
Japan

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1 Divorce

1.1 What are the grounds of jurisdiction for divorce proceedings? For example, residence, nationality, domicile, etc.?

There is no explicit jurisdictional requirement for divorce under the laws of Japan. The prevailing opinion among scholars and the Supreme Court held that if the domicile of the defendant is in Japan, in general, they are required to file a divorce law suit in Japan.

Although there is no definition of the domicile under the laws of Japan, a person in practice is treated as having the domicile in Japan if he or she has been in Japan for a couple of months with the intention to stay in Japan indefinitely.

There are some exceptions to the general rule of jurisdictional requirement.

The judgment of the Supreme Court of March 25, 1964 set an exception to the general jurisdictional requirement if the plaintiff is located in Japan and the one of the following requirements are met:

- (1) the plaintiff was abandoned by the defendant;
- (2) the whereabouts of the defendant are unknown; or
- (3) other situations equivalent to the above.

By applying this rule, the Supreme Court affirmed that the jurisdiction over the divorce case filed by a Korean wife residing in Japan against her Korean husband who had never been to Japan and whose whereabouts were not known.

Another judgment of the Supreme Court of June 24, 1996 set another exception to the general jurisdictional requirement: if the plaintiff is located in Japan and the plaintiff has difficulty in filing a divorce law suit, *de jure* or *de facto*, against the defendant in the location of the defendant.

By applying this rule, the Supreme Court affirmed that it has jurisdiction over a divorce case filed by a Japanese husband residing in Japan against his German wife located in Germany. In this case, the German court rendered a divorce judgment and, therefore, the Japanese husband is not allowed to file a divorce law suit again in Germany. The Japanese husband needed to file a law suit in Japan in order to divorce his wife.

1.2 What are the grounds for a divorce? For example, is there a required period of separation, can the parties have an uncontested divorce?

Under Japanese law, a husband and wife can get divorced by mutual agreement in accordance with Article 763 of the Civil Code of Japan. The elements of the judgment divorce under Article 770(1) are as follows:

- a. a spouse has committed an act of unchastely;
- b. a spouse was abandoned by another spouse in bad faith;
- c. it has not been clear whether a spouse is dead or alive for at least three years;
- d. a spouse is suffering from severe mental illness and there is no prospect of recovery; or
- e. there is any other grave cause making it difficult to continue the marriage.

The last element is interpreted to mean the same as “irrecoverable breakup of the marriage”. The factors to determine the existence of this ground are domestic violence, serious insult, failure to work despite the ability to work, wasteful habits, crime, conflict with the spousal family and difference in personal characteristics.

The length of the period of separation is considered as one of the most important factors in establishing the last ground. However, separation is not an indispensable factor of divorce.

There was an argument whether the wife or husband who is responsible for the irrecoverable breakup of the marriage could file a divorce law suit against his/her spouse.

The judgment of the Supreme Court dated September 2, 1987 held that he or she could file a divorce if:

- (i) the duration of separation is particularly long, considering the ages of the parties and compared with the duration of cohabitation;
- (ii) there are no dependent children; and
- (iii) there are no outstanding circumstances, particularly against social justice or in situations where the spouse, in objecting to the divorce, will be placed into extremely severe mental, social or economic conditions upon divorce.

1.3 In the case of an uncontested divorce, do the parties need to attend court?

No, they do not. The parties just have to submit the application for divorce to municipal office.

1.4 What is the procedure and timescale for a divorce?

With regard to the procedure of divorce by mutual agreement, the parties shall submit the divorce papers with the signatures of the parties to municipal office.

With regard to judicial divorce, a party has to file for mediation. If the parties reach an agreement for divorce in the mediation procedure, the parties are granted a divorce by mediation.

If not, the parties cannot get divorced by mediation. In this case, a party who wants to get divorced can file a lawsuit for divorce. In this procedure, if the court recognises the existence of one of the grounds for divorce mentioned above, the parties get divorced by judgement. Under Japanese law, the parties cannot file a lawsuit without filing for mediation (Article 257(1) of Domestic Relations Case Procedure Act). In case there is serious dispute regarding divorce between parties, it often takes more than one year for the court to render the judgement.

1.5 Can a divorce be finalised without resolving other associated matters? For example, children and finances.

If the parties have a child who is still a minor, the person who has parental authority must be determined in both cases whether the parties get divorced by agreement or judgement (Article 819(1) (2) of Civil Code). If parties agree on that point, the person who has custody shall be decided based on the agreement, if not, the court has to decide the person.

1.6 Are foreign divorces recognised in your jurisdiction?

Foreign divorce is recognised when a foreign divorce judgement is final and meets the following conditions provided by Article 118 of Code of Civil Procedure:

- (i) The jurisdiction of the foreign court is recognised under laws or regulations or conventions or treaties.
In determining if the foreign court has jurisdiction over the case, the same jurisdiction rule adopted by the court of Japan shall apply. For example, the judgment of the Tokyo Family Court of September 11, 2007 refused to recognise a divorce order of the Australian court as both parties had domicile in Japan.
- (ii) The defeated defendant has received a service (excluding a service by publication or any other service similar thereto) of a summons or order necessary for the commencement of the suit, or has appeared without receiving such service.
To meet this condition, the international service from the foreign country to the defendant in Japan shall meet the requirements in compliance with the treaty on the service if both Japan and the foreign country are member states of the treaty.
- (iii) The content of the judgment and the court proceedings are not contrary to public policy in Japan.
The above Tokyo Family Court judgment also refused to recognise a divorce order of the Australian court as the judgment is contrary to public policy in Japan. In this case, both the husband and wife had domicile in Japan and the plaintiff (husband) was solely responsible for the irrecoverable breakup of the marriage and could not file a divorce in Japan.

- (iv) A mutual guarantee exists.

In practice, there is no foreign judgment refused to recognise a foreign court divorce judgment applying this case. The monetary judgment rendered by the People's Republic of China is not recognised under this clause but the divorce judgment of the PRC is recognised under this clause.

1.7 Does your jurisdiction allow separation or nullity proceedings?

Under Japanese law, separation is not allowed but the nullification of marriage is allowed. Article 742 of Civil Code stipulates that marriage shall be void only in the following cases:

- (i) if one of the parties has no intention to marry due to mistaken identity or other cause; or
- (ii) if the parties do not lodge notification of marriage; provided, however, that the effect of marriage shall not be prevented merely because notification was not given in the form prescribed in paragraph (2) of Article 739 of Civil Code.

If the marriage is declared null, the parties can file a lawsuit or file a petition for Adjudication of Domestic Relations.

1.8 Can divorce proceedings be stayed if there are proceedings in another country?

It is generally understood that the Japanese court have jurisdiction over a matter even if there are proceedings in another country, as long as the Japanese court has the jurisdiction. However, once a foreign court has rendered a judgement and the judgement is recognised as valid in Japan by the Japanese court, the Japanese court will dismiss the ongoing petition for the reason that there is no merit to the petition.

2 Finances on Divorce

2.1 What financial orders can the court make on divorce?

The court can make orders regarding the distribution of property (Article 768 of Civil Code) and child support payment (Article 771 and 766(1) of Civil Code).

2.2 Do matrimonial regimes exist and do they need to be addressed by the court on divorce? Is there a default regime?

Under the laws of Japan, there is no matrimonial regime that needs to be addressed upon divorce.

2.3 How does the court decide what orders to make? What factors are taken into account?

With regard to orders for the distribution of property upon divorce, the parties to the divorce could agree on how to distribute the matrimonial property. If both parties fail to agree the method of distribution of matrimonial property, the family court shall determine whether to make a distribution, and the amount and method of that distribution, taking into account the amount of property obtained through the cooperation of both parties and all other circumstances (Article 768(3) of Civil Code).

Distribution of property under Japanese law is generally understood to cover the following three elements:

- (i) distribution of matrimonial properties that are acquired during marriage;
- (ii) compensation for the emotional damage caused by divorce; and
- (iii) post-divorce maintenance.

With regard to element (i) above, except for special cases, the levels of contribution of the parties are assumed to be equal.

With regard to element (ii) above, if a party is responsible for the breakdown of the marriage, the other party can claim compensation for the emotional damage caused by the divorce in accordance with Article 709 of Civil Code. This claim can be included in the claim of distribution of property.

With regard to element (iii) above, in making an order for the distribution of property, the court can only consider this element when one of the parties cannot support his/herself following the divorce, even if they receive property from the other party as outlined in the elements (i) and (ii).

2.4 Is the position different between capital and maintenance orders?

Under the case laws of Japan, maintenance of the spouse, other than the distribution of property upon divorce, is merely supplemental. In other words, one spouse may be required to support the other only if the distribution of property upon the divorce is not sufficient to support the living of the other. The other spouse is, in general, not entitled to receive financial support or alimony other than the distribution of the assets upon the divorce under the laws of Japan.

2.5 If a couple agrees on financial matters, do they need to have a court order and attend court?

If the parties have agreed on financial matters, they don't need to have a court order. With regard to the distribution of property, only when the parties do not, or cannot, settle on agreement, either party may make a claim to the family court for a disposition *in lieu* of agreement (Article 768(2) of Civil Code).

2.6 How long can spousal maintenance orders last and are such orders commonplace?

As mentioned above, in Japan, there is no spousal maintenance obligation except for the cases where the element of post-divorce maintenance is considered when the court determines the distribution of property.

2.7 Is the concept of matrimonial property recognised in your jurisdiction?

With regard to matrimonial property, except the property owned by one party before marriage and property obtained in the name of that party during marriage, the property owned by the parties is regarded as co-owned property.

2.8 Do the courts treat foreign nationals differently on divorce, if so, what are the rules on applicable law? Can the court make orders applying foreign law rather than the law of the jurisdiction?

Under Japanese law, if either the husband or the wife is a Japanese national who has their habitual residence in Japan, their divorce shall be governed by Japanese law (Article 27 of Act on General Rules for Application of Laws (“AGRAL”).

In other cases, the effect of a divorce shall be governed by the national law of the husband and wife if their national law is the same, or, where that is not the case, by the law of the habitual residence of the husband and wife if their law of the habitual residence is the same, or, where neither of these is the case, by the law of the place most closely connected with the husband and wife (Article 27 and 25 of AGRAL).

2.9 How is the matrimonial home treated on divorce?

The matrimonial home is treated as the one of the properties which is the object for distribution under the rules mentioned in question 2.3 above.

2.10 Is the concept of “trusts” recognised in your jurisdiction?

There is no special concept of family trusts under Japanese law.

2.11 Can financial claims be made following a foreign divorce in your jurisdiction? If so, what are the grounds?

The grounds for recognition of financial claims made following a foreign divorce are the same as the grounds mentioned in question 1.6 above.

2.12 What methods of dispute resolution are available to resolve financial settlement on divorce? E.g. court, mediation, arbitration?

In Japan, the parties can use methods such as a lawsuit, mediation, and the Adjudication of Domestic Relations.

3 Marital Agreements

3.1 Are marital agreements (pre and post marriage) enforceable? Is the position the same if the agreement is a foreign agreement?

Under Japanese law, marital agreements are concluded only before marriage (Article 755 of Civil Code). Though marital agreements are not popular in Japan, the agreements are enforceable as long as the agreements are not against public policy (Article 90 of Civil Code). However, if a party has entered into a contract that departs from the statutory property system, the contract may not be asserted against the successor in title of the husband or wife, or a third party unless registered prior to notification of marriage (Article 756 of Civil Code).

Also, a foreign agreement on marital property concluded under a foreign law may be asserted against a third party when it is registered in Japan (Article 26(4) of AGRAL).

3.2 Can marital agreements cover a spouse's financial claims on divorce, e.g. for maintenance or compensation, or are they limited to the election of the matrimonial property regime?

As long as the contents of the agreements are not against public policy of Japan, the agreements can cover a spouse's financial claims on divorce.

3.3 What are the procedural requirements for a marital agreement to be enforceable on divorce?

If a party has entered into a contract that departs from the statutory property system, the contract may not be asserted against the successor in title of the husband or wife, or a third party unless registered prior to notification of marriage (Article 756 of Civil Code).

4 Cohabitation and the Unmarried Family

4.1 Do cohabittees, which do not have children, have financial claims if the couple separate? What are the grounds to make a financial claim?

With respect to cohabitation, there is no provision on the subject of the division of property for unmarried cohabittees. However, article 768 of Civil Code for married parties is applied *mutatis mutandis* to unmarried cohabittees, according to case law. Therefore, cohabittees have financial claims if the couple separate.

4.2 What financial orders can a cohabitee obtain?

As mentioned above, cohabittees can obtain order for property division.

4.3 Is there a formal partnership status for cohabitants (for example, civil partnerships, PACS)?

Under Japanese law, there is no provision regarding formal partnership status for cohabitants.

4.4 Are same-sex couples permitted to marry or enter other formal relationships in your jurisdiction?

Under Japanese law, same-sex couples are not permitted to marry. As mentioned above, there is no provision regarding formal relationships other than marriage.

5 Child Maintenance

5.1 What financial claims are available to parents on behalf of children within or outside of marriage?

Under Japanese law, the parent who does not reside with the dependent child has an obligation to pay child maintenance to

other parent who resides with the child both within and outside of marriage. Parents have an obligation to support their dependent child.

5.2 How is child maintenance calculated and is it administered by the court or an agency?

Parents can decide the amount of child support by agreement. In cases where they cannot reach an agreement, the court or a mediation agency will decide the amount.

In cases where the amount of child maintenance is decided by judgement, mediation or adjudication, the amount is calculated with a formula designed to reflect the concept that the parents are responsible for ensuring their dependent child enjoys the same standards of living as the parents. A simplified chart has been created by court. The chart and usage can be obtained on website of Family Court (http://www.courts.go.jp/tokyo-f/saiban/tetuzuki/youikuhi_santei_hyou/). In accordance with the chart, the amount of child maintenance is calculated by taking into account the incomes of both parents, the age of the children, and the number of the children involved. However, in cases where there are special circumstances which result in the amount calculated by the formula being considerably unfair, the court can order an amount which departs from the chart by considering the special circumstances.

5.3 For how long is a parent required to pay child maintenance or provide financial support for their children? For example, can a child seek maintenance during university?

Though there is no provision stipulating the cut-off age of child support, in general, the parent is required to pay child maintenance until the child reaches the age of 20.

However, in cases where there are special circumstance which mean the child is unable to make his/her living by themselves, the parent has to pay child maintenance until the child is able to do so.

5.4 Can capital or property orders be made to or for the benefit of a child?

In cases where the parents cannot agree the amount of child maintenance, the court can decide the amount and make an order regarding child maintenance.

5.5 Can a child make a financial claim directly against their parents?

As Article 31 of Code of Civil Procedure stipulates that "a minor and an adult ward may not perform any procedural acts unless by a statutory agent", a minor dependent child cannot file a law suit against the parents to claim child maintenance.

6 Children – Parental Responsibility and Custody

6.1 Explain what rights of custody both parents have in your jurisdiction whether (a) married, or (b) unmarried?

Under Japanese law, both parents have parental authority of child in wedlock during their marriage (Article 818(1)). In Japan, parental

authority includes both legal and physical custody. At the time of the divorce, by agreement or by the order of the court, one of the parents shall be given parental authority (Article 819 of Civil Code). On the other hand, with regard to children out of wedlock, the mother has the parental authority. However, in case both parents agree that the father shall have parental authority, he can exercise parental authority.

6.2 At what age are children considered adults by the court?

Children are considered adults at the age of 20 (Article 4 of Civil Code). However, if the children enter into marriage, they are considered adults even if they are under the age of 20.

6.3 What is the duration of children orders (up to the age of 16 or 18 or otherwise)?

A child who is under the age of 20 is subject to the parental authority of his/her parents (Article 818(1) of Civil Code). However, in cases where the child enters into marriage, he/she is no longer subject to the parental authority (Article 753 of Civil Code).

6.4 What orders can the court make in relation to children? Does the court automatically make orders in relation to child arrangements in the event of divorce?

Upon the divorce, the court shall decide the sole parental authority if the parties to the divorce fail to determine who is to become the sole parental authority in accordance with Article 819(1) to (3) of the Civil Code of Japan.

6.5 What factors does the court consider when making orders in relation to children?

Upon the determination of the sole parental authority, the court will have considered who is the primary care-giver of the child, continuity of the family and school life of the children and the will of the children. As the mother has been the primary care giver for the child and mother often takes her child to her parents' home upon divorce in Japan. During the divorce mediation and litigation, primary care-giver is always the mother, the family and school life of the child is established with his mother, and the child is sometimes heavily encouraged to refuse to see his/her father. In that case, the left behind husband has had very little chance to be appointed as the sole parental authority by the court when they consider who the primary care-giver of the child is, the continuity of the family and school life of the child and the will of the child. Under the above circumstances, the mother has had strong incentive to abduct her child from her husband upon the divorce and Japan is so called the "heaven of the abductor".

Recently, the Matsudo branch of the Chiba District Court rendered an epoch making decision on March 29, 2016 (Matsudo Judgment). The Matsudo judgment compared the parenting plans submitted by both wife and husband who had been left behind for six years without visitation of his child and appoint the husband as the parental authority of the child because his parental plan was friendlier than

the mother by providing much more visitation chance to the other. This judgment is recognised to apply the friendly parent rules adopted in the United States and other western countries.

6.6 Without court orders, what can parents do unilaterally? For example, can they take a child abroad?

Under Japanese law, the parental authority can be exercised without court order. As the parent who has parental authority can determine the residence of the child (Article 821 of Civil Code), he/she can take the child abroad without a court order.

6.7 Is there a presumption of an equal division of time between separating or divorcing parents?

Under Japanese law, there is no concept of joint parental authority, and there is no presumption of an equal division of time between separating or divorcing parents. Equal division of time is often regarded to be too much of a burden on the child's family and school life with the primary care-giver.

6.8 Are unmarried parents treated in the same way as married parents when the court makes orders on separation or divorce?

Under the laws of Japan, unmarried parents are not treated in the same way as married parents. The court also does not have the authority to make orders on the separation or divorce of the unmarried couple. The parental authority is held by the mother of the child until the father adopts the child.

6.9 Is a welfare report prepared by an independent professional or is the decision taken by the Judge alone? If so, does the child meet the Judge?

In cases with regard to children, including parental authority and visitation, the judge may have a family court probation officer examine the facts of the case (Article 58(1) of Domestic Relations Case Procedure Act). In that case, the officer meets the child and speaks with them instead of the judge. However, whether the officer speaks with the child is on the discretion of the judge.

6.10 Is there separate representation for children in your jurisdiction?

Article 23 of Domestic Relations Case Procedure Act stipulates that the court may appoint separate representation for children. In cases with regard to children in which the court needs to listen their opinions, the court appoints separate representation for children so that children can fully express their opinions.

6.11 What methods of dispute resolution are available to resolve disputes relating to children?

To resolve disputes relating to children, the methods of mediation, adjudication of domestic relations, and litigation are available.

7 Children – International Aspects

7.1 Can the custodial parent move to another state/ country without the other parent's consent?

Under the laws of Japan, one of the parents shall have the parental authority upon the divorce, in accordance with Articles 819(1) and (2). The parent holding parental authority can decide the place of the residence of child (Article 821 of the Civil Code of Japan). He or she can, therefore, move to another country together with the child without the consent of the other parent.

7.2 If the court is making a decision on relocation of a child abroad, what factors are taken into account?

Under the laws of Japan, the court has no authority to render the relocation order.

7.3 In practice, how rare is it for the custodial parent to be allowed to relocate internationally/interstate?

No practice of the court allows the custodial parent to relocate the child internationally.

7.4 How does your jurisdiction deal with abduction cases? For example, is your jurisdiction a party to the Hague Convention?

Japan entered into the Hague Convention on January 24, 2014, the law of Japan was amended on June 12, 2013, and the convention

became effective in Japan on April 1, 2014. As a result, Japan deals with abduction cases in accordance with the Convention.

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Kaoru Haraguchi, a founding partner of our office, has been engaged in practising family law for approximately 30 years. He has wide and rich experience in Japan, the US (Chicago, Washington DC and New York) and the UK (London) for study (LL.M. The Law School of the University of Chicago, class of 1993) and has practical experience gained from law firms in New York, Washington DC and London.

He also provides legal services to international clients all over the worlds, in particular China and Mongolia recently.

Based on his international experience, he is able to serve many international clients using English. In collaboration with his Chinese and Mongolian colleagues, he is able to provide his 30 years of family law expertise to the international clients who do not speak either Japanese or English.



Haraguchi International Law Office was founded in 2004 by Kaoru Haraguchi in order to provide the highest quality of legal service in a timely manner to its Japanese and foreign clients.

We are multilingual and provide services in languages other than Japanese, such as English, Chinese and Mongolia.

We have been active members of domestic and international organisations together with domestic and international experts of family law, child psychologists of high conflicted couples, and psychiatrists.

We have been practising family law for US citizens and other citizens from all over the world around 30 years.

We have extensive experience of representing left behind parents and alienated parents through family courts mediation and judgments.