
How to make good use of Japanese Notaries

Note

"On this occasion, in Japan National Notaries Association, it is determined to electromagnetically record the original of a notarial deed and to store the electromagnetic record separately from the original, that is, to implement double savings of the original.

As lesson learned from the Great East Japan Earthquake, this measure is prepared in case there is a situation where an original document, an authenticated copy, and a certified transcript of a notarized will may get lost due to the occurrence of a large scale disaster or the like, which are expected in the forthcoming years; and is part of a Government's strategy to perform double savings of important official documents. Furthermore, the measure is for developing and strengthening storage systems for saving the original of the notarial deed that plays an important role for protecting rights of the people and for preventing private disputes; and is for further securing the reliability of the notarial deed.

This measure is to be executed on July 1, 2013 in Tokyo Notaries Association, Yokohama Notaries Association, Osaka Notaries Association, and each notary association belonging to the notary public's office in Nagoya city, and on April 1, 2014 in the national notary public's offices and notary associations."

1. Features of Japanese notary system

1) What does a notary do?

A notary is a special public official undertaking notarisation duties. A notary is appointed by the Minister of Justice, and belongs to the Legal Affairs Bureau or the District Legal Affairs Bureau.

The duties of a notary include creation of notarial deeds, authentication of private documents and articles of incorporation, and the attachment of officially-attested dates to documents.

2) Who can become a notary?

Currently, any person who fulfils the following criteria is eligible for appointment by the Minister of Justice:

- (a) Any person qualified as a judge, public prosecutor or attorney;
- (b) Any person selected by the Notary Selection Committee, who possesses academic and practical skills similar to those professionals listed under (a) above, and who has been engaged in legal affairs for many years.

3) How did Japanese notary system develop?

The Japanese notary system started with the Notary Rule of 1886. While this Notary Rule was modeled on French notary system, apparently it was also influenced by the laws of the Netherlands. Under this Rule the notary's authority was limited to the creation of notarial deeds.

The current Notary Law, influenced by Germany (then Prussia), was passed later in 1909 and the 1886 Notary Rule was abolished. The Notary Law provides for the authentication of private documents, along with the creation of notarial deeds, as part of the notary's work authority.

The Notary Law has since been revised several times to achieve its current form. In 1938, the authentication of articles of incorporation when a company is established was added to the notary's role. In 1996, a system of sworn statements (affidavits) for the attestation of private documents was established. Then, in 2000, additional authority was given for electronic notarisation including assignment of an electronic officially-attested date and electronic authentication of private documents. In 2002 this was extended to the electronic authentication of articles of incorporation.

4) Notaries Organisation

In Japan, there are 50 Notaries Associations, one in each district jurisdiction of the Legal Affairs Bureau, or the District Legal Affairs Bureau. The Japan National Notaries Association (“Nippon Koshonin Rengokai” in Japanese) is the national organisation.

The Japan National Notaries Association aims at developing the notarial system, as well as improving the notarial services and the quality of notaries by giving guidance and communicating with local Notaries Associations and individual notaries. The Japan National Notaries Association has one president, six vice presidents, twenty five directors, and two auditors. Several managing directors are elected from among the directors, and a chairman of the board of directors is elected from among the managing directors. A general meeting is held once a year and executive board meetings are held about three times a year.

The Japan National Notaries Association has the following eight committees: (1) Regulation Committee,(2) Planning Committee,(3) Public Relations Committee, (4) Foreign Affairs Committee, (5) Document Form Committee, (6) Editing Committee,(7) Electronic Notarisation Committee, and(8) Notarial System’s Committee.

The Japan National Notaries Association joined the International Union of Notaries in 1977 and three vice presidents and several councils of the Union have so far been elected from the members of the Japan National Notaries Association.

2. Notarial Deeds

1) What is a notarial deed?

A notarial deed is an official document prepared by a notary in accordance with the law. As these are official documents, in addition to having a high level of evidential power, if an obligor (debtor) defaults on a debt, it is possible to enforce seizure of the debtor's real estate, personal assets and claimable assets in Japan based on a notarial deed without any court judgment being rendered.

2) What types of notarial deeds are there?

Notarial deeds include, without limitation:

- Notarised wills/will deeds;
- Notarial deeds for contracts pertaining to monetary loans;
- Notarial deeds related to payment of damages for mental anguish or payment of child support, in connection with divorce; and
- Notarial deeds relating to the leasing of land or buildings.

3) Can I have a notarised will made even if I am a foreign national?

If a foreign national resident in Japan has a will prepared at a notary office in accordance with Japanese law, the form of that will is valid in Japan. However, unless the laws of the person's nationality allow the application of the laws of Japan to the formation and validity of the will, or rules pertaining to inheritance, then they will be subject to the laws of the person's nationality. This in turn requires a thorough knowledge of that country's laws.

4) Can a notarial deed be made by an agent?

A notary deed can be requested not only by the parties concerned but also by an agent. However, a will cannot be drawn by an agent. When making a request, the parties concerned must prove their identities with their registered seal certificates or the like. The agent must present a power of attorney, and confirm their identifications.

5) What are the fees for making notarial deeds?

The fees notaries can charge are fixed by a Cabinet Order.

a. The basic fees for making notarial deeds concerning contracts, wills etc. are principally determined according to the Yen amount as follows.

Notarial Value (yen)	Fee (yen)
Less than and including 1 million	5,000
Over 1 million to 2 million	7,000
Over 2 million to 5 million	11,000
Over 5 million to 10 million	17,000
Over 10 million to 30 million	23,000
Over 30 million to 50 million	29,000
Over 50 million to 100 million	43,000
Over 100 million to 300 million	43,000+13,000 per 50 million
Over 300 million to 1 billion	95,000+11,000 per 50 million
Over 1 billion	249,000+8,000 per 50 million

b. The above fees are for one juristic act. For clarification see the examples below. If a contract is unilateral, like a donation or a loan, the value of the donated property or the loan is the “Notarial Value” (see the table above). If a contract is bilateral like an exchange, the combined value of the exchanged items is the Notarial Value. And in the case of a bilateral contract in which one party pays money for a thing or service, the Notarial Value is determined by doubling the amount paid.

Example: The Notarial Value of a sales contract in which the buyer pays one million yen for merchandise would be two million yen, making the fee 7,000 yen.

c. If a contract concerns periodic payments, the total amount of payment during the whole term is the Notarial Value, but if the payment term exceeds 10 years, the calculation is capped at 10 years.

Example: In a lease contract, if the lessee leases a house for three years with a rent of 100,000 yen per month, the Notarial Value is 7,200,000 yen (= 100,000 yen/month x 36 months x 2 (bilateral)), making the fee 17,000 yen.

Example: If, in a divorce case, a husband agrees to pay 50,000 yen per month for child support until the 3-year-old child becomes of age (20), the Notarial Value is 6,000,000 yen (= 50,000 yen/month x 12months x 10 (maximum of years)), making the fee 17,000 yen.

d. In the case of a will, the number of juristic acts is calculated by the number of beneficiaries.

Example : In a will, if the testator's wife is bequeathed land worth 70 million yen and savings worth 40 million yen, totaling 110 million, his son is bequeathed savings worth 30 million yen, and one of his friends is bequeathed 1 million yen in cash, the fee would be 84,000 yen (= (43,000 yen+13,000 yen) + 23,000 yen + 5,000 yen).

But if the total amount of an inheritance is 100 million yen or less, a special fee is added to the fee calculated as stated above.

e. In the case where the Notarial Value cannot be measured (for example in the case of an adult guardianship contract), the fee is fixed at 11,000 yen.

f. There are some other rules and various fees besides the basic fees. Please ask the notary to whom you are going to entrust about them.

3. Authenticated Private Documents

1) What is an authenticated private document?

A notary certifies that the creation or description of general private documents was made through a just procedure. Specifically, if a person takes a private document to a notary office and either signs it in the presence of the notary, or in cases such as where the individual acknowledges that the signature on the private document is his/her own in the presence of the notary, the notary adds a note on the private document whereby, by virtue of its evidential power, the genuineness of the execution of that document is certified.

As the notarising authority of a notary is limited to private documents, official documents will never be the subject of authentication.

The content of documents to be authenticated must be lawful. Any documents containing matter that is illegal or invalid, or documents that might possibly be used in a crime cannot be authenticated.

Depending on the circumstances, any document to be authenticated that has had text inserted, deleted or altered may be ineligible for authentication, or the notary may record those circumstances on the authenticated document.

2) When is private document authentication required?

Even when a private document is received with the signature or name-seal of the writer, it is not known whether the person who prepared it actually signed or affixed his/her name-seal on it. Authentication by a notary is a system certifying that the person did prepare the document.

In particular, documents used overseas often require authentication by a notary.

3) What evidence is required for authentication of private documents ?

When the signatory of a private document comes to a notary office seeking authentication, any one of the following five types of document is required, in addition to the document to be authenticated.

1. Passport
2. Driver's License
3. Residents Registration-Card (with a full-frontal face photograph)
4. Certificate of seal impression and the registered seal
(If an impression of your seal has been registered with the city hall or ward office, this is the document that certifies this fact. The 'registered seal' refers to the seal of which the seal impression was registered with the city hall or ward office.)

5. Alien Registration Card

If the signatory is signing in his capacity as representative director of a company, the certificate of seal impression of the representative director and certificate of registration of the company are required.

4) How do I obtain authentication of private documents, such as certificates issued by private universities or banks, for which it is difficult in practice to obtain power of attorney from the issuer for the purpose of authentication?

If the person prepares a declaration in which what the person wishes to convey to the recipient is stated and the document in question is attached as an exhibit, then a notary can authenticate the signature of the person who executes this declaration.

5) What are the fees for private document authentication?

The fee for authentication of private documents written in a foreign language is normally 11,500 yen per document. However, powers of attorney written in a foreign language are 9,500 yen per document.

6) What is an affidavit or sworn statement?

This involves swearing in front of a notary that the content of the private document is true. Sanctions will be applied in case of perjury. In some instances a public office in a foreign country requires submission of private documents sworn by the party concerned as to the truthfulness of its contents and notarisation by a notary to that effect. In these cases an affidavit should be used.

The fee for notarisation of an affidavit written in a foreign language is 17,000 yen per document.

7) What should I do after I obtain authentication from a notary in the case of a document for use in a foreign country?

When a private document is to be presented in a foreign country, sole authentication by a notary is insufficient.

In general, once authentication from a notary has been received, further authentication must be obtained from a Director of the Legal Affairs Bureau (District Legal Affairs Bureau) to which that notary is attached.

This authentication is attached to the private document authenticated by that notary. The Ministry of Foreign Affairs then attests that the official seal of the Director of the Legal Affairs Bureau is true. Finally, the consulate of the country in Japan to which the documents will be presented makes its certification (called "consular authentication").

In instances where the overseas recipient of the private document is an organization (such as a private company, and where there is no objection by the other party such as when there is no requirement for submission of the document to an official body in the recipient country) then sole authentication by a notary is sometimes acceptable.

Japan is a member country of the 1961 Hague Convention under which authentication by a consular official is unnecessary. Therefore, if used among member countries of the convention, as long as the apostille of the Ministry of Foreign Affairs is obtained in the form prescribed by the convention, "consular authentication" is not required and the private document may be sent immediately to the overseas party.

If the recipient is located in a foreign country which is a member country of the Hague Convention, the notary offices in Tokyo and Kanagawa Prefecture will produce authenticated documents with an apostille affixed so that once a notary authentication is obtained the document can be immediately submitted to the overseas party. Even if the document is sent to a foreign country which is not a member country of the Hague Convention, the above notary offices will prepare authentication documents attested by the Director of the Legal Affairs Bureau and the Ministry of Foreign Affairs, which means there is no need to go to either of these offices again, and after receipt of notary authentication, all that will be required is "consular authentication" from a local embassy or consulate.

Even if a country is not a member country of the Hague Convention, there are several countries that allow special simplified treatment. Please ask at your nearest notary office.

4. Authentication of articles of incorporation

1). What are articles of incorporation?

Articles of incorporation are essentially the constitution of a corporation and are rules relating to its purpose, internal organisation and activities. This term can also be used to refer to written documents that record these or to an electronic record of the same.

When certain companies like a stock corporation (kabushiki kaisha) are set up, the validity of its articles of incorporation will not be recognised unless they are notarised by a notary. The work associated with this authentication shall be handled by a notary attached to the Legal Affairs Bureau or the District Legal Affairs Bureau that has territorial jurisdiction over the district in which the company's head office is to be located.

Articles of incorporation changed after the company is set up need not be notarized.

2) What are the fees for notarising articles of incorporation?

The fee for notarising articles of incorporation is 50,000 yen excluding the cost of a certified copy. Stamp duty incurs an additional cost of 40,000 yen. However, when articles of incorporation is e-notarised, there is no need to pay stamp duty.

5. Officially-attesting Dates

1) What is the legal effect of an officially-attested date?

An officially-attested date is the certification of a date. Some legal acts include the “first in time principle” that rights belong to the person who concluded a contract first. Examples include the assignment of a claim or a pledge of rights. In the assignment of a claim, in order to have priority over a third party, the date of a contract must be clearly certified using an officially-attested date. An officially-attested date is utilised in such instances. However, an officially-attested date is only the confirmation of a date and it does not certify matters such as the genuineness of the creation of the document.

2) How do I obtain an officially-attested date?

As an officially-attested date is simply the certification of a date, the person who created the document does not need to appear before the notary. Neither a power of attorney nor a certificate of seal impression is required.

The document which is the subject of the attachment of an officially-attested date, however, must be a private document duly prepared. In other words, it must contain the signature or the name-seal of the person who prepared it.

3) What are the fees for attesting official dates?

The fee for attaching an officially-attested date is 700 yen per document.

6. e-Notarisation

1) The Notary Law was amended in April 2000 to introduce e-notarisation in Japan, and e-notarisation practice started in January 2002.

e-Notarisation is available for the following five notarial acts.

- (1) Authentication of e-documents
This includes authentication of articles of incorporation prepared in digital form.
- (2) Attaching officially attested date to e-documents
- (3) Preservation of notarised e-documents

- (4) Supplying a certified duplicate copy of e-documents under (3)above.
- (5) Certifying that an e-notarised document which has been under the possession of a person other than notaries has not been altered and is identical with the e-document preserved under (3)above.

2) Characteristics of Japanese e-Notarisation

System

e-Notarisation is performed through a system which is called e-Notarisation Centre. The Centre uses a Virtual Private Network service (VPN). The Japan National Notaries Association (“JNNA”) owns and maintains the Centre at its own cost. The System is built on a PKI (Public Key Infrastructure).

Technical maintenance of the Centre is entrusted by JNNA on a contractual basis to a private company with an established reputation.

Procedure

A client prepares an e-document as a PDF document, and executes a digital signature on the e-document.

A request for e-notarisation is made on-line on the Internet. For this purpose, the Ministry of Justice provides a reception page on the Ministry's website for clients of e-notarisation. Applications accepted on this page are transferred to the JNNA e-Notarisation Centre for notarisation by a notary.

A notary downloads the e-document from the server of the Centre to his/her terminal in his/her office, and examines it to see if it satisfies the necessary requirements for notarisation.

The notary then takes acknowledgement of the e-signer (i.e., client). The client must appear in person before the notary. This is because the general doctrine of physical appearance before the notary applies to e-notarisation. However, as noted earlier, agents may participate in place of the principal in e-notarisation.

When the notary is satisfied with the acknowledgement, he/she attaches an acknowledgement certificate with his/her digital signature to the e-document, and saves it in a CD or other media for storage to give it back to the client (Digital certificates for notaries are issued by the relevant Government department.)

3) Reality of e-Notarisation

Statistics show a sharp increase in the number of authentications of digitally prepared articles of incorporation. In 2010, the total number was 58,000 - about 88 times more than that in 2004 when the figure was 655.

7. Notarial deeds for witnessed fact

Notarial deeds for witnessed fact are notarial deeds in which a notary makes a notarial deed for a fact related to a private right that he/ she has actually witnessed and experienced. Facts covered by this procedure are:

(1) minutes of shareholders meetings; (2) opening and closing of a safety deposit box in a bank; (3) the name seal of the owner of the property in a bankrupt estate; (4) the preparation of an inherited property; (5) practice, etc. of an invention. With respect to (5) “practice, etc. of an invention”, there are two options: (i) a notarial deed to be used for witnessed facts to be used for eliminating the novelty of a patent; and (ii) a notarial deed to be used for witnessed facts to prove prior use and patent infringement, etc.

8. Petit Advice

Location of the notary office can be obtained from the website of the relevant Legal Affairs Bureau and also from the Japan National Notaries Association.

Some notary offices have only one notary, who is authorized to prepare deeds. This notary may, at times, be away from the notary office. It is advisable, therefore to make schedule arrangements by telephone in advance of a visit to the notary office. This will ensure that the required documents are correctly prepared, and the procedure is carried out smoothly.

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