

## JAPAN

### LEGAL BASIS

1. **Has your State signed and/or ratified the *European Convention on State Immunity* (1972) and/or the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004)? Do the authorities of your State consider the provisions on these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?**

Japan concluded the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004). Whether or not the said UN Convention can be considered as part of customary international law, the Japanese law entitled *Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc.*, that sets out rules based on the Convention, does not limit the scope of application to Member States of the Convention but is applicable to non-Member States. This national legislation is already in force, even though the Convention itself is yet to enter into force.

Moreover, Japan also concluded the *Convention of 1 March 1954 on Civil Procedure* and the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*.

2. **Please provide information on:**

- a. **National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).**

The English translation of the *Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc.* is available at: <https://www.japaneselawtranslation.go.jp/>

- b. **Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.**

In the case of service of process by Japan against another State:

Japanese courts review lawfulness of the service of process when deciding whether or not to proceed based on the Code of Civil Procedure.

In the case of service of process against Japan by another State:

There is no procedure under which Japanese courts review the lawfulness of the service of documents instituting proceedings against Japan in a foreign State. However, when deciding on whether a Judgment rendered by a court of a foreign State can be recognized and executed, Japanese courts may review whether the service of process in question was in accordance with law in light of Article 118 of the Code of Civil Procedure as well as Article 24 of Civil Execution Act.

### PROCEDURE

3. **Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.**

n/a

- a. **How are the terms “diplomatic channels” (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted**

**by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.**

The service of process through “diplomatic channels” is understood to encompass the following means: 1. By way of a notification, upon the request of the competent court, by the diplomatic mission in the foreign State to the Foreign Ministry of the State against which the proceedings are instituted; 2. By way of a notification, upon the request of the competent court, by the Foreign Ministry of the State of forum to the diplomatic mission of the State against which the proceedings are instituted. Japan prefers the first method of transmission in order to make sure to know the timing of receipt by the Foreign Ministry of the State against which the proceedings are instituted, as this is more in line with Article 20, para. 2, of the *Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc.*, which corresponds to Article 22, para. 2, of the *United Nations Convention on Jurisdictional Immunities of States and Their Property*.

**b. How are the terms “if necessary” (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?**

Article 20, para. 4, of the *Act on the Civil Jurisdiction of Japan with respect to a Foreign State, etc.* provides that in addition to what is set out by paras. (1) and (2) of this article, requirements concerning the service of a Complaint etc. upon a Foreign State, etc. shall be specified by the Rules of the Supreme Court. According to the *Rules (of the Supreme Court) on the Civil Jurisdiction of Japan with respect to a Foreign State, etc.*, such documents in question are to be accompanied by translation in (an) official language(s) of the foreign State in question (Article 1, para.1, of the Rules). It is the responsibility of the party who submits the documents to provide the translation of such documents (Article 1, para. 2, of the Rules).

**4. Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.**

There is no general answer to this question. When Japan is the defendant in the proceedings, - including the case in which the service of process is carried out by way of a notification to the Japanese diplomatic mission in the State of forum - the procedures to be followed depend on multiple factors such as the kind of the procedure in question, whether the State of forum concluded both or either of *Convention of 1 March 1954 on civil procedure* and/or *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*.