

June 2014

<You Can Use Conciliation in a Case on the Order for the Return of Child>

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 What is Conciliation in Procedures for the Order for the Return of Child?

Under "Act for Implementation of the Convention on the Civil Aspects of International Child Abduction" (the Hague Convention Implementation Act), a case of petition for the return of child may be referred to conciliation if both parties give consent. In such a case, conciliation procedures are sought at the court by which the case of the return of child has been handled, and the procedures for the Order for the Return of Child may be suspended temporarily.

Conciliation procedures are presided by a Conciliation Committee and aim for reconciling the opinions and formulating agreement between both parties. The Conciliation Committee first makes inquiry on circumstances and hears opinions from both parties. Then the Conciliation Committee provides advice or recommendation from a neutral and fair standpoint. The Conciliation Committee usually consists of one judge and two or more committee members who are selected citizens with commonsense from non-governmental sector. In conciliation procedures, both parties are required to appear in principle.

In the conciliation procedures, it is possible to have discussion on such matters as follows depending on the case:

- Whether the child should be returned to the state of his/her habitual residence or stay in Japan
- The expenses for the traveling
- The living environment for the time being
- How to share the living expenses and child support
- Visitation or contacts
- The rights of custody or the parental authority of the child, etc.

When both parties have reached an agreement, a conciliation record is prepared including the contents of agreement. Once the return of child is agreed in the conciliation procedures, it is possible to take procedures for compulsory execution based on the conciliation record, and also regarded that the agreement on the other matters (such as the child support) should take the equivalent effect as adjudication or a final and binding judgment. The effectiveness of the agreement in the state of habitual residence depends on the interpretation of laws in that state. Please also see "5 Investigations on Laws in State of Habitual Residence" below.

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As for the future of the child, it is desirable to seek voluntary solutions as much as possible through discussion between both parties. The conciliation procedures not only enable both parties to have substantial discussion with Conciliation Committee members in procedures separated from the procedures for the Order for the Return of Child and to seek a voluntary solution, but also guarantee the agreement of both parties by compulsory execution, etc.

2 Flow of Conciliation Procedures

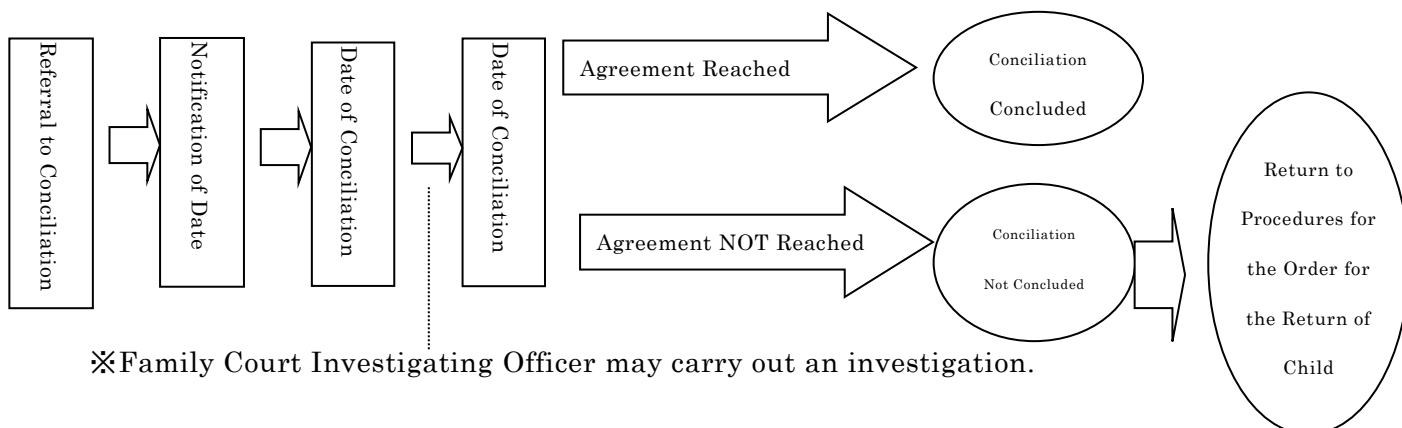
(1) Hearing of Intents from Both Parties

Before the court refers the case to conciliation procedures (Referral to Conciliation), the court hears both parties' opinions concerning the referral. The court will request both the petitioner, when filing a petition for the return of child, and the respondent, when preparing and submitting the written answer, to submit the "Response to Inquiry Concerning the Progress of Procedures for the Order for the Return of Child (※)." If you have any requests on the matters related to Referral to Conciliation procedures, let the court know by describing it on the form. If both parties have reached a substantial agreement and wish for referring to conciliation procedures at the moment of filing a petition, please submit an agreement on Referral to Conciliation prepared jointly by both parties at the time of filing a petition for the return of child.

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

(2) Flow of Procedures after Referral to Conciliation

The flow of conciliation procedures after the Referral to Conciliation is shown in the diagram below. The conciliation procedures are closed-door procedures, where the conciliation committee facilitates discussion from a neutral position while hearing from both parties. On the designated date, the petitioner and the respondent, after waiting in the respective waiting rooms, are to enter a conciliation room alternately or at the same time.



※Family Court Investigating Officer may carry out an investigation.

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(3) Relationship between Termination of Conciliation and Procedures for the Order for the Return of Child

a) When an agreement is reached in conciliation (Conclusion of Conciliation)

The conciliation terminates and the procedures for the Order for the Return of Child completes as the petition for the order is regarded to be withdrawn.

b) When it is recognized there is no prospect for agreement between both parties (Non-Conclusion of Conciliation).

When the Conciliation Committee recognizes that there is no prospect for agreement between both parties, the conciliation will terminate as non-conclusion of conciliation, except that the adjudication in lieu of conciliation is rendered. When the conciliation terminates due to a non-conclusion of conciliation, the procedures for the Order for the Return of Child will continue.

In the procedures for the Order for the Return of Child, the court may examine the documents submitted in the conciliation procedures and the relevant parties may state the contents of the discussion in the conciliation

3 How to Submit Documents, etc. Required for Conciliation Procedures

- In the conciliation, you may be requested to submit documents to support your argument depending on the necessity. As for the way to submit the documents, refer to the explanation below or ask the Conciliation Committee members in charge or a court clerk.
- When you submit documents, etc., submit a copy for the court and the corresponding number of copies for the opponents, and bring along a copy for yourself on the day of the conciliation. If there are pages among the documents that you do not wish to hand over to the opponents, you may submit a copy only to the court. Even in this case, the opponents may confirm the contents of the documents, etc. by requesting for inspection of or copying of the record.
- If you have any information among the documents, etc. that you do not like the opponents to know even if the opponents request for inspection of or copying of the record, it is advised to apply a masking (with black paint) over the portion (such as the address of a tax certificate in case of concealing the address) that the family court does not need to see (Prepare 2 copies of each document for the court and for the opponent, respectively.).
- As for the document which cannot be masked, describe the required items in a "Request for Non-Disclosure(※)" and submit the relevant document attached underneath the form with a staple as a unit. The judge will make a decision whether to permit the request for inspection of or copying of the document by the opponent considering the description in your "Request for Non-Disclosure."

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4 Inspections of or Copying of the Submitted Documents

One party may request for inspection of or copying of the documents, etc. submitted by the other party during conciliation procedures. The judge will make a decision whether to permit the request considering circumstances including if the request is obstructing a smooth discussion.

In the case where conciliation procedures complete with a non-conclusion of conciliation, a request for inspection of or copying of the documents submitted during the conciliation procedures are inevitably permitted if the judge examines the documents during the procedures for the Order for the Return of Child, as long as the legally specified grounds for exception do not apply.

5 Investigations on Laws of the State of Habitual Residence

In the conciliation procedures, various matters may be agreed upon such as the issues of custody of the child or of the withdrawal of criminal prosecution. The effectiveness of such agreement, however, depends on interpretation of laws of the state of habitual residence. For this reason, the court may request both parties in the conciliation procedures to investigate laws of the state of habitual residence.