

Demonstration: Mediation and Conciliation

Asia Pacific Symposium
on the 1980 Hague Convention

Tokyo
June 29 and 30, 2016



The outline of this session

Introduction

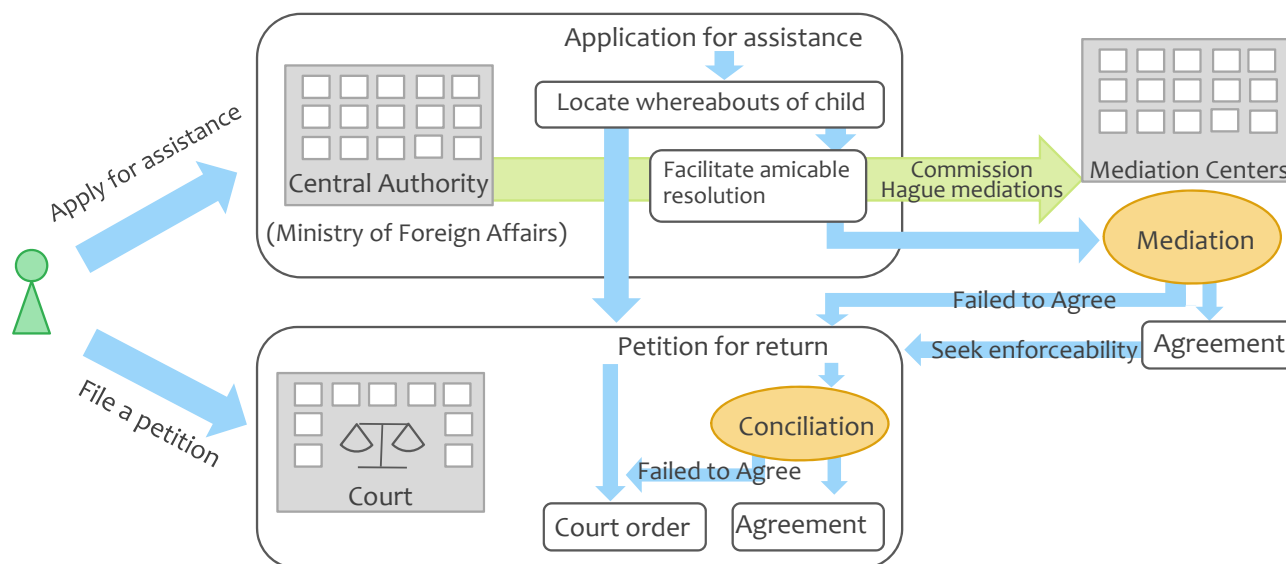
Demonstration 1 : (Out-of-Court) Mediation

(Break)

Demonstration 2 : Conciliation
(In- Court Mediation)

Comments

Overview of Typical Flow for Hague Applications in Japan



Conciliation and Mediation

	Conciliation	Mediation
Link to Court / Japanese Central Authority (JCA)	Proceedings at Court	Proceedings at Mediation Centers which are commissioned by the JCA (7 Mediation Centers in FY2016)
Conciliated / Mediated by	“Conciliation Committee” consists of: <ul style="list-style-type: none"> - One Judge - Two Conciliation Commissioners (conciliators) 	Mediator(s)
Enforceability	Agreement can be enforced in the same manner as final and binding court orders (depending on contents of the agreement).	Not immediately enforceable. Agreements need to be rendered enforceable in the relevant jurisdictions.

Case between Laura and Yuji

Left Behind Parent: Laura Nakata (the mother, a national of country X)
Taking Parent: Yuji Nakata (the father, Japanese)
Child: Taro Nakata (4-year-old boy)

1 Aug 2009	Yuji opened a Japanese restaurant in country X.
15 Aug 2009	Yuji employed Laura at his Japanese restaurant.
10 Oct 2010	Laura and Yuji married.
2 Feb 2012	Taro was born in country X.
3 Mar 2016	Yuji went Japan with Taro, promising Laura to come back by 31 March 2016. (Yuji explained to Laura that he needs to raise funds in Japan for his restaurant and would like to take this opportunity to show Taro to the ground parents.)
31 Mar 2016	Yuji sent Laura an Email stating that he will stay and raise Taro in Japan.

Case between Laura and Yuji (Application to the Central Authority)

14 Apr 2016	Laura filed a Hague application to the Central Authority of country X.
30 Apr 2016	The Central Authority of country X transferred Laura's application to the Central Authority of Japan (JCA).
10 May 2016	The JCA decided to assist Laura's case. The JCA sent Laura the package of documents explaining the possible procedures in Japan and the JCA's assistance. The JCA also sent Yuji the same package of documents with notification that the Hague application was filed.

Case between Laura and Yuji (Mediation)

CAST

Laura Nakata (Mother)	“Laura”	... Ms. Miriam Rose Ivan L. Pereira (Registered Foreign Lawyer)
Yuji Nakata (Father)	“Yuji”	... Mr. Takehisa Hamada (Attorney at Law)
Fuki Fukuda (Mediator)		... Ms. Ai Kuroda (Attorney at Law)
Mark Miller (Mediator)		... Prof. Colin P.A. Jones (Doshisya University)
A (Administration Staff the Center)		... Mr. Seisuke Taniguchi (Mediation Center Osaka)
B (Case Officer of the JCA)		... Ms. Maki Okoshi (Ministry of Foreign Affairs)
Narrator		... Ms. Yuki Uchiyama (Attorney at Law)

This demonstration of mediation shows an example of mediation with the full cooperation of one of the seven mediation centers commissioned by the JCA, the Public Interest Incorporated Association Mediation Center Osaka (“Mediation Center Osaka”).

Case between Laura and Yuji (Mediation)

15 May 2016	Yuji made a phone call to the JCA, stating that he is willing to have mediation with Laura on this issue at the Mediation Center Osaka. The JCA conveyed this to Laura.
30 May 2016	Laura sent application for mediation to the Mediation Center Osaka. ----- (Demonstration starts from here) -----
6 Jun 2016	The Mediation Center Osaka received Laura’s application. The Center notified the JCA on Laura’s application for mediation and seek assistance for the initial contact between the Center and Yuji. The JCA asked Yuji to contact the Center.
8 Jun 2016	Yuji called the Center, telling his acceptance to have mediation and his address. The Center sent Yuji the relevant documents.
15 Jun 2016	The Center received Yuji’s written consent to participate mediation.
1 Jul 2016	1 st mediation session
7 Jul 2016	2 nd mediation session
13 Jul 2016	3 rd mediation session

Case between Laura and Yuji (Conciliation)

CAST

Laura Nakata (Mother)	“Laura-san”...	Ms. Miriam Rose Ivan L. Pereira (Registered Foreign Lawyer)
Yuji Nakata (Father)	“Yuji-san”...	Mr. Takehisa Hamada (Attorney at Law)
Judge	...	Ms. Kumiko Tsukada (Ministry of Foreign Affairs)
Ms. Honda (Conciliation Commissioner)	...	Ms. Misako Nishi (Conciliation Commissioner)
Mr. Suzuki (Conciliation Commissioner)	...	Mr. Toshiteru Shibaie (Attorney at Law)
Ms. Sato (Attorney for Laura)	“Sato-sensei”...	Ms. Masami Kittaka (Attorney at Law)
Mr. Mori (Attorney for Yuji)	“Mori-sensei”...	Mr. Yohei Suda (Attorney at Law)
Narrator	...	Ms. Tomoko Yoshimura (Conciliation Commissioner) Ms. Keiko Tanaka (Conciliation Commissioner)

Case between Laura and Yuji (Conciliation)

15 May 2016	Yuji made a phone call to the JCA, stating that he has no intention to discuss voluntary arrangement on this issue with Laura and refuses further contact from the JCA. The JCA conveyed this to Laura.
23 May 2016	Laura applied for the Lawyer Referral Service.
30 May 2016	Laura retained one of the referred lawyers.
17 Jun 2016	Laura filed a petition for return of Taro to the Tokyo Family Court.
27 Jun 2016	1 st court proceeding: the court referred the case to conciliation with the consent of both parties.
12 Jul 2016	Laura arrived Japan to attend conciliation.
----- (Demonstration starts from here) -----	
15 Jul 2016	1 st conciliation session
19 Jul 2016	2 nd conciliation session
20 Jul 2016	3 rd conciliation session & 2 nd court proceeding

APPENDIX (Memorandum of Understanding)

1. Respondent will return to Country X with Taro, the son of the parties in this mediation, (the “Child”) by the end of August 2016, and resume living with Applicant.
2. Respondent hereby apologizes to Applicant for breaking his promise to return to Country X by the end of March and for deciding instead to live in Japan with the Child.
3. From now on, Respondent promises to never take the Child away without Applicant’s written consent.
4. From now on, Respondent and Applicant will share the duties and responsibilities both at home and the restaurant – except cooking in the restaurant, which shall be responsibility of Respondent. Respondent and Applicant shall help each other with the housework, the care of the Child and the running of the restaurant. They will thoughtfully consider the division of roles between them and will cooperate with each other to carry out their duties. Applicant shall cooperate with Respondent in managing the restaurant as much as possible.
5. From now on, Respondent will disclose to Applicant all management and financial information concerning the restaurant that will be reopened in Country X.
6. Applicant will take Japanese language lessons, and Respondent will bear the reasonable cost thereof, and take care of the restaurant and Taro with the help of the mother of Applicant while Applicant takes such lessons.
7. Respondent will return to Country X because of Applicant’s sincere promise to give their marriage another try.
8. Applicant promises not to bring any divorce proceedings for at least a year.
9. Respondent will make the arrangements and bear the travel expenses for returning the Child to Country X.
10. Respondent will repay the sum of JPY 500,000 over the next two years that Applicant spent to travel to Japan for the court proceedings in the Osaka Family Court (i.e., Heisei 28 (Ie-nu) No.○), seeking for the return of the Child, as well as the mediation proceeding.
11. Both parties confirm and agree that there are no other claims or obligations between the parties except for the formal note of settlement specified in this Memorandum of Understanding concerning this case.
12. Both parties agree to bring this MOU to the court proceeding mentioned in the provision 10 and make the Settlement Agreement based on this MOU to the extent the laws of the court allows.
13. The sum of JPY 100,000 is charged for concluding the mediation in this case, which amount shall, however, be borne by the Ministry of Foreign Affairs.