

## **. Applications for Recognition of Overseas Performance Evaluation Organizations**

This document is prepared by the Building Guidance Division, Housing Bureau, Ministry of Land, Infrastructure and Transport for the reference of applicants who intend to apply for recognition as overseas performance evaluation organizations.

In order to apply for recognition as an overseas performance evaluation organization, etc., it is recommended that applicants refer to the original relevant provisions of the Building Standard Law, etc.

### **1. Ministerial Approval System**

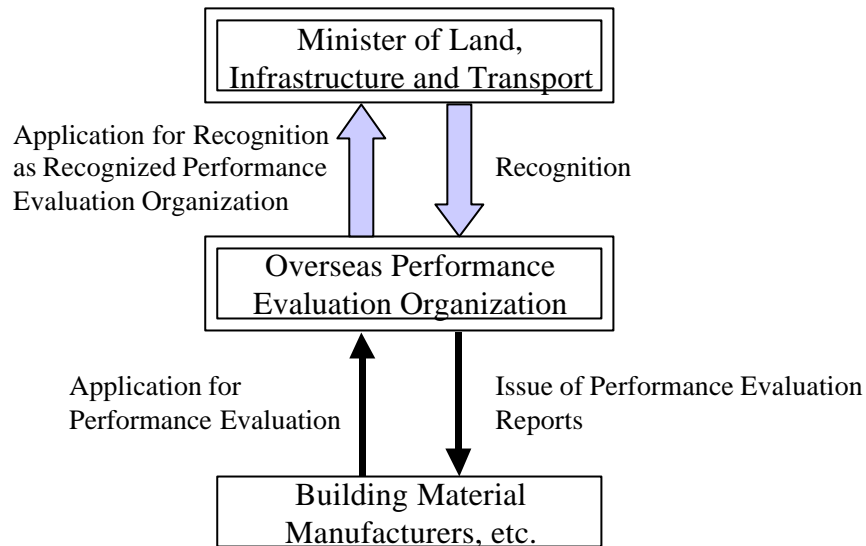
Under the Building Standard Law, buildings and building parts and materials, etc., shall conform to the technical requirements stipulated in the Law and Ordinances. Conformity may be confirmed by a building official, etc., of a Designated Administrative Agency (local government) either based on specifications stipulated in advance or general verification methods, etc., or based on approval of conformity by the Minister of Land, Infrastructure and Transport granted on the basis of results of a performance evaluation organization having the required evaluation capabilities with regard to specific technical requirements, prior to confirmation by a building official, etc. (Article 68-26 of the Law, Approval of Construction Methods, etc.)

For example, requirements, etc., for building materials related to sick-house countermeasures are subject to ministerial approval. Building materials that do not conform to previously designated JIS and JAS specifications shall be approved by the Minister of Land, Infrastructure and Transport (type 2, type 3, or exempt) on the basis of formaldehyde emission tests and evaluations conducted by a performance evaluation organization.

### **2. Performance Evaluation Organizations**

A performance evaluation organization may be a performance evaluation organization in Japan designated by the Minister of Land, Infrastructure and Transport (Article 77-56 of the Law), or an overseas performance evaluation organization recognized by the Minister of Land, Infrastructure and Transport (Article 77-57 of the Law). Both such organizations conduct tests and evaluations at the request of building material manufacturers, etc., and issue the evaluation reports required for ministerial approval.

Performance evaluation services are provided by designated or recognized organizations, such as public testing agencies or private-sector testing and evaluation service companies. In order to ensure neutrality and fairness, specific limits are placed on the additional activities, etc., of directors and employees of performance evaluation organizations.



### **3. Provisions of the Law and Regulations Concerning Recognized Performance Evaluation Organizations**

The provisions relating to recognized performance evaluation organizations are stipulated in the Building Standard Law (the Law), the Building Standard Law Enforcement Order (the Cabinet Order), the Building Standard Law Enforcement Regulation (the Enforcement Regulation), and the Ministry of Land, Infrastructure and Transport Order Concerning Designated Qualifying Examination Organizations and others under the Building Standard Law (the Ministerial Ordinance).

Basically, the Law stipulates the criteria of recognition and obligations of performance evaluation organizations, etc., while the Cabinet Order defines the term of validity of recognition, etc., and the Enforcement Regulation stipulates fee schedules, etc. The Ministerial Ordinance provides detailed regulations for the operations of performance evaluation organizations.

#### **Provisions Concerning Recognized Performance Evaluation Organizations**

Relevant Articles	Provisions
Article 68-26 of the Law	Approval of construction methods, etc.
Article 77-57 Paragraph 1 of the Law	Recognized performance evaluation organization (Grounds for application for recognition)
Article 77-57 Paragraph 2 of the Law	(Grounds for the following provisions as applied, mutatis mutandis, to recognized performance evaluation organizations)
Article 77-36 Paragraph 2 of the Law	Designation (Service categories and areas)
Article 77-37 of the Law	Disqualification
Article 77-38 of the Law	Designation criteria
Article 77-39 Paragraph 1 of the Law	Public Notice of designation, etc. (name and address, service category and area, etc., of organization)
Article 77-41 of the Law	Renewal of designation
Article 77-22 of the Law	Changes in service areas
Article 77-34 of the Law	Suspension/termination, etc., of services

Relevant Articles	Provisions
Article 77-39 Paragraph 2 of the Law	Public Notice of Designations, etc. (Notification of change of name, address, etc.)
Article 77-39 Paragraph 3 of the Law	Public Notice of Designations, etc. (Public notice of change of name, address, etc.)
Article 77-42 of the Law	Approvers
Article 77-44 of the Law	Obligations of approval, etc.
Article 77-45 of the Law	Regulations for approval services, etc.
Article 77-47 of the Law	Bookkeeping, etc.
Article 77-48 of the Law	Orders for supervision
Article 77-49 of the Law	Reports, inspections, etc.
Article 77-55 of the Law	Revocation of recognition, etc.
Article 136-2-13 of the Cabinet Order	Term of validity of designation, etc., of designated approval organizations, etc.
Article 136-2-14 of the Cabinet Order	Payment of costs pertaining to inspections conducted on the premises of recognized approval organizations, etc.
Article 11-2-3 of the Enforcement Regulation	Amount of fees (for performance evaluation)
Article 72 of the Ministerial Ordinance	Application for recognition as a recognized performance evaluation organization
Article 73 of the Ministerial Ordinance	Notification of change to name, etc., of a recognized performance evaluation organization
Article 74 of the Ministerial Ordinance	Application for authorization for change (expansion) of service area of a recognized performance evaluation organization
Article 75 of the Ministerial Ordinance	Notification of change (reduction) of service area of a recognized performance evaluation organization
Article 76 of the Ministerial Ordinance	Notification of appointment or dismissal of evaluators
Article 77 of the Ministerial Ordinance	Application for authorization of performance evaluation service regulations
Article 78 of the Ministerial Ordinance	Notification of suspension/termination of services of a recognized performance evaluation organization
Article 79 of the Ministerial Ordinance	Provisions applied mutatis mutandis (Grounds for the following provisions as applied, mutatis mutandis, to recognized performance evaluation organizations)
Article 59 of the Ministerial Ordinance	Category of the designation of designated performance evaluation organizations
Article 62 of the Ministerial Ordinance	Renewal of designation of a designated performance evaluation organization
Article 63 of the Ministerial Ordinance	Methods of performance evaluation
Article 64 of the Ministerial Ordinance	Requirements for evaluators
Article 67 of the Ministerial Ordinance	Items specified in service regulations
Article 68 of the Ministerial Ordinance	Books
Article 69 of the Ministerial Ordinance	Retention of documents
Article 54 of the Ministerial Ordinance	Value of travel expenses
Article 55 of the Ministerial Ordinance	Address of the resident government office (used as base point for travel expense calculations)
Article 56 of the Ministerial Ordinance	Details of the calculation of value of travel expenses

### **3.1 Recognition Applications (Article 77-57 Paragraph 1 of the Law, Article 72 of the Ministerial Ordinance)**

An organization seeking recognition shall submit an application to the Minister of Land, Infrastructure and Transport (Building Guidance Division, Housing Bureau, Ministry of Land, Infrastructure and Transport), with the required supporting documents attached, as stipulated in Article 72 of the Ministerial Ordinance. There are no charges, etc., for recognition applications.

### **3.2 Service Categories and Areas (Article 77-36 Paragraph 2 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law, Article 59 of the Ministerial Ordinance applied mutatis mutandis to Article 79 of the Ministerial Ordinance)**

When making an application, the organization seeking recognition shall select the category in which it will provide evaluation services from those stipulated in Article 59 of the Ministerial Ordinance [e.g., performance evaluation services in relation to formaldehyde emissions, as stipulated in Article 59 Item (8-3)].

The service area (the country or region, etc., in which the building material manufacturers, etc., for which the applicant will provide performance evaluation services are located) shall also be stipulated in the application.

### **3.3 Disqualification (Article 77-37 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law, Article 72 Item (3) of the Ministerial Ordinance)**

In the case of a corporation, for example, recognition will not be granted if any of the directors of the organization seeking recognition is a ward of court, etc., a bankrupt party that is unable to be reinstated, a person sentenced to a punishment of imprisonment or greater or penalized for violating the building law and regulations who has completed his term within the past two years, or a person whose recognition was revoked and two full years have not yet elapsed from the date of revocation.

Recognition applications shall be accompanied by documentary evidence that no directors fall into the above categories (Article 72 Item (3) of the Ministerial Ordinance).

### **3.4 Recognition Criteria (Article 77-38 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law)**

The Minister of Land, Infrastructure and Transport shall not grant recognitions unless it is concluded that an application for the recognition conforms to the following criteria stated in each item of Article 77-38 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law.

Item (1):

Item (1) defines criteria relating to the appropriateness of aspects of business operation plans, such as the number and deployment of employees, service structure, offices and facilities.

The main requirements that shall be met are as follows:

- ① Performance evaluations shall be carried out in a department that is independent from departments providing other services (excluding services relating to building confirmation/inspections), and there shall be a director in charge.

- ② Persons who are employed in the following restricted areas of business shall not be appointed as evaluators. A team of at least two evaluators shall carry out each performance evaluation task (Article 37 of the Ministerial Ordinance).
  - A. Design and superintendence (including construction work contracting, supervision of construction work, agency business and consultation, but excluding survey and evaluation of buildings)
  - B. Construction (excluding activities that do not relate to buildings and their sites, such as dredging, landscaping and well-digging)
  - C. Real estate (including the brokerage of land and buildings, the real estate agency and intermediation business, real estate leasing, and real estate management)
  - D. The manufacture, supply and distribution of building materials and facilities
- ③ Persons other than employees of the organization shall not be allowed to participate in performance evaluation as assistants. Work carried out by assistants shall be limited to support tasks. It is acceptable for assistants also to be employed in restricted areas of business.
- ④ Performance evaluations shall not be carried out in respect of buildings and building facilities, etc., if individuals, companies or organizations, etc., associated with representatives or directors in charge of performance evaluations have been involved in design, superintendence, construction or manufacture, etc.
- ⑤ Evaluators and assistants shall not be engaged in performance evaluation services relating to buildings and building facilities, etc., if individuals, companies or organizations, etc., with which they are associated have been involved in design, superintendence, construction or manufacture, etc.

Item (2):

Item (2) defines criteria for basic financial soundness. They are used as the basis for judging such matters as whether an organization has stable management and has the resources to meet liability claims. The main requirements that shall be met are as follows:

- ① The size of the budget shall be appropriate.
- ② The business activities and budget shall be balanced.
- ③ The organization shall have basic assets, capital and funds, etc. (hereinafter referred to as “basic assets, etc.”) equivalent to about one-tenth of annual spending on performance evaluation services.
- ④ The organization shall have basic assets, etc., of at least 100 million yen. Proviso: This requirement will not apply if the organization has indemnity insurance (provided that the coverage is at least 100 million yen, and that there are no exclusions for damage that is clearly the result of earthquakes or other natural disasters) for its performance evaluation services.

Item (3):

Item (3) sets specific limits on the additional activities, etc., of directors and employees of performance evaluation organizations in order to ensure neutrality and fairness. It is necessary to limit the proportion of persons who are also involved in such activities as design, superintendence, construction and the manufacture of equipment in order to eliminate the potential for influence on the performance of the organization’s service and its decisions. The main requirements that shall be met are as follows:

- ① Corresponding to the relevant categories of Japanese corporations listed in the following table, the proportion of the persons subject to restrictions who are engaged in restricted business activities (excluding minor involvement) or belong

to corporations engaged in such restricted business activities shall, in principle, be less than one-half. Proviso: The limit will be less than two-thirds if a supervisory committee has been established. In such cases, an individual engaged in restricted business activities or persons employed in any one corporation engaged in restricted business activities shall not make up more than one-half of the total.

Type of corporation	Persons subject to restrictions
Foundation	Councilors and directors
Corporation	Directors and members
Unlimited partnership	Employees
Limited partnership	Unlimited liability employees
Joint-stock company	Directors
Limited company	Directors
Association	Trustees and associates

$$\frac{\text{Number of directors, board members involved in restricted business activities}}{\text{Total number of directors, etc.}} < \frac{1}{2}$$

Proviso: The limit can be increased to two-thirds if a supervisory committee has been established. However, the number of directors, etc., who are engaged in restricted business activities in any one company shall not make up more than one-half of the total number of directors, etc.

- ② If the organization is equivalent to a Japanese joint-stock company, etc., the aggregate number of shares held by persons engaged in restricted business activities or corporations engaged in restricted business activities shall, in principle, be less than one-half of the total number of shares issued and outstanding. Proviso: The limit may be increased to two-thirds if a supervisory committee has been established. In such cases, aggregate number of shares held by an individual engaged in restricted business activities or by persons employed in any one corporation engaged in restricted business activities shall not make up more than one-half of the total number of shares issued and outstanding.

$$\frac{\text{Number of shares held by persons involved in restricted business activities}}{\text{Total number of shares issued and outstanding}} < \frac{1}{2}$$

Proviso: The limit can be increased to two-thirds if a supervisory committee has been established. However, the number of shares held by a company engaged in restricted business activities shall not make up more than one-half of the total number of shares issued and outstanding.

- ③ The supervisory committee shall consist of persons recommended by a bar association and a consumer organization, academic experts on architecture, and administrative supervisors or auditors of the company or organization concerned. The activities of the committee will include deliberations on performance evaluation service regulations, supervision of services, etc. The supervisory committee shall carry out quarterly audits and upon completion of each audit shall submit reports to the Minister of Land, Infrastructure and Transport.

Item (4):

Item (4) stipulates restrictions concerning additional activities of the organization itself. This is because of the potential risk affecting neutrality and fairness if a recognized performance evaluation organization is also operating as a design office or construction company. For this reason, additional activities shall not include such restricted business activities as design, superintendence and construction.

Item (5):

The provisions of Item (5) are used to judge whether there are issues that affect the suitability of organizations even though they meet the criteria in Items (1) through (4). Specific judgments are made in relation to each individual organization.

**3.5 Public Notice of Recognition, Notification of Changes, etc.** (Articles 77-39 and 77-22 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law, Articles 73, 74 and 75 of the Ministerial Ordinance)

When recognition is given, the Minister of Land, Infrastructure and Transport will give public notice of the name and address of the recognized performance evaluation organization, the recognition category, the service area, the location of the office at which services will be provided, and the service commencement date.

The recognized performance evaluation organization shall notify the Minister of Land, Infrastructure and Transport no later than two weeks in advance of any intended change of name, address or office location. Authorization by the Minister of Land, Infrastructure and Transport is required in order to expand the service area. Notification to the Minister of Land, Infrastructure and Transport is required in order to reduce the service area.

**3.6 Renewal of Recognition** (Article 77-41 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law, Article 62 of the Ministerial Ordinance applied mutatis mutandis to Article 79 of the Ministerial Ordinance)

Recognized performance evaluation organizations shall apply for renewal of recognition every five years. The provisions for new applications are applied, mutatis mutandis, when renewing Recognitions.

**3.7 Appointment of Evaluators, etc.** (Article 77-42 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law, Article 76 of the Ministerial Ordinance, Article 64 of the Ministerial Ordinance applied mutatis mutandis to Article 79 of the Ministerial Ordinance)

Recognized performance evaluation organizations shall appoint evaluators to carry out performance evaluations who meet the following requirements stipulated in Article 64 of the Ministerial Ordinance:

A person who serves or has served as a professor or assistant professor of architecture, mechanical engineering, electric science, sanitary science, or other academic subject similar or related to the performance evaluation in a university operated under the School Education Act or an equivalent foreign educational institution.

A person who is a staff member or a former staff member of a research/testing institute related to the performance evaluation such as architecture, machinery, electricity, sanitation, and who has advanced specialized knowledge concerning the fields concerned.  
A person who is authorized by the Minister of Land, Infrastructure and Transport as a person with knowledge and experience equal or superior to that mentioned in the preceding two items.

When “ a person requiring authorization by the Minister of Land, Infrastructure and Transport as a person with knowledge and experience equal or superior to that mentioned in the preceding two items” is appointed, an application for authorization by the Minister of Land, Infrastructure and Transport shall be made at the time of the initial application, or when a person is appointed. Supporting documents showing the curriculum vitae of the candidate and other information shall be attached to this application.

The Minister of Land, Infrastructure and Transport shall be notified if a recognized performance evaluation organization appoints or dismisses an evaluator.

If an evaluator infringes the approval service regulations or does not meet the criteria stipulated in Article 77-38 Item (3) (restrictions on additional activities) of the Law, the Minister of Land, Infrastructure and Transport can direct the organization to dismiss that evaluator.

**3.8 Obligations of Recognition, etc.** (Article 77-44 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law)

A recognized performance evaluation organization shall carry out a performance evaluation if requested to do so, unless there is a justifiable reason not to do so.

**3.9 Performance Evaluation Service Regulations and Performance Evaluation Manual**  
(Articles 77-45 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law, Articles 77, 41 and 63 of the Ministerial Ordinance)

A recognized performance evaluation organization shall establish performance evaluation service regulations stipulating necessary procedures and a performance evaluation manual as an attached documents to those regulations defining technical evaluation methods, etc., such as test methods. The regulations and manual shall be authorized by the Minister of Land, Infrastructure and Transport.

Article 41 of the Ministerial Ordinance stipulates that the items stipulated in the service regulations should include business hours, the service area, the scope of services, the methods used to carry out evaluation services, proper payment methods for fees, the appointment and dismissal of evaluators, the service provision systems, etc.

If the service regulations are deemed inappropriate, the Minister of Land, Infrastructure and Transport may direct the organization to amend their content.

The service manual shall state the methods used for performance evaluations in accordance with the Laws, Cabinet Orders and Notifications relating to the performance evaluations to be carried out, and Article 63 of the Ministerial Ordinance. The Ministry of Land, Infrastructure



and Transport has prepared a standard service manual for performance evaluations relating to formaldehyde emissions.

**3.10 Provision, etc., of Books Keeping** (Article 77-47 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law, Articles 68 and 69 of the Ministerial Ordinance applied mutatis mutandis to Article 79 of the Ministerial Ordinance)

An approved performance evaluation organization is required to provide books for record-keeping purposes as stated in Article 68 of the Ministerial Ordinance. These shall be retained until the complete termination of performance evaluation services, etc.

**3.11 Requests Necessary for Supervision** (Articles 77-48 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law)

The Ministry of Land, Infrastructure and Transport may give requests necessary for supervision to a recognized performance evaluation organization when the Minister deems its performance evaluation services are not appropriately operated.

**3.12 Reports, Inspections, etc.** (Articles 77-49 and 77-55 Paragraph 3 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law, Article 136-2-14 of the Cabinet Order)

The Minister of Land, Infrastructure and Transport may require an recognized performance evaluation organization to provide reports and may carry out on-site inspections, etc., as deemed necessary to ensure that services are being provided fairly and appropriately.

The recognized performance evaluation organization will be responsible for travel expenses (for two persons) incurred for such on-site inspections.

**3.13 Suspension/Termination, etc., of Services** (Article 77-34 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law, Article 78 of the Ministerial Ordinance)

If a recognized performance evaluation organization intends to suspend or terminate all or part of its performance evaluation services, it shall notify the Minister of Land, Infrastructure and Transport in advance. In case of notification, public notice will be given to that effect.

**3.14 Revocation, etc., of Recognition** (Article 77-55 of the Law applied mutatis mutandis to Article 77-57 Paragraph 2 of the Law)

The Minister of Land, Infrastructure and Transport shall revoke the recognition of a recognized performance evaluation organization when it comes under the disqualification provisions of Article 77-37 of the Law.

Recognition may be revoked or services suspended under various circumstances, such as if a recognized performance evaluation organization fails to submit required notifications or authorization applications to the Minister of Land, Infrastructure and Transport, or carries out performance evaluations that do not conform to the performance evaluation service regulations, or fails to comply with directives of the Minister of Land, Infrastructure and Transport, or no longer meets the recognition criteria, or engages in extremely inappropriate

actions during the course of providing services, or has obtained recognition by dishonest means.

### **3.15 Performance Evaluation Fees (Article 11-2-3 Paragraph 5 and 6 of the Enforcement Regulation)**

The Ministry of Land, Infrastructure and Transport sets the fees that designated performance evaluation organizations in Japan receive from applicants seeking performance evaluations. Because commodity price levels and other factors vary from country to country, recognized performance evaluation organizations overseas are required to submit cost breakdowns such as cost for labor, administrative and other information to the Minister of Land, Infrastructure and Transport and obtain authorization for their fees.

### **4. Documents Required for Recognition Applications**

Recognition applications shall be accompanied by the supporting documents listed in Items 1 through 3 of the following table.

The application forms and attached documents should be made in Japanese in principle, but the followings can be written in English:

- name and address of the applicant organization and personnel,
- the attached documents with \* in the following table.

### **5. Standard Time required for Recognition Procedure**

Standard time required for recognition procedure will be three (3) months in principle.

### Documents to Be Submitted with Initial Applications

Documents required		Ground provisions
1. Application for Recognition as Recognized Performance Evaluation Organization (Form 36)		Article 72 of the Ministerial Ordinance
(Attached documents)		
(1) Articles of association or bylaw, etc.		Article 72 (1) of the Ministerial Ordinance
(2) Asset inventory, etc.(*)		Article 72 (2) of the Ministerial Ordinance
(3) Document clarifying that the applicant does not come under disqualification provisions		Article 72 (3) of the Ministerial Ordinance
		Article 72 (4) of the Ministerial Ordinance (Article 58 applied mutatis mutandis)
(4) Business plan/income and expenditure budget (* for expenditure budget)		Article 58 (3) of the Ministerial Ordinance
(5) Documents stipulating decision-making concerning application		Article 58 (4) of the Ministerial Ordinance
(6) Documents listing names and CVs of directors, etc. (in the case of a corporation) (*)		Article 58 (5) of the Ministerial Ordinance
(7) Documents describing items concerning the organization and management		Article 58 (6) of the Ministerial Ordinance
(8) Documents showing address of the office(*)		Article 58 (7) of the Ministerial Ordinance
(9) Documents listing the name, address, numbers of shares, etc., of shareholders who own 5% or more of the total issued shares, etc. (in the case of a corporation) (*)		Article 58 (10) of the Ministerial Ordinance
(10) Documents providing general descriptions of testing equipment, etc., and maintenance plans		Article 58 (11) of the Ministerial Ordinance
(11) Documents listing names and CVs of evaluators (*) (**Note)		Article 58 (12) of the Ministerial Ordinance
(12) Documents summarizing business now operated		Article 58 (13) of the Ministerial Ordinance
(13) Documents describing evaluation service implementation plan		Article 58 (14) of the Ministerial Ordinance
(14) Documents describing other reference items		Article 58 (15) of the Ministerial Ordinance
2. Application for Recognition of Performance Evaluation Service Regulations (Form 41)		Article 77 of the Ministerial Ordinance
(Attached documents)		
	Performance evaluation service regulations	Article 77 of the Ministerial Ordinance
	Performance evaluation service manual	(part of service regulations)
3. Application for Recognition of Performance Evaluation Fee Schedules		Article 11-2-3 Paragraph 6 of the Enforcement Regulation
Documents describing the following items		
	(1) Fees for each service category	Article 11-2-3 Paragraph 6 (1) of the Enforcement Regulation
	(2) Labor, administrative and other costs per case	Article 11-2-3 Paragraph 6 (2) of the Enforcement Regulation
	(3) Travel expenses, daily allowances and accommodation expenses	Article 11-2-3 Paragraph 6 (3) of the Enforcement Regulation
	(4) Other necessary items	Article 11-2-3 Paragraph 6 (4) of the Enforcement Regulation

(\*\*Note) If the evaluators are not eligible under Article 64 Items (1) and (2) of the Ministerial Ordinance and require ministerial authorization under Article 64 Item (3), documents demonstrating that the knowledge and experience of the evaluator are equivalent to or superior to Items (1) and (2) are required.