

THE ANSWER BY THE JAPANESE GOVERNMENT
TO THE QUESTIONNAIRE ACCOMPANYING THE PROVISIONAL VERSION OF THE NEW
PRACTICAL HANDBOOK ON OPERATION OF THE HAGUE CONVENTION OF 15
NOVEMBER 1965 ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL
DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

3.1

The Minister for Foreign Affairs is designated as the Central Authority which receives requests for service from other Contracting States, pursuant to the first paragraph of Article 2.

Address of the Central Authority

Ministry of Foreign Affairs

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100-8919 JAPAN

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3.2

The languages used by the Central Authority's staff are Japanese and English.

3.3

Please refer to the statistics attached to this answer.

4.1

Hachioji Branch of Tokyo District Court, Judgment, December 8, 1997

The plaintiff filed a suit with the NY family court to claim for a return of a child from the defendant. The show cause order accompanied by the plaintiff's affidavit was sent directly to the defendant in Japan by postal channel. The order was necessary to commence the procedure but a Japanese translation thereof was not attached. The NY family court rendered a judgment in favour of the plaintiff in the absence of the defendant. The plaintiff sought enforcement of the judgment in Japan.

Hachioji Branch of Tokyo District Court held as follows and dismissed the case.

Japanese Code of Civil Procedure requires as one of the conditions for recognition and enforcement of a foreign judgment that the defeated defendant has received service of summons or any other necessary orders to commence procedures in light of enabling a defeated defendant to arrange for his/her defense. It is considered that, for the purpose of enabling a Japanese defendant to arrange for his/her defense, a Japanese translation must be attached to a document to be served and be served in accordance with the due process of judicial co-operation. In this case, the requirement for recognition and enforcement of a foreign judgment is not met because the show cause order was sent to the defendant without its translation.

Tokyo District Court, Judgment, February 24, 1998

The plaintiff filed a claim with the German court. The consular agent in Japan served the written complaint to the defendant by registered mail. The German court rendered a judgment in favour of the plaintiff in the absence of the defendant. The plaintiff sought enforcement of the judgment in Japan.

Tokyo District Court held as following (these are only the points concerning service);

(a) The consular agent may serve documents by registered mail as the method under Article 8, paragraph 1 of the Convention.

(b) It is not against the principle of reciprocity under Article 21 of Vienna Convention on the law of treaties that the State that has declared the objection to Article 8, paragraph 1 of the Service Convention performs service through its consular agents in Japan, which has not declared such objection.

Supreme Court, Judgment, April 28, 1998

This case concerns an action for the recognition and enforcement of an order issued by the Hong Kong High Court before Hong Kong was returned to China on July 1, 1997.

Supreme Court held as follows (there are only the points concerning service);

"Service of summons or any other necessary orders to commence procedures" against the defendant provided in Article 118ii of the Code of Civil Procedure does not have to comply with the laws and rules of our civil procedure. However it is required that the process of service gives the defendant actual knowledge of of the commencement of action and not hinder the exercise of his/her right to defense. In addition, the viewpoint of realizing clear and stable procedures leads to the following interpretation of

Article 118ii. Where a convention is concluded regarding judicial co-operation between our country and the judgment country for the service of judicial documents and it is required that service of judicial documents necessary to commence an action be undertaken in accordance with the methods provided by the convention, process of service that does not abide by the methods of the convention does not satisfy the requirement provided in Article 118ii.

Japan and the United Kingdom, which had sovereignty over Hong Kong at that time, are parties to the Service Convention. Service, as in the present case, by means of direct delivery by a person who is asked personally to do so by the respondent is not permitted by the Convention. Moreover we are unable to find a basis for it in the bilateral treaty between our country and the United Kingdom, the "Consular Treaty between Japan and the United Kingdom of Great Britain and Northern Ireland." Therefore service of the above-mentioned Notice of Motion to the appellants should be regarded as an illegal action that does not satisfy the requirement provided in Article 118ii of the Code of Civil Procedure.

4.2

"Manual of International Judicial Co-operation Procedure in Respect of Civil Cases" (*Hoso-kai*, 1999)
(under the editorship of Civil Affairs Bureau, General Secretariat, Supreme Court of Japan)

"Handbook of International Judicial Co-operation" (*Hoso-kai*, 2001)

5.1

We consider it desirable to put on the web site the information contained in the former handbook.

5.2

We do not have an opinion about it.

5.3

We do not have an opinion about it.

5.4

We do not have an opinion about frequency and resources of updating the Handbook. However it may be desirable to make it possible to access the latest information, for example, by means of the web site.

6.1

In Japan, it is difficult to examine all the cases relating to interpretation of the Convention because each court seized shall have the authority to interpret and apply the Convention autonomously. However, it seems to us that interpretation of the Convention's scope has not changed in Japan since 1992.

6.2

The phrase "in civil or commercial matters" may give rise to some difficulties in interpretation of its scope because the interpretation of the phrase may defer between a requesting State and a requested State. A typical example of this divergence can be seen in the question whether or not the documents of administrative cases should be within its scope of the phrase. We understand that each State shall have authority to interpret it autonomously. However it is necessary and beneficial to know the interpretation of the phrase and the practical operation in each State even if.

Where the interpretation of such phrase becomes a point of issue in the civil case in Japan, a court seized interprets it autonomously as mentioned in 6.1.

6.3

We have not noticed a change since 1992 regarding the interpretation.

6.4

We have not noted a change since 1992 regarding the Convention's exclusive character.

6.5

We have not had any information regarding the difficulty in interpretation about the terminology used in the Convention such as "writ of summons" so far.

7.1

In Japan, the only Authorities competent to forward requests for service to the foreign Central Authorities are the judges (see practical handbook second edition).

7.2

We do not have an opinion about it.

8.1

(1) Article 5, paragraph 1, sub-paragraph (a)

The Minister for Foreign Affairs designated as the Central Authority refers the document to the competent court of justice. Service is then effected either by post (special postal service, Article 66 of the Mail Act; a report of service is drawn up by the postman) or through a marshal (see practical handbook second edition).

(2) Article 5, paragraph 2

The Minister for Foreign Affairs refers the documents sent to it to the competent court clerk. The court clerk informs the addressee of the documents to be served and the addressee then either presents himself/herself to the court or requests that they be forwarded to him/her. In the latter case special postal service will be effected (Article 66 of the Mail Act; the postman will draw up a report of the delivery). When the person to be served refuses to accept the documents, or fails to appear or to apply for forwarding the documents to him/her within three weeks of the date on which he/she was informed, the documents will be returned to the applicant (see practical handbook second edition).

(3) Article 5, paragraph 1, sub-paragraph (b)

When it is so requested, a marshal will effect service by delivering the document directly to the person after ascertaining that he/she is the addressee (see practical handbook second edition).

8.2

We require a translation for any document to be served under Article 5 paragraph 1, sub-paragraph (a) or (b).

We have no agreement under Article 20 sub-paragraph (b).

8.3

We have taken no administrative or other forms of action.

8.4

In principle, the applicant incurs no charges because the National Treasury bears costs of service.

However, in the case of service by a marshal, a fee is charged and to be reimbursed. To that end, the court which effected the service sends a bill of the costs to be reimbursed to the applicant together with the certificate referred to in Article 6.

9.1

We do not think that such a declaration makes judicial assistance substantially more cumbersome in practice.

It is necessary that the Central Authority recognizes the content of a document to be served on the occasion of performing service under the Convention. We also consider that it is beneficial for the addressee to serve the translation of the document to the addressee as well as the original to give enough notice of the case (please refer to the answer of 9.4).

9.2

We do not consider that it is appropriate to adopt such a recommendation.

9.3

We do not have a suggestion.

9.4

We do not consider it appropriate that the requirement of full translation is always restricted to the document's summary.

In Japan, full translation is required for any document to be served under Article 5 paragraph 1,

sub-paragraph (a) or (b) and we serve the translation to the addressee together with the original. We consider that this practice is beneficial for the addressee because it makes it possible for him/her to recognize the content of the document to be served at the same level as domestic civil cases.

We also think it necessary that judicial officers who perform service recognize the contents of documents to be served when they serve them. In order to recognize the content of the document, a translation of the document's summary is not adequate.

9.5

We consider that such translation needs not to be legalized or to bear an apostille.

10.1

Please refer to the statistics attached to this answer.

10.2

Please refer to the statistics attached to this answer.

10.3

We do not have an opinion about it.

11.1

We frequently use consular channels in practice as the requesting State, because it needs no cost and takes shorter time to complete service comparatively. Also we frequently use diplomatic channels as the requesting State.

11.2

Please replace the description concerning the Japanese position on Article 10, sub-paragraph (a) in the provisional version of the new practical handbook (page 60) with the following.

This change is not substantial one but is to make it to be understood clearly.

Japan has not declared that it objects to the sending of judicial documents, by postal channels, directly

to persons abroad. As the representative of Japan has made it clear at the Special Commission of April 1989 on the operation of the Convention on the Service of the Documents Abroad and on the Taking of Evidence Abroad, Japan does not consider that the use of the postal channels for sending judicial documents to persons in Japan constitutes an infringement of its sovereign power. Nevertheless, as the representative has also indicated, Japan believes that the sending documents by such a method is not always valid in Japan in view of the benefit of the addressee, even though Japan has not declared the objection.

11.3

Japan has declared the objection to Article 10, sub-paragraph (b).

11.4

Japan has declared the objection to Article 10, sub-paragraph (c).

12.1

We make no legal distinction between judicial documents producing procedural effects (e.g. a written complaint or a judgment paper) and those that do not (e.g. a preliminary document).

12.2

We have no statistics about it.

13.1

We are reluctant to introduce the dual-dating system in the Convention because introducing such a system will raise complicated legal issues.

13.2

Our law does not provide for the system to determine the date of service for the applicant in the event of transmission abroad.

14.1

In the case of the question, enforcement of a foreign judgment can be refusal in some cases.

Japanese Code of Civil Procedure requires as one of the conditions for recognition and enforcement of a foreign judgment that the defeated defendant has received service (except for service by publication of notice or any similar means) of summons or any other necessary orders to commence procedures or has responded in the action without receiving service thereof in light of enabling a defeated defendant to arrange for his/her defense. It is considered that a Japanese translation must be attached to a document to be served regardless of his/her linguistic ability for the purpose of enabling a Japanese defendant to arrange for his/her defense.

With regard to the case in question, we think it possible to deny enforcement of the foreign judgment on the grounds that the service has not been translated at least in the case where the defendant (or addressee) is a Japanese.

15.1

No rulings have issued that permit such agreement or contract.

16.1

a) The Central Authority in Japan is not willing to accept such requests.

Even if the use of electronic means for requests to the Central Authority under Article 3 is consistent with the letter, spirit and objectives of the Convention, a "document" transmitted by e-mail or fax cannot be served legally in Japan. We would not accept requests forwarded to our Central Authority by e-mail or fax because legal service which is based on such a request cannot be performed in Japan.

b) We do not use e-mail and fax to forward requests for service.

16.2

a) Service from abroad cannot be performed by e-mail or fax in Japan.

b) We would not accept it as valid service producing procedural effect.

c) In case of entrusting service performed in a foreign state to the competent authorities of the state, the

service shall be performed in accordance with the law of such state. We would accept it as valid as long as the requested State admits service by e-mail or fax.

16.3

a) The Central Authority in Japan cannot use e-mail or fax for the sending of the certificate of due performance of service because Japanese Code of Civil Procedure provides that the public official who has effected service shall draft a document, which cannot be made by electrical means, containing the particulars relating to the service, and submit it to the court.

We do not seek to do so at this point.

b) We understand that the Convention does not admit certificate by electronic means because Article 6, paragraph 1 provides that the Central Authority of the State addressed shall complete a certificate in the form of the model annexed to the present Convention. Therefore we would not accept receipt by e-mail or fax of a certificate of service abroad under the present Convention.

16.4

We have no statute or case law permitting the use of e-mail or fax in service procedures.

16.5

Please refer to the answers from 16.1 to 16.4.

16.6

Our domestic law does not recognize such a clause as being valid. The reason is that service shall be performed based on the court's own authority and by the method stipulated by the law in Japan and our law does not admit parties' autonomy to change its methods of prescribed in the law itself.

17.1

We do not have an opinion about it.

17,2

We do not have an opinion about it.

17.3

We would be in favor of such a change.

17.4

Such solution does not seem appropriate to us because it might raise practical difficulties.

17.5

We consider that an electronic version of the model forms would be useful.

18.1

Please refer to the answer of 11.2 with respect to the effect of direct service through postal channels.

We do not assert reciprocity in terms of such a method.

18.2

We do not assert reciprocity in terms of such a method.

States of which Japan requested service under the Convention (2002.1.1-12.31)

Requested States	number	average time (days)
UNITED STATES	25	331
ITALY	1	111
GREECE	1	48
SWITZERLAND	3	33
REPUBLIC OF KOREA	55	61
CHINA	21	94
HONG KONG	5	156
GERMANY	5	43
PAKISTAN	1	156
FRANCE	3	119
BELGIUM	1	65
POLAND	1	113
TOTAL	122	128

States which requested service of Japan under the Convention (2002.1.1-12.31)

Requesting States	number
UNITED STATES	570
IRELAND	2
ARGENTINA	2
UNITED KINGDOM	4
ITALY	27
EGYPT	6
NETHERLANDS	8
CANADA	7
GREECE	7
SWITZERLAND	6
SWEDEN	2
SPAIN	6
SRILANKA	2
SLOVAKIA	1
REPUBLIC OF KOREA	108
CHINA	240
GERMANY	20
TURKEY	6
NORWAY	5
FINLAND	2
FRANCE	183
BELGIUM	8
POLAND	3
TOTAL	1225

