



2026 International Client Seminar

March 5-7, 2026

Navigating International Depositions and Cultural Challenges

A Practical Guide for Cross-Border Discovery

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Introduction: The Global Litigation Reality

When a consumer in Texas is injured by a product, the resulting litigation may require testimony from a factory manager in Shenzhen, an engineer in Stuttgart, or a quality control specialist in Osaka. When a commercial dispute arises from a failed joint venture, key witnesses may be scattered across multiple continents. The globalization of commerce has made international depositions an increasingly common feature of American civil litigation—yet most practitioners encounter them infrequently enough that each occasion requires referencing or relearning the rules.

This article provides a practical framework for navigating international depositions, with particular attention to the decision points that determine success or failure. Rather than exhaustively cataloging legal rules, we focus on the strategic questions practitioners must answer: Am I able to take this deposition at all? Where should it occur? What procedural path makes sense given my timeline and budget? And critically—how do cultural differences affect every stage of the process?

The guidance here draws from the products liability context, where cross-border depositions arise frequently in cases involving foreign-manufactured components or products. A U.S. retailer sued for a defective product may need testimony from the overseas manufacturer. A multinational corporation defending a product claim may need to prepare foreign employees for deposition in U.S. litigation. But the principles apply broadly across commercial litigation, employment disputes, and any matter where critical witnesses are located abroad.

The Threshold Question: Can You Take This Deposition?

Before investing time and resources in planning an international deposition, practitioners must answer a fundamental question: Is this deposition legally permissible in the witness's location? The answer varies dramatically by country and determines the entire strategic approach.

Country Classification: A Practical Framework

Countries fall into three (3) general categories based on their treatment of depositions for foreign litigation:

Category One: Voluntary Depositions Generally Permitted. In these jurisdictions, U.S. attorneys may take voluntary depositions from willing witnesses without significant procedural hurdles. This category includes Canada, Mexico, the United Kingdom, and Australia. The deposition typically proceeds on notice, with a court reporter and videographer if desired, much as it would domestically. The key requirement is that no compulsion is used—the witness must appear voluntarily.

A critical distinction applies across all categories: parties versus non-parties. Nearly all countries have rules that protect their citizens from U.S. legal processes, and these protections apply most strongly to non-party witnesses—individuals who have no stake in the underlying litigation but possess relevant information. In products liability cases, for instance, you may need testimony from a foreign manufacturer's engineer who has no connection to the U.S. lawsuit. Such witnesses can find sympathetic ears in their local courts when seeking to avoid a deposition.

A 2023 Ontario court decision illustrates this reality. In *Hospira Healthcare v. Rotsztain*, a New York breach of contract action, the defendant sought to depose an Ontario-based attorney through letters rogatory issued by the New York trial court. The Ontario court refused to enforce them, ruling that the Ontario resident was entitled to the protections of Canadian discovery laws, which are less permissive than U.S. rules. Under Canadian law, discovery must be relevant to a contested issue—a more demanding standard than the U.S. rule permitting

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discovery of anything reasonably calculated to lead to admissible evidence. The court characterized the deposition request as an unlawful “fishing expedition.”¹ This case underscores that even in “Category One” countries, reluctant non-party witnesses have legal avenues to resist.²

Category Two: Depositions Permitted with Advance Authorization. Several countries permit depositions, but require prior permission from governmental authorities or specific procedural steps. Italy allows depositions before U.S. consular officers, but depositions of non-U.S. citizens require permission from the Italian Court of Appeals with jurisdiction over the deponent. Spain permits depositions at the U.S. embassy or other locations, but if a consular officer must administer the oath, advance arrangements with the embassy are required. Sweden permits voluntary depositions regardless of nationality, but prior permission from the Swedish Foreign Ministry is required. Switzerland requires prior authorization from the Federal Department of Justice and Police, with requests addressed to the cantonal central authority where the evidence is to be taken.

Category Three: Depositions Prohibited or Severely Restricted. Some countries prohibit depositions entirely or impose restrictions so severe that alternative approaches are necessary. Germany does not allow voluntary depositions of German nationals, though depositions of U.S. citizens may be permitted with prior approval. France requires prior permission from the French Central Authority for the Hague Evidence Convention and a commission issued by a U.S. court; the French Central Authority will not approve depositions taken merely on notice. China does not permit depositions by foreign persons, asserting that only Chinese judicial authorities may perform judicial acts in China; attempting to take a deposition in China may result in arrest or deportation. Russia and Brazil similarly prohibit depositions by American attorneys, with authorities in these countries asserting exclusive competence for such judicial acts.³

The Importance of Early Assessment

Identifying the applicable category early in the litigation is essential. Even in cooperative situations, international depositions can take many months to arrange. When formal procedures through the Hague Evidence Convention are required, timelines of a year or more are not unusual. Practitioners should assess international discovery needs at the outset of any case with cross-border dimensions and build appropriate time into the case schedule.

The Hague Evidence Convention: When and How to Use It

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters provides a framework for obtaining evidence across borders among contracting states. Understanding when to use it—and when alternatives may be preferable—is a critical strategic decision.

Letters of Request: The Primary Mechanism

The most common tool under the Hague Evidence Convention is the Letter of Request (also called a Letter Rogatory). Upon motion, a U.S. court issues a formal request to the Central Authority designated by the foreign country. The Central Authority then forwards the request to the appropriate judicial authority for execution under local law.

The Letter of Request must include specific information: the name of the court and issuing judge, the parties and their representatives, the names and addresses of witnesses, the questions to be asked or subject matter for examination, the names of those planning to attend, and relevant logistical details including proposed dates. Many jurisdictions require translation of all documents.

A crucial point: When testimony is obtained through the Hague Convention, it is typically conducted under the procedural rules of the foreign jurisdiction, not American rules. This means the examination may be conducted

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by a local judge rather than by counsel directly. Cross-examination in the American sense may not be permitted. The resulting testimony may look quite different from a domestic deposition transcript.

The Convention Is Not Exclusive

The U.S. Supreme Court has held that the Hague Evidence Convention does not provide the exclusive means for obtaining evidence abroad. District courts have discretion to determine whether Convention procedures are required on a case-by-case basis, considering factors including the importance of the evidence, the specificity of the request, the availability of alternative means, and the sovereign interests of the nations involved.

This means practitioners often have choices. A voluntary deposition of a cooperative witness may proceed without invoking Convention procedures, even in a Convention country, if local law permits. The decision involves weighing efficiency against formality, cost against enforceability, and speed against comprehensiveness.

When Compulsion May Be Easier Than Voluntary Procedures

Counterintuitively, in some jurisdictions it is easier to compel a deposition through formal Convention channels than to arrange a voluntary deposition. France is the prime example. The requirements for obtaining French Central Authority permission for a voluntary deposition are essentially the same as for a Letter of Request—but the Letter of Request adds the power of compulsion. Given the time required to reserve embassy or consulate facilities for a voluntary deposition, proceeding through formal Convention channels may actually be faster and more cost-effective.⁴

Alternative Strategies: Bringing Witnesses to Neutral Ground

When depositions practically cannot be taken in a witness's home country, alternative venues become essential. The choice of where to conduct a deposition involves balancing legal requirements, cost, convenience, and strategic considerations.

Bringing the Witness to the United States

For a cooperative witness, bringing them to the United States is often the simplest solution. The deposition proceeds under American rules, the transcript is directly usable in U.S. courts, and the procedural uncertainties of foreign proceedings are eliminated. The primary considerations are visa requirements (witnesses may need B-1 business visitor visas, with processing times varying by country), travel costs (which the requesting party typically bears), and the witness's willingness and ability to travel.

Even when a party is covering travel costs, the total expense of bringing a witness to the United States may be less than the combined costs of international travel for counsel, court reporters, and videographers, plus the fees associated with embassy facilities or local counsel in a foreign jurisdiction.

Third-Country Depositions

When a witness cannot or will not come to the United States, and their home country restricts depositions, a third country may provide a workable venue. The United Kingdom is a common choice for European witnesses, given its common-law tradition and deposition-friendly procedures. Singapore and Hong Kong serve similar functions for Asia-Pacific witnesses.

The selection of a third-country venue should consider travel burden for the witness, availability of qualified interpreters and court reporters, local rules governing depositions, and any visa requirements for the witness to enter that country.

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For witnesses in countries that prohibit depositions entirely, common third-country solutions include: Hong Kong or Taiwan for witnesses from mainland China; Finland for witnesses from Russia; and Mexico, Panama, or Colombia for witnesses from Brazil. These locations permit U.S. depositions and offer relatively convenient access for witnesses from the restricted jurisdictions.⁵

U.S. Embassy and Consulate Depositions

In many countries, depositions may be conducted at U.S. embassy or consulate facilities. This option is particularly relevant in Category Two countries that permit depositions with procedural safeguards. Embassy facilities are considered U.S. territory for many purposes, which can simplify certain procedural issues.

Japan presents a particularly demanding example. It is illegal to take a deposition in Japan at a law firm, hotel, or any other venue—even if conducted by video. Any witness in Japan being deposed must be physically present in the U.S. Embassy in Tokyo or the U.S. Consulate in Osaka.⁶ This requirement creates additional logistical challenges: in-room participants are limited to five individuals, a reliable internet connection is not assured, and deposition rooms are only available for limited hours each day.⁷

However, embassy depositions present practical challenges. Room availability is limited, and scheduling often requires significant advance notice. Statutory fees apply. In some countries, specific permissions must still be obtained from local authorities even for embassy depositions. Practitioners should contact the relevant embassy or consulate early in the planning process to understand requirements and availability.

Practical Planning: From Strategy to Execution

Once the strategic decisions about venue and procedure are made, careful attention to logistics determines whether the deposition proceeds smoothly.

Engaging Local Counsel

The importance of consulting local counsel cannot be overstated. Foreign counsel provides essential guidance on local procedural requirements, the enforceability of U.S. court orders, customs regarding communications with witnesses and opposing counsel, and practical matters from scheduling to facilities. Local counsel can handle required court appearances in the foreign jurisdiction and provide real-time guidance during the deposition itself.

ALFA International's global network provides access to qualified local counsel in jurisdictions worldwide—a significant advantage when international discovery needs arise unexpectedly.

Court Reporters, Interpreters, and Videographers

Qualified professionals may not be readily available in all foreign locations. In some cases, it may be necessary to transport U.S. court reporters, interpreters, or videographers to the foreign jurisdiction. When using local professionals, verify their qualifications and experience with American-style depositions. Court interpreter certifications, while not always required, indicate familiarity with legal proceedings and terminology.

A critical but often overlooked issue is oath administration. U.S. notary powers are only effective within United States territory; a notary traveling abroad loses the legal authority to administer oaths. The exception is U.S. consular officers and personnel working on embassy or consulate grounds, which are considered extensions of American soil for this purpose. The most expedient solution is for both sides to stipulate on the record that the court reporter can swear in the witness—a time-honored practice that avoids the need for consular involvement while assuring admissibility.

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If videotaping the deposition, confirm that equipment will function with local electrical systems and that any necessary customs clearances for bringing equipment into the country have been obtained. Italy, for example, requires specific customs clearances for video equipment. When hiring local videographers, ensure they are familiar with U.S. deposition standards and will record in National Television System Committee (NTSC) format consistent with the Federal Rules of Evidence. Video shot by camera operators unfamiliar with American depositions may be unplayable in the United States without expensive format conversion, or worse, may be deemed inadmissible.

Protective Orders and Confidential Information

A frequently overlooked issue: domestic protective orders may restrict sharing confidential documents with foreign deposition witnesses who have not agreed to be bound by the order. Obtaining a foreign witness's agreement may not be possible, and U.S. courts have limited power to compel compliance from non-parties abroad. Address this issue when negotiating protective orders, ensuring that provisions permit necessary document sharing with foreign witnesses.

Travel and Visa Requirements

Some countries require special visas to conduct depositions. Japan and India are examples where business visas with specific permissions may be necessary. Contact the relevant embassy well in advance to understand requirements and processing times. For witnesses traveling to the United States, visa processing can take weeks or months depending on the country of origin and current consular workloads.

Stipulating to Procedural Rules

Where local law permits, parties may stipulate to conduct the deposition under U.S. procedural rules rather than foreign rules. This can significantly simplify the proceeding, allowing American-style direct and cross-examination, familiar objection practices, and standard witness preparation. However, confirm that the foreign jurisdiction permits such stipulations before relying on this approach. Some jurisdictions may require that certain procedural elements follow local rules regardless of party agreement.

Cultural Competency: The Human Dimension

Legal and procedural knowledge alone is insufficient for effective international depositions. Cultural competency—understanding how communication styles, professional norms, and social expectations differ across cultures—affects every interaction from initial outreach to final questions.

Communication Styles: Direct vs. Indirect

American communication tends to be direct and explicit. We say what we mean and expect others to do the same. Many other cultures—including much of Asia, the Middle East, and Latin America—employ more indirect communication styles. Meaning is conveyed through context, implication, and what is left unsaid as much as through explicit statements.

In the deposition context, this means answers that seem evasive by American standards may reflect cultural communication norms rather than witness reluctance. A Japanese witness who responds “That would be difficult” may be politely saying “No.” A German witness's direct, unadorned answers may seem curt, but reflect a cultural preference for efficiency over pleasantries. Understanding these patterns helps practitioners interpret testimony accurately and adjust questioning strategies appropriately.

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Formality and Hierarchy

American professional culture has become increasingly informal. First-name usage is common even in initial meetings, casual dress is acceptable in many settings, and hierarchical distinctions are often downplayed. This informality can be jarring—even offensive—in cultures that maintain stronger formality norms.

In Germany, professional titles matter. Addressing a witness as “Frau Dr. Müller” or “Herr Dr. Müller” and strictly using the formal “Sie” (the polite, proper personal pronoun form when speaking German), as opposed to using first names, “Dr. Müller” without full, proper honorific or appellation, or using “Du,” shows appropriate respect. In Japan, hierarchical relationships shape every interaction; addressing questions to a junior employee in the presence of superiors may create discomfort. In many Latin American countries, building personal rapport before diving into business matters is expected and valued.

The safest approach is to err on the side of greater formality until cultural cues indicate that informality is welcome. It is easier to relax formality than to recover from an impression of disrespect.

The Concept of “Face”

In many Asian cultures particularly, the concept of “face”—one’s dignity and social standing—profoundly influences professional interactions. Causing someone to lose face, even unintentionally, can permanently damage a relationship.

Aggressive cross-examination tactics that might be routine in American litigation cause serious face loss for witnesses from face-conscious cultures. Public contradiction or correction creates embarrassment. Even pointed questions that imply criticism may be perceived as attacks on dignity rather than legitimate inquiry.

This does not mean practitioners must abandon effective examination techniques. It does mean being thoughtful about framing, tone, and approach. Questions that allow a witness to provide context or explanation preserve face better than those designed to trap. Acknowledging complexity rather than demanding simple yes-or-no answers may elicit more useful testimony while maintaining a productive relationship.

Email Communication Best Practices

Email is typically the primary communication channel for coordinating international depositions, and cultural norms affect email etiquette significantly.

Greetings and Closings: “Hi John” may be fine for American colleagues, but inappropriate for initial contact with foreign counterparts. Use formal salutations (“Dear Dr. Schmidt,” “Dear Mr. Tanaka”) until the relationship warrants informality. Closings should match the formality level: “Best regards” or “Sincerely” rather than “Thanks” or “Cheers.”

Clarity and Directness: Avoid American idioms, slang, and colloquialisms that may not translate. Be explicit about dates (write “March 15, 2026” rather than “3/15” to avoid confusion between American and European date formats) and always specify time zones. Recognize that several identically named cities are located in different states or countries, using clarifying language to ensure understanding. Notably, these points are critical not just in communication among attorneys or the deponent, but also with court reporters, videographers, support staff, etc.

Scheduling Sensitivity: Propose options that accommodate the recipient’s schedule and time zone rather than assuming availability during American business hours. Sending an email Friday afternoon expecting a response

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before Monday is unreasonable when it's already Saturday morning for the recipient.

Witness Preparation Across Cultures

American-style witness preparation—extensive sessions reviewing likely questions, practicing answers, discussing demeanor and presentation—may be unfamiliar or uncomfortable for witnesses from civil law jurisdictions where such preparation is viewed with suspicion.

When preparing international witnesses, explain the purpose and process clearly. Emphasize that preparation is about understanding the process and testifying accurately, not coaching particular answers. Allow more time than you might need for a domestic witness, building rapport and addressing cultural differences in expectations. Consider involving someone who shares the witness's cultural background to help bridge communication gaps.

Virtual Depositions: The Post-Pandemic Landscape

The COVID-19 pandemic permanently changed deposition practice. Virtual depositions, once exceptional, are now routine. For international matters, remote technology offers significant advantages—but also raises unresolved legal questions.

Advantages of Virtual International Depositions

The cost and time savings can be dramatic. Eliminating international travel for attorneys, court reporters, and videographers substantially reduces expenses. Scheduling becomes more flexible when participants need not coordinate travel. Witnesses can testify from familiar, comfortable environments, potentially reducing stress and improving testimony quality.

For routine depositions of cooperative witnesses, virtual proceedings may be the most practical approach regardless of the witness's location. The economics make depositions feasible that might not justify the expense of in-person international proceedings.

Legal Uncertainties

The legal status of remote depositions where the witness is physically located abroad remains unsettled. Countries that prohibit depositions on their soil generally have not addressed whether those prohibitions apply when the witness participates remotely in a proceeding conducted from the United States. Practitioners should not assume that technology provides a loophole around blocking statutes.

Critically, the availability of remote technology does not reduce the legal obstacles or the burden analysis that foreign courts apply. In *Hospira Healthcare*, the Ontario court's assessment of whether to enforce letters rogatory did not factor in that the deposition would have been conducted remotely. The legal protections afforded to the witness remained the same regardless of the technology used.⁸

Consult local counsel before proceeding with remote depositions of witnesses in restrictive jurisdictions. Document the legal basis for the proceeding and any compliance measures taken. If there is genuine uncertainty, consider whether the potential benefits justify the risk that the testimony might later be challenged or the proceeding deemed improper.

Technical Best Practices

Successful virtual depositions require attention to technical setup. Ensure all participants have reliable internet connections with sufficient bandwidth for stable video. Test equipment in advance, including backup options for

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common failure modes. Address lighting and audio quality—unclear audio makes testimony difficult to follow and creates problems for the court reporter.

Establish protocols for exhibit handling. Screen sharing should be tested before the deposition. Consider whether to provide hard copies of anticipated exhibits to the witness in advance, which may be more efficient than working entirely from screen-shared documents, while being mindful of confidentiality and protective order requirements.

Working with International Clients

Many international depositions arise in the context of representing multinational clients. Building and maintaining effective relationships with international clients requires the same cultural competency skills essential for working with international witnesses.

Setting Expectations About American Litigation

Clients from civil law jurisdictions may be unfamiliar with—or shocked by—aspects of American litigation that domestic clients take for granted. The breadth of American discovery, the expense of litigation, the duration of proceedings, and the risks of jury trials may all require explanation.

The deposition process may be foreign to clients whose legal systems do not include anything comparable. Explain clearly what a deposition involves, why it matters, and what the client or its employees should expect. Help clients understand the process without minimizing legitimate concerns or creating unnecessary anxiety.

Communication Across Time Zones

Time zone differences require conscious accommodation. A call scheduled for 8:00 AM in New York is 9:00 PM in Tokyo. Expecting immediate email responses across significant time differences is unrealistic. Build time zone awareness into communication practices and scheduling, and be explicit about deadlines and response expectations.

Working with In-House Counsel Internationally

The role and authority of in-house counsel varies across cultures and organizations. In some settings, in-house lawyers have significant decision-making authority; in others, legal matters may be handled primarily by business executives with legal training or support. Understanding the organizational dynamics and decision-making processes of international clients helps ensure that communications reach the right people and that advice is delivered in a form upon which action takes place.

Using International Deposition Testimony at Trial

The ultimate purpose of most depositions is to develop evidence for trial. International depositions require particular attention to how testimony will be used, because foreign witnesses may not be available to testify live.

Admissibility Requirements

Under Federal Rule of Civil Procedure 32, a deposition may be used “for any purpose” at trial if the witness is outside the United States at the time of trial, provided the adverse party was represented at or had reasonable notice of the deposition and the testimony would be admissible under the Federal Rules of Evidence if the witness were present. Many foreign witnesses will meet the “outside the United States” criterion, making their deposition testimony directly usable.

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The evidentiary admissibility requirement means practitioners should conduct international depositions with an eye toward trial use. Be mindful of relevancy and hearsay rules. Consider objections carefully and whether to rephrase questions to avoid admissibility problems. For important testimony, the deposition may be the only opportunity to develop the record.

Presentation Considerations

If deposition testimony may be presented to a jury, consider the presentation from the outset. Video depositions allow the fact finder to assess demeanor and credibility in ways that reading transcripts cannot match. Conduct the examination in a manner that will present well on video—fair, professional, and respectful, avoiding tactics that might create sympathy for the witness or reflect poorly on the examining attorney.

Conclusion: Preparation, Flexibility, and Cultural Awareness

International depositions require a combination of careful legal analysis, logistical planning, and cultural sensitivity. Success depends on early assessment of where witnesses are located and what procedural paths are available; realistic timeline planning that accounts for the additional complexity of cross-border proceedings; engagement of qualified local counsel who can navigate foreign requirements; attention to cultural differences that affect communication, relationships, and the conduct of proceedings; and flexibility to adapt when circumstances change or unexpected obstacles arise.

The global economy continues to generate litigation with international dimensions. Practitioners who develop competency in cross-border discovery are better positioned to serve clients operating in that global environment. The investment in understanding these issues pays dividends not only in individual cases but in the relationships and reputation that sustain a successful practice.

ALFA International's worldwide network of independent law firms provides a unique resource for navigating these challenges. When international discovery needs arise, member firms can draw on colleagues with local knowledge and experience across jurisdictions, turning what might otherwise be daunting obstacles into manageable tasks.

¹ *Hospira Healthcare Corp. v. Rotsztain*, 2023 ONSC 4283 (Can. Ont. Sup. Ct. J.).

² *Id.*

³ U.S. Dep't of State, Brazil Judicial Assistance, <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Brazil.html> (last visited Jan. 15, 2026).

⁴ See Legal Language Services, *The Challenges of Taking Voluntary Depositions Abroad*, <https://www.legallanguage.com/legal-articles/taking-international-voluntary-depositions/> (last visited Jan. 15, 2026).

⁵ Optima Juris, *20 Things You Should Know About International Depositions for 2020*, <https://www.optimajuris.com/20-things-you-should-know-about-international-depositions-for-2020/> (last visited Jan. 15, 2026).

⁶ Bryce Kunimoto & Erica Medley, *Step-by-Step Process of Applying for and Taking a Deposition at the U.S. Embassy or U.S. Consulate in Japan*, Holland & Hart LLP (Aug. 2023), <https://www.hollandhart.com/step-by-step-process-of-applying-for-and-taking-a-deposition-at-the-us-embassy-or-us-consulate-in-japan>.

⁷ *Id.*

⁸ See Esquire Deposition Solutions, *Technology Is No Substitute for Careful Planning of International Depositions* (Oct. 5, 2023), <https://www.esquiredepositions.com/technology-is-no-substitute-for-careful-planning-of-international-depositions/>.