services (June 2010)		
No.	Service	Fee
52	Taking depositions or executing commissions to take testimony	
a.	Scheduling, arranging appointments for depositions, including depositions by video teleconference (per daily appointment)	\$1,283.00
b.	Attending or taking depositions, or executing commissions to take testimony (per hour or part thereof)	\$309

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c.	Swearing in witnesses for telephone deposition	\$231
d.	Supervising telephone Per Hour Plus Expenses. Depositions (per hour or part thereof over the first hour)	\$231
e.	Providing seal and certification of depositions	\$415.00
53	Exemptions: Deposition or executing commissions to take testimony. Fees will not be charged when the service is performed:	
a.	At the direct request of any Federal Government agency, any State or local government, the District of Columbia, or any of the territories or possessions of the United States (unless significant time required and/or expenses would be incurred).	No Fee
b.	Executing commissions take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of Federal court on behalf of an indigent party.	No Fee

7 FAM Exhibit 925.1h CONSULAR CLOSING CERTIFICATE OF A DEPOSITION

(CT:CON-130; 03-22-2006)

VENUE

Japan)
(Name of Country))
))
))
(State/Province/District))
)) ss:
City of Tokyo)
(Name of City))
))
Embassy of the United States of)
America)
(Name of Foreign Service Post))

I do hereby certify that pursuant to a commission issued by the United States District Court for the Southern District of New York (or notice of the taking of a deposition), I examined (name of witness) under oath as follows, at my office in Tokyo, Japan.

“Do you solemnly swear (or affirm) that you will tell the truth, the whole truth, and nothing but the truth, in answer to the several questions now to be put to you?”

The witness, known to me to be the person named and described in the questions and commission. (Name of Interpreter) acted as interpreter, having been sworn by me as follows:

“Do you solemnly swear (or affirm) that you know the English and (name of) languages and that you will truly and impartially interpret (or translate) the oath to be administered and questions to be asked of (name of witness), a witness, now to be examined, out of the English into the (name of) language, and that you will truly and impartially interpret (or translate) the answers of (name of witness) out of the (name of) language, into the English language?”

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Evidence was taken down by (name of stenographer), stenographer, who was sworn by me:

“Do you solemnly swear (or affirm) that you know the English and (name of appropriate language) languages and that you will truly and impartially reduce to writing or (take down notes and faithfully transcribe, video record) the questions to be asked of the witness and the testimony of (witness’ name), a witness now to be examined?”

And after being read over and corrected by the witness, was signed by the witness in my presence. I further certify that I am satisfied that neither (name of witness) or myself are in any way related to any of the parties to this cause or in any manner interested in the result thereof.

In witness whereof I have signed this certificate and affixed the seal of the Embassy of the United States of America at Tokyo, Japan.

(Signature of Consular Officer)

(Typed Name of Consular Officer)

(Title of Consular Officer)

(SEAL)

(Date)

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7 FAM Exhibit 925.3
SAMPLE OF A FORMAT FOR INTERNAL ENVELOPE
RETURNING A DEPOSITION

(CT:CON-130; 03-22-2006)

United States District Court for the Southern District of California

Modular Concepts of CA, Plaintiff)

) CIV File No 05-67379

v.) Deposition of Robert Shaw

)

Starr Specialists, Inc., Defendant)

7 FAM Exhibit 926.3

GUIDELINES FOR RECORDING DEPOSITIONS BY NONSTENOGRAPHIC MEANS

(CT:CON-130; 03-22-2006)

GUIDELINES FOR RECORDING DEPOSITIONS BY NON-STENOGRAPHIC MEANS

1. The recording equipment shall be of such quality as to produce an accurate and trustworthy record, and shall be provided by the requesting party.
2. An independent operator, after being duly sworn, shall operate and monitor the recording equipment to ensure that a recording of the testimony is being made.
3. Each participant in the deposition shall be equipped with an individual microphone.
4. Two original recordings shall be made, each on a separate recording machine, and each receiving its signal from the microphones. Specifically, one is not to be the re-recording of the other.
5. The two recording machines upon which the originals are made are to be operated in tandem. They shall be equipped with digital counters to facilitate the making of a log index.
6. Counsel must keep in mind that one of the significant problems with the use of tape recorders is the identification of the speaker. The record must accurately reflect the parties to the deposition, as well as identify the speakers at any particular time. Prior to the start of direct examination, each person who speaks on record, including counsel, should identify himself or herself. If the subsequent testimony is limited to an exchange between two parties, no further words identifying the speakers are necessary. However, any third party, such as opposing counsel, who interjects any statements, must precede interjection with words of identification.
7. Objections should be made during the taking of the deposition.
8. The requesting party is to provide an independent third party operator, who shall, in addition to monitoring the equipment, be responsible for making a log-index. Such index must include the subject matter being discussed, cross-referenced to the reading on the digital counter, a listing of exhibits, and the names of all parties to the deposition.
9. At the close of the deposition, the independent third party's certification must be re-recorded orally. Thereafter, one of the originals shall be sealed in an appropriate container in the presence of counsel. The third party shall also certify the correctness and completeness of the recording in writing in

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the same manner a stenographic reporter certifies the typed record of a deposition. The original, with the certification attached thereto, shall be immediately filed with the clerk of the court. The original so filed may not be removed from the court's custody except upon written order of the court.

10. The independent third party is to retain possession of the other original, which may be used for the production of duplicates for parties to the suit.