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Enforcement of International Divorce in Japan

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I. Introduction

As we mentioned in the previous reports, the governing law of an international (foreign) couple with the different nationalities living in Japan with the intention to stay in Japan would be the laws of Japan. According to 763 of the Civil Code of Japan, the international (foreign) couple may divorce by mutual consent.

The divorce of the international (foreign) couple shall be recognized and enforceable in the country where there assets are located because the assets owned by the international (foreign) couple are often located outside of Japan and divided by the operation of law upon the divorce. Otherwise the international (foreign) couple shall divorce in the country.

To avoid the divorce again in the foreign country, mere divorce by the mutual consent is risky. This is because mere divorce by the mutual consent sometimes cannot be recognized or enforceable in the country where only the judgment divorce is available. For example, many common law countries or states only accept the judgment divorce. To avoid the risk of non-recognition or unenforceable of consent divorce, it is better to get divorce judicially in Japan.

II. Judicial Divorce

Although there is no statute in relation to the jurisdiction of the judicial divorce, the judgment of the Supreme Court of March 24, 1964 set the general principal under which a party to divorce litigation may file a law suit against the other party as long as the other party is located in Japan. Under the general principal set the Supreme Court of Japan, the international (foreign) couple living in Japan may file a divorce law suit in Japan. Under Article 257(1) of the Code of Procedure for Family Affairs Dispute (“CPFAD”), a party to divorce law suit shall first file divorce mediation prior

to filing a divorce law suit.

In accordance with Article 268(1) of CPFAD, the agreement of the parties to divorce reached through mediation and stated in the mediation record shall have the same effect as the final and binding divorce judgment.

III. Practice of Judicial Divorce

In practice, therefore, the international (foreign) couple who could get divorce amicably negotiates the terms and conditions of the divorce each other and executes the divorce settlement agreement first. The parties then file divorce mediation and reach the agreement in the first court day in accordance with the settlement agreement.

Experienced lawyers, such as us, are normally negotiate with the opposite party or his/her attorney, draft the settlement agreement, execute the agreement in English with the opposite party or his/her attorney, file a mediation, communicate with the mediation court official, attend the first and final mediation court day and settle the mediation in front of the mediation panel in Japanese on behalf of the client.

It is, therefore, important for an international (foreign) couple to find an experienced English speaking lawyer like us to get divorce in Japan.

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