

【E-01】

June 2014

BE SURE TO READ BEFORE FILING A PETITION

**<For Those Who File a Petition for Conciliation (Adjudication) for Visitation or Contacts
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 Cases Where Conciliation (or Adjudication) Procedures for Visitation or Contacts are Handled by Tokyo or Osaka Family Court under the Hague Convention Implementation Act

According to the law of Japan, a parent who has not taken care of his/her child, during separation or after the divorce, may file a petition for conciliation (or adjudication) to seek visitation or contacts with the child, and may file a petition for conciliation (or adjudication) to seek modification of the contents or of the method, etc. of the visitation or contacts already set up, if circumstances (substantial aspects such as the age or other situations) have been changed. In such a case, in principle, conciliation is to be filed to the family court with the jurisdiction covering the address of the respondent, and adjudication is to be filed to the family court with the jurisdiction covering the address of the child. Under the Hague Convention Implementation Act, however, if a decision has been made by the Minister for Foreign Affairs either for providing assistance in child's return to foreign state or assistance in visitation or contacts with child in Japan, or a petition for the return of child has been filed, you may take procedures for conciliation (or adjudication) for visitation or contacts also at Tokyo Family Court or Osaka Family Court.

【Cases where conciliation (or adjudication) for visitation or contacts with child is also handled by Tokyo Family Court】

- ① In the case where the address of the child (if the child's address is not in Japan or not known, the child's residence applies) is located in the following places
- Within Jurisdiction of Sapporo High Court • • Hokkaido
 - Within Jurisdiction of Sendai High Court • • Miyagi, Aomori, Akita, Iwate, Yamagata, Fukushima
 - Within Jurisdiction of Tokyo High Court • • Tokyo, Kanagawa, Chiba, Saitama, Gunma, Ibaraki, Tochigi, Yamanashi, Niigata, Nagano, Shizuoka
 - Within Jurisdiction of Nagoya High Court • • Aichi, Gifu, Mie, Toyama, Ishikawa, Fukui
- ② In the case where the address of the child is not in Japan or not known, and the residence of the child is not in Japan or not known.

【Cases where conciliation (or adjudication) for visitation or contacts with child is also handled by Osaka Family Court】

In the case where the address of the child (if the child's address is not in Japan or not

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known, the child's residence applies) is located in the following places

- Within Jurisdiction of Osaka High Court • • Osaka, Kyoto, Hyogo, Nara, Shiga, Wakayama
- Within Jurisdiction of Hiroshima High Court • • Hiroshima, Okayama, Yamaguchi, Tottori, Shimane
- Within Jurisdiction of Fukuoka High Court • • Fukuoka, Saga, Nagasaki, Oita, Kumamoto, Kagoshima, Miyazaki, Okinawa
- Within Jurisdiction of Takamatsu High Court • • Kagawa, Tokushima, Kochi, Ehime

Although it is not mandatory to appoint an attorney in the procedures for conciliation (or adjudication) for visitation or contacts, you may need legal knowledge of both Japan and the state of habitual residence of the child, etc. in order to examine which state's law to apply in the arrangement of visitation or contacts, in what cases the petitioner can have visitation or contacts with the child under the law to be applied, and if the arrangement on visitation or contacts has effect also in the state of habitual residence. For this reason, you are advised to consult with an attorney of Japan. Once you appoint an attorney, the attorney will carry out, as your agent, alleging and proving including preparation of a written petition, etc.

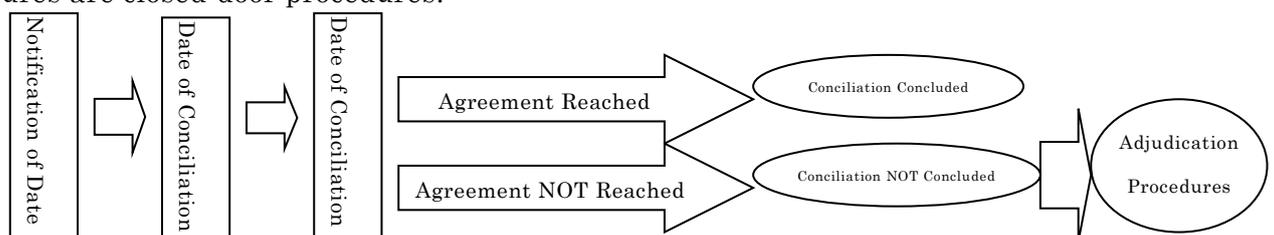
If you are interested in introduction to Japanese attorneys, please contact the Ministry of Foreign Affairs, which is the Central Authority of Japan.

Hague Convention Division, Consular Affairs Bureau, the Ministry of Foreign Affairs
Address: Kasumigaseki 2-2-1, Chiyoda-ku, Tokyo, Japan, 100-8919
Telephone Number: +81-3-5501-8466
Email Address: hagueconventionjapan@mofa.go.jp

2 Conciliation Procedures are Shown as Follows.

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.

The flow of conciliation procedures are shown in the diagram below. 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. The Conciliation Committee facilitates discussion from a neutral position while hearing from both parties. The conciliation Procedures are closed-door procedures.



※ Family Court Investigating Officer may carry out an investigation.

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It is desirable that an arrangement about visitation or contacts with the child is made by an agreement of both parties through discussion between them. Even when a court is examining a petition for the return of child to the state of habitual residence in parallel, agreement through discussions between both parties as to whether the child should be returned to the state of habitual residence is desirable. For example, in a case where you assume that the child should be returned to the state of habitual residence, you may need to arrange visitation or contacts for the time being in the state of habitual residence. In a case where you assume that the child should continue to live in Japan as accustomed so far, you would need to arrange visitation or contacts in this case, too. For this reason, even if at first a petition for adjudication for visitation or contacts was filed, it may be referred to conciliation procedures by a decision of the judge.

3 Fees Required for Filing a Petition

- Revenue Stamp ・ ・ ¥1,200 per child (Minor) in the case
- Postal Stamps for Correspondence ・ ・ (Conciliation case) TWO 100-yen stamps, EIGHT 82-yen stamps, TEN 10-yen stamps, and TWO 5-yen stamps. (Total: 966 yen)
(Adjudication case) FOUR 500-yen stamps, NINE 82-yen stamps, TWO 52-yen stamps, and FOURTEEN 10-yen stamps. (Total: 2982 yen)

4 Documents, etc. Required for Filing a Petition

- Written Petition(※): 3 copies
 - Prepare 3 copies of the written petition. These are for the court, for the respondent, and for the petitioner; one copy is sent to the respondent as specified by the law. Be sure to describe in the written petition that you have received decision for assistance in child's return to foreign state or for assistance in visitation or contacts with child in Japan, or you have filed a petition for the return of child. As a form (※) to describe the above matter is available besides the form of written petition (※) , you may use it and attach it with the written petition.
- "Explanation of Circumstances(※)": 1 copy (In the case of adjudication: 2 copies (one for the court and the other for the respondent))
- "Notification of Place of Contact, etc. (Notification of Modification) (※)": 1 copy
- "Response to Inquiry Concerning the Progress (※)": 1 copy
- "Confirmation of Opinion on the Court Handling the Case, etc.(※)": 1 copy
- A copy of one of official documents to certify identification information (nationality, registered domicile, date of birth, family relations, etc.) of the petitioner, the respondent and the child
 - A transcript of family register, a marriage certificate, and a birth certificate may be

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applicable.

→ In case the petitioner and the respondent were once married and divorced, attach documents to certify the facts of the marriage and of the divorce.

In case the petitioner can visit or contact the child based on a judicial decision or agreement in the state of habitual residence, attach a document to certify that.

A copy of written notice of decision for assistance in child's return to foreign state or for assistance in visitation or contacts with child in Japan

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

5 How to Submit Documents, etc. Required for Procedures (Submit the documents, etc. in A4 size.)

- In the conciliation, you may be requested to submit documents to support your argument depending on the necessity. As for the ways to submit the documents, refer to the explanation below or ask the Conciliation Committee member in charge or a court clerk.
- When you submit documents, etc., in conciliation procedures, submit a copy for the court, and bring along a copy for the petitioner on the day of the conciliation. When you submit a document, etc. that you wish to deliver to the respondent, submit 2 copies of it (one for the court and the other for the respondent).
- When you submit a document, etc., in adjudication procedures, be sure to submit 2 copies (one for the court, and the other for the respondent), and bring along a copy for the petitioner on the day of the adjudication.
- 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 that the family court does not need to see (such as the address of a tax certificate in case of concealing of the address) (Prepare 2 copies (one for the court and the other for the respondent) in the same manner).
- 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 by the opponent considering the description in your "Request for Non-Disclosure." Therefore, the document with "Request for Non-Disclosure" may be disclosed with the permission for inspection of or copying of the record; the document without "Request for Non-Disclosure" will be regarded as having no request for non-disclosure.
- Number each evidentiary documents, write "甲" before the number and "号証" after the number (e.g. "甲1号証"), and submit 2 copies (one for the court and the other for the respondent). Besides, submit 2 copies (one for the court and the other for the respondent) of written explanation of evidentiary documents with the numbers, the titles, and clarified points of proof of the evidentiary documents (in the same manner as one used for civil action).
- Be sure to attach a Japanese translation to an evidentiary document written in a foreign language.

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be prepared in Japanese.

6 Inspection of or Copying of the Submitted Documents

A copy of the written petition submitted by the petitioner is sent to the respondent as specified by the law. Besides that, 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 adjudication procedures commences with a non-conclusion of conciliation, the judge of adjudication procedures examine the documents submitted during the conciliation procedures if the documents are necessary for adjudication. Then a request for inspection of or copying of the documents is permitted as long as the legally specified grounds for exception do not apply. This is the same manner to the case where a petition is filed for adjudication from the beginning.

7 What to Confirm before Filing a Petition

(1) Have you made an application for Assistance to the Ministry of Foreign Affairs (the Minister for Foreign Affairs)?

In the case you file a petition for conciliation (or adjudication) for visitation or contacts to Tokyo Family Court or to Osaka Family Court according to the Hague Convention Implementation Act, the precondition is that you have received the decision of the Minister for Foreign Affairs either for assistance in child's return to foreign state or for assistance in visitation or contacts with child in Japan, or you have filed a petition for the return of child.

In addition, 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 will not be 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 by the Ministry of Foreign Affairs (the Minister for Foreign Affairs). When you have filed an application for assistance to the Ministry of Foreign Affairs (the Minister for Foreign Affairs), Ministry of Foreign Affairs will 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 live together with the child. Therefore, for prompt proceedings, you are advised to file an application for assistance to the Ministry of Foreign Affairs (the Minister for Foreign Affairs) before filing a petition to a court.

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

You are requested to submit a form, "Notification of Place of Contact, etc. (Notification of Modification)(※)" 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.

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(3) Investigations on Laws of the State of Habitual Residence

The effectiveness of an agreement on visitation or contacts in the state of habitual residence may depend on interpretation of laws of the state. For this reason, both parties in the conciliation procedures may be requested to investigate laws of the state of habitual residence.

(4) The jurisdiction is determined according to the address of the respondent or of the child.

As stated in “1 Cases Where Conciliation (or Adjudication) Procedures for Visitation or Contacts are Handled by Tokyo or Osaka Family Court under the Hague Convention Implementation Act,” in principle, a petition for conciliation is to be filed to the family court with the jurisdiction covering the address of the respondent, and a petition for adjudication is to be filed to the family court with the jurisdiction covering the address of the child. However, if a decision has been made by the Minister for Foreign Affairs either for assistance in child’s return to foreign state or for assistance in visitation or contacts with child in Japan under the Hague Convention Implementation Act, or a petition for the return of child has been filed, you may take procedures for conciliation (or adjudication) for visitation or contacts also at Tokyo Family Court or Osaka Family Court.

Even after you file a petition for conciliation (or adjudication) procedures for visitation or contacts, your case may be transferred to another court if the court where you file a petition does not have the jurisdiction.

Further, even if Tokyo Family Court or Osaka Family Court has jurisdiction under the Hague Convention Implementation Act, the case may be transferred to the court nearest to the address of the child or of the respondent considering various circumstances including necessity of a prompt investigation of the child’s situation.