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TAKING EVIDENCE IN FRANCE IN CIVIL AND COMMERCIAL MATTERS

Since October 1974, **The Hague Convention of 1970 on Taking of evidence Abroad in Civil and Commercial Matters** has been in force in France. Arrangements to take evidence in France for use in civil cases before courts in the United States must therefore be made in accordance with the general provisions of that convention and, be subject to certain specific provisions established by the French Government. The Convention provides **three means** to take evidence:

- I- DEPOSITION BEFORE A LOCAL JUDICIAL AUTHORITY BY MEANS OF LETTERS ROGATORY (LETTERS OF REQUEST)
- II- DEPOSITION BEFORE A DIPLOMATIC OR CONSULAR OFFICER
- III- DEPOSITIONS BEFORE A PERSON COMMISSIONED BY THE COURT

I - DEPOSITION BEFORE A LOCAL JUDICIAL AUTHORITY BY MEANS OF LETTERS ROGATORY (LETTERS OF REQUEST)

By these means, a judicial authority in the United States requests the competent French judicial authority to obtain evidence or to perform some other judicial act. Such letters rogatory should be sent by the court in the United States to the following address:

Ministère de la Justice
Direction des Affaires civiles et du Sceau
Bureau de l'Entraide judiciaire en Matière civile et commerciale
13, place Vendôme
75042 Paris Cedex 01
France

Documents must be written in French, or accompanied by a translation in French, and should specify:

- (1) The authority requesting its execution and the authority requested to execute it (name of the court), or the “appropriate judicial authority in France”;
- (2) The name and address of the parties to the proceedings, and their representatives;
- (3) The nature of the proceedings, and all necessary information pertaining to it;
- (4) The evidence to be obtained;
- (5) The names and addresses of the persons to be examined;
- (6) The questions to be put to the witnesses, or a statement of the subject matter on which they are to be examined;
- (7) The documents or other property to be inspected;
- (8) Whether the evidence is to be given under oath or affirmation, and any specific form of oath that must be used;
- (9) Whether any special procedure or method should be followed in taking the evidence.

In the absence of special instructions under items (2) and (9), the French court executing the letters rogatory will follow its own normal procedures.

The court issuing the letters rogatory may ask to be informed on the date and place of the proceedings, and parties of the case and their representatives may be present. Judges of the requesting court may also ask to attend the proceedings.

There are no fees required for the execution of letters of requests; however, the French court may require reimbursement for any fees paid to experts, interpreters, or expenses incurred as a result of use of special procedures requested by U.S. court.

The Embassy cannot monitor the process. It can take several months to have such a request completed.

II – DEPOSITIONS BEFORE A DIPLOMATIC OR CONSULAR OFFICER

Evidence may be taken in France by deposition before a diplomatic or consular officer of the United States (Articles 15 and 16 of the Convention and Title 288 United States Code, Section 2072). Depositions may only be taken by commission issued by the competent court. Depositions on notice for French nationals or third country nationals living in France will

not be approved by the French Ministry of Justice. The Ministry of Justice also will not approve requests to take evidence, as pre-trial discovery for cases not yet pending in court.

The commission should be issued to "any consular officer of the United States assigned to (the city where the Consulate is, or in the case of Paris, the Embassy), France" rather than to any specific name or title of consular officer.

Before evidence may be taken from French nationals or third country nationals residing in France, authorization must be obtained in advance from the **Bureau de l'Entraide judiciaire en Matière civile et commerciale** of the Ministry of Justice. The Embassy or consulate must have all the documents pertaining to the case at least 45 days before the deposition is to be held. The following specific provisions must be met:

- Per the convention, the deposition should be held on Embassy premises but it is not possible for security reasons: When transmitting the request, the Embassy will ask the Ministry of Justice to waive this requirement.
- The deposition must be open to the public
- The date and time of the deposition must be communicated to the Ministry of Justice in advance.
- The witnesses must be summoned by written notice in French at least 15 days in advance of the deposition date. The written notice, sent by the consulate or Embassy, must include assurances that appearances are voluntary, that a lawyer may represent the witnesses, and that the parties to the case have consented to the deposition. The Embassy or consulate will request authorization for the deposition from the Ministry of Justice.

CONSULAR FEES:

There is a \$1,283 non-refundable scheduling fee. If rescheduled, another non-refundable scheduling fee will be collected. There is a statutory fee of \$309 an hour of consular officer time during the actual deposition. A notarial fee of \$415 for the notarial service related to the deposition closing certificate (if needed) is also charged. Fees can be paid by credit card.

**Policy relating to
Acceptance and Processing of Civil Depositions
By the Consular Section, Paris, France**

Serious space, budget, and personnel constraints, as well as Embassy security considerations require that we impose the following conditions on the acceptance of civil depositions for use in U.S. courts:

For security reasons and because access of the public cannot be granted, most depositions cannot take place on Embassy premises. The Ministry of Justice understands this problem and currently authorizes the deposition to take place on another location than the Embassy premises. Still, this authorization is given on a case by case basis.

The attorneys for the various parties will be expected to agree that, after oaths are administered, the record will reflect their mutual agreement to the departure of the consular official, subject to recall for cause by the parties in the event of dispute; and normal existing consular fees shall remain in force as well.

When a deposition is scheduled to take place off-site:

1. The Consular Section will advise the appropriate office of the Ministry of Justice that the deposition listed needs to be taken "off-site;"
2. All charges for the office space/hotel will be the direct responsibility of the party seeking the deposition;
3. The attorneys for the various parties will be expected to agree that, after oaths are administered, the record will reflect their mutual agreement to the departure of the consular official, subject to recall for cause by the parties in the event of dispute; and
4. Normal existing consular fees shall remain in force as well.

NECESSARY INFORMATION, DOCUMENTS, AND TRANSLATIONS:

In all cases involving witnesses of French nationality or third-country nationals residing in France, the Embassy must have the information or documents listed below at least 45 days **before** the deposition is to be held. This timing is necessary in order to allow sufficient time to obtain authorization from the Ministry of Justice, provide the required advance notice to witnesses, and finalize internal arrangements for the deposition.

All documents on the following list must be provided, with French translation:

The commission to take the deposition, referring to the Hague Convention with precise information on:

- The name of the court;
- The name of the judge or issuing authority;
- The names of parties to the case and their representatives;
- The names, addresses and telephone number of all witnesses to be summoned;
- The questions to be put to the witnesses, or a statement of the subject matter on which they are to be examined;
- The names of any of the parties, or their representatives, who plan to attend the deposition;
- Whether the parties to the case have consented to the deposition, and if not, the reasons for any objection;

The name, address and telephone number of the stenographer and interpreter who have been selected, if any;

STENOGRAPHERS AND/OR INTERPRETERS: It is the responsibility of the party arranging the deposition to contract and pay for any necessary stenographic or interpretive services. The Embassy maintains lists of stenographers and interpreters but assumes no responsibility for the professional ability or integrity of the individuals or firms listed therein.

TELEPHONE DEPOSITIONS: When a telephone deposition is exceptionally approved by the Ministry of Justice, Consular officers may administer oaths to witnesses who will be deposed by telephone from the United States. The call should be placed by attorneys in the United States and consular fees are the same as noted above for depositions. At the present time, adequate facilities to take telephone depositions are not available in the Embassy premises. Therefore, telephone depositions must be approved and arranged for off-site.

The Embassy will notify all parties planning to attend the deposition of the date set as soon as authorization has been received from the Ministry of Justice and arrangements finalized.

III - DEPOSITIONS BEFORE A PERSON COMMISSIONED BY THE COURT

Evidence may also be taken in France by deposition before any competent person commissioned by a court in the United States. Authorization must be obtained in advance by the individuals participating in the deposition from the Bureau de l'Entraide Judiciaire International of the Ministry of Justice. All information listed under Part 1, "Deposition Before a Local Judicial Authority by Means of Letters Rogatory" above should be sent to the Ministry of Justice at least 45 days before the deposition will be held.

In addition, the request for authorization from the Ministry of Justice must include:

- An explanation of the reasons for choosing this method of taking evidence, taking into account the judicial costs involved; and
- The criteria for designating the individual commissioned to take evidence.

The Embassy does not assist in requesting Ministry of Justice authorization in cases where the commissioned competent person is not a consular officer of the United States.

All of the other provisions and the general procedure described above for depositions before a consular officer must be followed, except that there is no consular fee because the services of a consular officer are not required.

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