

June 2014

BE SURE TO READ BEFORE FILING A PETITION

**<For those who file a Petition for the Return of Child
under the Hague Convention Implementation Act>**

Tokyo Family Court

Osaka Family Court

※This document was originally written in Japanese. The translation was contracted out by the Ministry of Foreign Affairs, and confirmed by both the Ministry of Foreign Affairs and Tokyo Family Court and Osaka Family Court.

1 Overview of Court Proceedings for the Order for the Return of Child Based on the Hague Convention Implementation Act

○Procedures for the Order for the Return of Child are shown as the following.

Procedures for the Order for the Return of Child are the procedures under which a court orders a person (the respondent) that takes custody of a child under the age of 16 in Japan to return the child to a contracting state to the Hague Convention on the Civil Aspects of International Child Abduction (hereinafter referred to as “the Hague Convention”) where the child had habitual residence (hereinafter referred to as “the state of habitual residence”), when removing the child to Japan or retaining the child in Japan infringes on the petitioner's rights of custody of the child according to the law of the state of habitual residence.

【Grounds for Return of Child】

- ① The child has not attained the age of 16.
- ② The child is located in Japan.
- ③ Pursuant to the laws or regulations of the state of habitual residence, the removal or retention breaches the rights of custody with respect to the child attributed to the petitioner.
- ④ At the time of the removal or the commencement of the retention, the state of habitual residence was a Contracting State to the Hague Convention.

Even when all Grounds for Return of Child are recognized, if any of the Grounds for Refusal of Return of Child, which are listed from ① to ⑥ below, is found, the court shall not order the return of child (The court may still order the return of child if it recognizes, considering overall circumstances, that return of child to the state of habitual residence would serve the interests of the child, even if there exists any of the grounds listed from ① to ③ or ⑤ below.).

In proceedings for the Order for the Return of Child, it is important for both parties to allege and submit evidence adequately from early stages of the proceedings. In addition, legal knowledge of both Japan and the state of habitual residence is necessary for the proceedings. Therefore, you are advised to consult with an attorney. Once you appoint an attorney, the attorney will carry out, as your agent, the alleging and proving including preparation of a written petition, etc.

If you are interested in introduction to Japanese attorneys, please contact the Ministry of Foreign Affairs, which is the Central Authority of Japan.

Hague Convention Division, Consular Affairs Bureau, the Ministry of Foreign Affairs

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【Grounds for Refusal of Return of Child】

- ① In the case where the petition for return of child was filed after the expiration of the period of one year since the time of the removal or the commencement of the retention of the child, and the child is now settled in his/her new environment;
- ② In the case where the petitioner was not actually exercising the rights of custody at the time of the removal or the commencement of the retention of the child (except in the case where it could be deemed that the rights of custody would have actually been exercised by the petitioner but for said removal or retention);
- ③ In the case where the petitioner had given prior consent or subsequently approved the removal or retention of the child;
- ④ In the case where there exists a grave risk that child's return to the state of habitual residence would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;
- ⑤ In the case where the child objects to being returned, in a case where it is appropriate to take account of the child's views in light of his/her age and degree of development;
- ⑥ In the case where the return of the child to the country of habitual residence would not be permitted by the fundamental principles of Japan relating to the protection of human rights and fundamental freedoms.

In order to prevent the respondent from taking the child out of Japan during the procedures for the Order for the Return of Child, you may file another petition for issuance of an Order of Ne Exeat to bar the other party to take the child out of Japan, or of an Order of Passport Surrender to submit the child's registered passport to the Minister

for Foreign Affairs.

In order to give an order on a petition for the return of child, the court requests both parties to submit documents of allegations (written petition, written response, or written statement, etc.) or supporting evidence to the court. Then the court directly hears from the parties about the case. If it is considered necessary, a Family Court Probation Officer may meet the petitioner, the respondent or the child to carry out an investigation.

○For swift determination of the case, both parties are required to allege and prove promptly and accurately.

As mentioned above, in procedures for the Order for the Return of Child, the court orders the respondent to return the child to the state of habitual residence as long as the Grounds for Refusal of Return of Child listed from ① to ⑥ are not found. The Hague Convention prescribes the necessity to act expeditiously in proceedings. As the Hague Convention Implementation Act provides, a petitioner of the case on the Order for the Return of Child or the Minister for Foreign Affairs may ask the court to explain the status of the proceedings of the case if six weeks have elapsed from the date on which a petition for return of child is filed and said case is still pending. Therefore, both parties are required to allege and prove promptly and accurately for swift determination of the case. Since in procedures for the Order for the Return of Child, as mentioned above, you would need legal knowledge of Japan and of the state of habitual residence, you are advised to request consultation with an attorney depending on your needs.

○Procedures for the Order for the Return of Child are not procedures to make decisions on custody rights or parental authority.

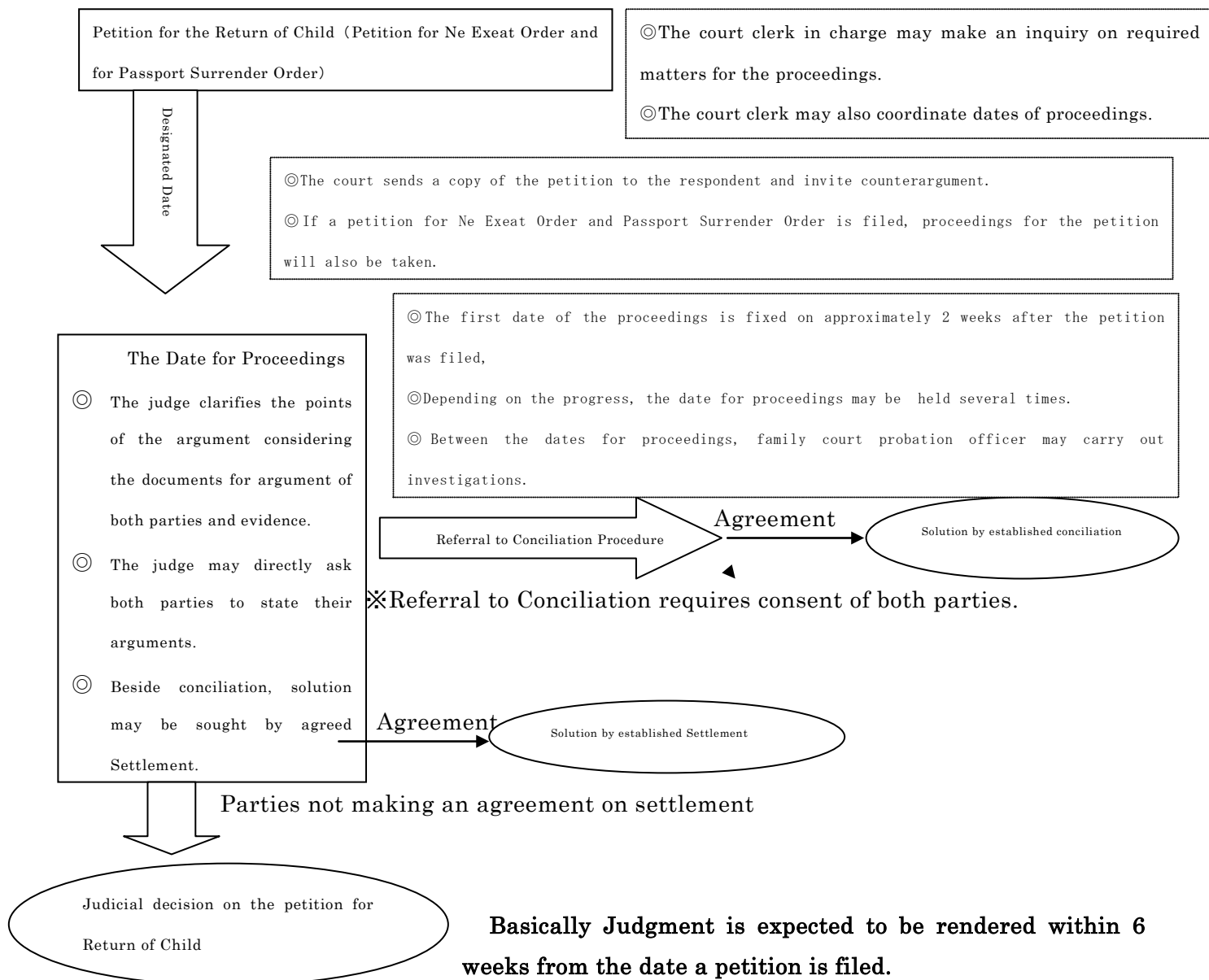
The procedures for the Order for the Return of Child solely intends the return of the child to the state of his/her habitual residence, and the court will not decide on who should be granted custody rights, or parental authority of the child. Therefore, once the court in Japan makes a decision for return of child, the child will be returned to the state of his/her habitual residence, and then a judgment will be made under the procedures in the said state on who should be granted custody rights or parental authority of the child. Even if an adjudication case on designation or modification of parental authority holder or on disposition of custody rights of the child or a divorce case where these matters are being examined is pending before a family court in Japan, the family court cannot make a judicial decision on the above mentioned cases, unless the decision to dismiss the petition for the return of child at the judicial authority has become final and binding.

○During procedures for the Order for the Return of Child, it is possible to have discussion between both parties for an amicable solution.

Whether the child should be returned should desirably be discussed between both parties for the interests of the child. Therefore, it is possible to seek a settlement in the

procedures, or to have discussion by referring the case to conciliation procedures (Referral to Conciliation) if both parties give consent. For more details about conciliation procedures, refer to "You Can Use Conciliation in a Case on the Order for the Return of Child".

○Flow of Procedures



2 What to Confirm before Filing a Petition

(1) Have you filed an application for assistance in child's return to the Ministry of Foreign Affairs (the Minister for Foreign Affairs)?

When you have made an application for assistance in child's return to foreign state and the Ministry of Foreign Affairs (the Minister for Foreign Affairs) has decided to provide assistance in child's return to foreign state, you may expect a voluntary solution. That is,

the Ministry of Foreign Affairs arranges discussion about the return of the child or visitation or contacts with the child between you and the person who has taken the custody of the child without taking judicial procedures at the court.

If the address of the child, and the name and address of the person who lives together with the child are not identified, the court is not able to take any further procedures. In such a case, the procedures will be carried on if necessary information is submitted by you or through assistance in child's return to foreign state by the Ministry of Foreign Affairs (the Minister for Foreign Affairs). When you have filed an application for assistance in child's return to foreign state, the Ministry of Foreign Affairs (the Minister for Foreign Affairs) will also collect information, depending on its necessity, from related organizations to discover the whereabouts of the child and to identify the name and address of the person who lives together with the child. Therefore, for prompt proceedings, you are advised to file an application for assistance in child's return to foreign state before filing a petition to a court.

(2) Are you ready with a written petition and attached documents?

For more information on how to prepare a written petition and attached documents, refer to "About Documents to Submit (To Those Who File a Petition for Return of Child) (※)."

If the written petition or attached documents need correction or are incomplete, the procedures may take additional time.

(3) If you notify us of the date on which you are to file a petition, the procedures will be taken more promptly.

After you file a petition, the court will examine the written petition, etc. as promptly as possible, and coordinate to set the date of proceedings while asking your circumstances necessary for the progress. If you notify the court of the date on which you are to file a petition, the court can ask you necessary information when you come to the court to file a petition, and the procedures will proceed more promptly. If you have appointed an attorney in Japan for the procedures, please notify the court, and you do not need to visit the court by yourself.

(4) Designate a place within Japan to receive documents from the court.

You are required to submit a form, "Notification of Place of Contact, etc. (Notification of Modification) (※) " (Also refer to "About Documents to Submit (To Those Who File a Petition for Return of Child) (※) ") in order to designate a place to receive documents from the court, when you file a petition. Basically the court will send documents including a written order, etc. to the place you specified in the form. If the address specified in the form is in a foreign state, the court cannot take smooth procedures as it would need much more

time for the process to send the documents. Therefore, the receiver's address should be in Japan. If you appoint a Japanese attorney, you may specify the office address of your attorney as the receiver's address.

(5) The jurisdiction is determined according to the address of the child.

Tokyo Family Court handles the case when the address of the child is found in jurisdiction of Tokyo High Court, Nagoya High Court, Sendai High Court, or Sapporo High Court.

Osaka Family Court handles the case when the address of the child is found in jurisdiction of Osaka High Court, Hiroshima High Court, Fukuoka High Court, or Takamatsu High Court.

Even after you file a petition, your case may be transferred to another court if the court where you file a petition does not have the jurisdiction.

※There is no English version of this form. Written documents to be submitted to the court should be prepared in Japanese.

3 Please attend the designated date for prompt proceedings.

Since procedures for the Order for the Return of Child are expected to proceed expeditiously under the Hague Convention Implementation Act, please attend the designated date. The court asks your convenience but the court is not always able to designate the date as your request. In the case where you miss the date for an unavoidable reason, please make sure your attorney can contact you during the date for coordinating a next date, etc.