

Hague Convention Case
Guide to Civil Legal Aid

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Introduction

Civil Legal Aid is a system that primarily provides loans to pay for attorney fees and costs, etc. to realize the rights of those with limited means. Civil Legal Aid is provided by the Japan Legal Support Center (the “JLSC”).

This Guide has been prepared so that those that wish to apply to the JLSC for Civil Legal Aid and thereafter appropriately receive procedures and services in Japan for Hague Convention Cases. Please note that Civil Legal Aid is not applicable for judicial procedures outside Japan.

Also, please contact the Central Authority (MOFA of Japan) for retaining an attorney to file a petition for a Return Order. If you have actually received, or there is the possibility that you may receive, a petition or claim from the opposing party for a Hague Convention Case and would like to retain an attorney, please consult with your nearest bar association.

1. Types of Aid provided under Civil Legal Aid

(1) Representation Aid

Legal fee for attorney and other actual costs for the legal procedures for seeking (i) the return of a child, (ii) a ne exeat order (order not to depart Japan), (iii) a compulsory execution or (iv) visitation or other contact with a child (including negotiations for settlements and ADR procedures), will be loaned. Japanese Civil Legal Aid is a system for interest free loans for legal fees and costs, such as costs for interpretation and translation, and the loans should be, in principle, repaid [by the recipient] in instalments. To be eligible to receive Civil Legal Aid support, several requirements must be met, including that the applicant’s income must be below a certain amount. Please note that any costs incurred through applying for representation aid (such as the costs for translation of the required documents) is not covered by this aid.

(2) Legal Consultation Aid

Legal consultation will be provided free of charge (only face-to-face consultation is available). Please refer to later Clause 13.

2. Requirements to Apply for Aid

(a) The applicant must meet the means test

The applicant's means will be evaluated in Japanese yen. If the applicant has income in currencies other than Japanese yen, the amount of income will be converted into Japanese yen using the exchange rate at the time the application is made and applied to the means test (set forth in Section 3 below). The exchange rate shall be decided by the Minister of Finance pursuant to Article 35, paragraph 2 of the Ministerial Ordinance on Reports on the Foreign Exchange Trading (the Ministerial Ordinance Rate).

※Conversion into Japanese yen will be made at the time the JLSC receives the application.

(b) The applicant must meet the merit test

In other words, there is the possibility of a successful outcome. It is necessary to suffice either (i) the successful result of the court decision is reasonably foreseen, or (ii) it is expected, by retaining an attorney that (x) dispute will be resolved through mediation, settlement agreement or negotiation for amicable settlement or (y) legal benefits to the applicant can be obtained.

(c) Consistent with the purpose of Civil Legal Aid

Civil Legal Aid will not be provided to cases where (i) it is inappropriate to provide Civil Legal Aid in light of social justice or law (such as pursuing frivolous lawsuits) or (ii) the applicant does not consent to the terms and conditions set by the aid agreement and/or through the examination process. Also, as the Japanese Civil Legal Aid is a lending system, aid will not be provided if the applicant has no intention to repay.

(d) Applicant is eligible under the Hague Convention

In order to certify that the applicant is eligible for the aid under the Hague Convention, you must, in principle, have a decision on assistance issued by the Central Authority (**Ministry of Foreign Affairs of Japan**). If you are thinking of applying for the Civil Legal Aid but do not have a decision on assistance issued by the Central

Authority(MOFA of Japan), please contact the Central Authority(MOFA of Japan) first. The JLSC will consult individually if there are exceptional circumstances, in which case you will be asked to submit the documents certifying each item below in order to show that you are eligible under the Hague Convention.

- i) You are a citizen of a member state of the Hague Convention or has habitual residence in such state
- ii) The child to whom such application relates is below the age of 16 years.
The Convention applies only to children below the age of 16 years. The Convention shall cease to apply when the child reaches the age of 16 years, even if the case is in the middle of procedures. For example, even if the child was below 16 years at the time of removal or retention, an order for the return will not be issued if the child reaches the age of 16 years during the procedures.
- iii) A child was taken across national borders.
The Convention is not applicable unless removal of a child happens across the borders.
- iv) The child to whom such application relates is in Japan
- v) Habitual residence of the child to whom such application relates was in a member state of the Convention at the time of the removal or commencement of the retention of the child.
- vi) Removal or retention of a child constitutes a breach of custody rights of the applicant vis-à-vis the child in accordance with the law of the state of habitual residence

If you have already received a petition or claim of a Hague Convention Case, you are deemed an eligible applicant for the Hague Convention Case under this item (d). In such case, at the time of making an application, you will be requested to submit the prima facie evidence (e.x., documents of judicial proceedings, such as a petition for the return of the child or visitation or other contact with the child, summons from ADR organization, notice or demand from the LBP).

3. Means Test (income and assets criteria)

(1) Income

The criteria of monthly income (including bonuses) of the applicants, etc are as follows:

Single-person household	Two-person household	Three-person household	Four-person household
182,000 yen or less	251,000 yen or less	272,000 yen or less	299,000 yen or less

- For a household of five or more, 30,000 yen per person will be added [to the amount of a four-person household].
- If the spouse is the opposing party of the dispute, the income of the spouse is not aggregated.
- If the applicant, etc has a burden of rent or housing loan, up to the amount stipulated in the chart below can be added to the applicable income criteria stipulated above.

Single-person household	Two-person household	Three-person household	Four-person household
41,000 yen	53,000 yen	66,000 yen	71,000 yen

- Income of the other family members who live with the applicant, etc., to the extent it contributes to the family budget, should be aggregated with that of the applicant, etc.
- There may be a case where a certain amount can be deducted from the above mentioned criteria amount when a difficulty in making a living is recognized due to the burden of costs for medical care or education or costs deriving from compelling occupational needs.

(2) Assets

The aggregated market value of all the assets, such as cash, deposits and savings, securities and real estate of both the applicant and his/her spouse must be the amount stipulated below.

Single-person household	Two-person household	Three-person household	Four-person household
1,800,000 yen or less	2,500,000 yen or less	2,700,000 yen or less	3,000,000 yen or less

- (i) Residential house and farm land, necessary for living, (ii) assets in dispute, (iii) assets of the spouse, if the spouse is the opposing party of the dispute, can be excluded from the above amount in the criteria.
- There may be a case where a certain reasonable amount can be deducted from the above mentioned criteria amount when the assets are reserved for future medical care or education costs.

(3) The number of family members

“Family” means (i) a cohabitating spouse (including a person who is in a common-law marriage) and (ii) relatives whose living is substantially dependent on the applicant.

You will be requested to submit documents certifying the number of family members, such as a certificate of residence (*jyuu-min-hyou*). If there is no such document, (i) you will be requested to make a declaration of the number of family members living together and the relation with each member on the application form, and, in addition, (ii) a written report by the attorney to be retained certifying that the statement in the application form is true and accurate will be requested.

4. Application for Representation Aid

If you would like to apply to the JLSC for Civil Legal Aid, it is required, in principle, that (i) you have received a decision on assistance issued by the Central Authority (MOFA of Japan) and (ii) an attorney has been retained. If you have already received a petition or claim of a Hague Convention Case, (i) and (ii) mentioned above are not required. In such case, we recommend you consult with your nearest bar association first.

(1) Point of Contact for Application

- (a) A claim for return of a child, a ne exeat order (order not to depart Japan) in relation thereto and the compulsory execution thereof

An application can be made at any of the JLSC’s District Offices. However, the application will be transferred for examination to the JLSC’s District Office either in Tokyo or Osaka, where the court of competent jurisdiction is located.

(b) Visitation or Other Contact with the Child

An application can be made at any of the JLSC's District Offices, where the application will be examined as well.

(c) For negotiations for amicable settlement (out of court) or ADR procedures

Application can be made at any of the JLSC's District Offices, where the application will be examined as well. There may be cases where the application will be transferred to the JLSC's District Office either in Tokyo or Osaka if the negotiation fails and the case will be brought to family court for a petition for return of the child.

(2) Required Documents

Please make the following documents available when applying. If the documents are written in a language other than Japanese, a Japanese translation must accompany it. Please note that translation costs for the documents required for applying cannot be covered by the aid to be provided by the JLSC.

○Application Form: Please fill in the necessary information.

○Documents proving income:

<Examples>

- Public Assistance Recipient: Certificate of Receipt of Public Assistance
- Salary Earners: Statement of Salary and Bonus
- Self-Employed: Certificate of Taxation
- Pension Recipient: Certificate of Receipt of Public Pension
- Unemployed: Documents pertaining to the Receipt of Unemployment Benefits

※If the relevant documents are not available, the examination will be conducted based on (i) statements in the application form, (ii) a written report by the attorney to be retained certifying that the statements in the application form is true and accurate and (iii) other prima facie evidence (if the documents are those other than the ones issued by public institutions, Japanese translation and a document certifying that the translation is true and accurate must also

accompany them).

○Decision on Aid issued by the Central Authority(MOFA of Japan):

※If not available, we will ask you the specific circumstances and ask you to submit alternative documents so that we can confirm whether you are eligible under the Hague Convention.

You may be requested to submit the necessary documents other than those listed above.

(3) Examination Procedures

The main points to be checked and decided by the examination procedures are as follows. As the examination will be made through documents, the applicant is not required to attend the examination procedures in person.

- Whether the applicant/application is eligible for the Civil Legal Aid will be examined.
- Whether Civil Legal Aid should be commenced will be decided, by confirming the details of the case.
- If the commencement of Civil Legal Aid is decided, the amount of the loan (for the payment of retainer fees and remuneration to the attorney) and the repayment method will be considered and decided.
- The Decision on the Commencement of Aid, stipulating the contents of the decision, will be delivered.

5. Standard Amount to be Loaned

The following amounts are examples. The amount to be loaned will be decided by the Head of the District Office after the examination and thus may be higher or lower than the amount listed below, in consideration of the characteristics of the case, status of the procedures and other circumstances.

*LBP (Left Behind Parent): parent whose child was removed to the other country

*TP (Taking Parent): parent who removed his/her child to the other country

(1) Order on Return of a Child

(a) Example of LBP:

Retainer Fee: standard amount is 577,500 yen

(may be increased up to 770,000yen, if disposition of the case is extremely difficult)

Actual Costs: 50,000 yen

Remuneration: standard amount is 198,000 yen

(b) Example of TP:

Retainer Fee: standard amount is 346,500 yen

(may be increased up to 577,500yen, if disposition of the case is extremely difficult)

Actual Costs: 50,000 yen

Remuneration: standard amount is 132,000 yen

(2) Visitation or other contact with a child, negotiations for amicable settlements (out of court) and ADR procedures

(a) Example of LBP:

Retainer Fee: standard amount is 404,250 yen

(may be increased up to 539,000 yen, if disposition of the case is extremely difficult)

Actual Costs: 50,000 yen

Remuneration: standard amount is 138,600yen

(b) Example of TP:

Retainer Fee: standard amount is 242,550 yen

(may be increased up to 404,250yen, if disposition of the case is extremely difficult)

Actual Costs: 50,000 yen

Remuneration: standard amount is 92,400yen

(3) Additional Costs

With respect to the actual costs, there may be some cases where the costs for interpretation and/or translation will be separately incurred. In such case, additional costs will be decided by the Head of the District Office pursuant to the payment

standards, upon request from the attorney.

The maximum amount to be loaned for costs for interpretation and/or translation will be as follows:

(a) Interpretation Costs

For both LBP Case and TP Case, up to 366,666yen.

(b) Translation Costs

LBP Case: Up to 1,047,618yen, in principle.

TP Case: Up to 366,666yen, in principle.

6. Repayment of the Loan

(1) Repayment

You are required to repay to the JLSC the amount the JLSC paid on your behalf, such as remuneration for an attorney and the costs for translation, after the commencement of the Civil Legal Aid is decided. There is no system in Japan under which the defeated party bears all court costs, which means you are required to repay the amount loaned even in the event where you win the case or the case is settled by agreement.

Conditions of repayment, including the currency (yen or USD), the number of repayment instalments, and the frequency will be decided by the JLSC, considering your circumstances.

(2) Methods of Repayment

Please choose from the following repayment methods how to make repayment at the time the commencement of the Civil Legal Aid is decided. Any charges or costs of repayment must be borne by the aid recipient.

If you would like to change the repayment method after it is decided, please consult with the JLSC, in which case the repayment method may be changed, considering the circumstances. Please note, however, that the currency in making repayment cannot be changed, in principle.

《For those residing in Japan》

Automatic Debit from a Financial Institution

Monthly debit will be made on the date designated by the JLSC during the repayment period.

《For those who reside outside Japan》

Please choose a repayment method from the following at the time a decision is made on the commencement of the Aid.

(a) Credit Card

Either VISA- or MasterCard-branded credit cards are accepted. The JLSC will register the aid recipient's credit card information and decide the monthly repayment amount. Credit cards which the aid recipient is not the holder of are not accepted. Charges for settlement and foreign exchange conversion may differ for each credit card issuer.

※ Please note that debit card is NOT accepted.

(b) PayPal

You must first open a PayPal account.

An e-mail message will be sent to your designated e-mail address every month. The e-mail message will include the link (URL) to PayPal. You can make a repayment by simply clicking the link (URL) to PayPal and logging in to your PayPal account. 2.5% will be added to the foreign exchange rate as a charge for the foreign exchange conversion.

(c) Remittance to Bank Account

Japanese bank account is available. Please remit to the bank account specified in the decision. Remittance charges may differ at each bank from which you remit.

(d) International Postal Money Order

Please purchase an international postal money order at the post office in your home country, fill in the necessary information and send to the JLSC. In order to avoid loss of the money order, we suggest that you send it by registered mail.

(e) Other Methods (Western Union)

For those who can repay the entire amount in a lump sum, we also accept remittance through Western Union. If you prefer a lump-sum repayment through Western Union, please contact us by e-mail or postal mail.

※ The mailing address to send bank checks and international postal money orders is listed in the last part of the “Guide for Repayment to JLSC” at the following link.

<http://www.houterasu.or.jp/en/hague/page003.html>

(3) Repayment default

If repayment is delayed or missed without notice, the JLSC may cancel the decision of instalment repayment and declare the entire outstanding balance due and payable immediately in one lump sum, cause its subcontractor to send overdue payment reminder letters or make a demand through legal proceedings. Please note that overdue charges at the rate of 5% per annum will be incurred, as set forth in the Civil Code of Japan.

Further, in the event that you apply for aid with no intention to repay [the loan], criminal charges (including imprisonment) may be imposed pursuant to the Criminal Code of Japan.

If you expect a delay in repayment or it becomes difficult to repay for any reason, please be sure to contact the JLSC by e-mail.

※ The e-mail address to send e-mail messages for repayment is listed in the last part of the “Guide for Repayment to the JLSC” at the following link.

<http://www.houterasu.or.jp/en/hague/page003.html>

7. Procedures after the Commencement of Aid is Decided

(1) Execution of Agreement

When the commencement of aid is decided, the JLSC, the attorney who will be in charge of the case and the aid recipient will enter into an agreement by and among the three parties. Please sign the agreement and submit the original to the JLSC through

the attorney. The JLSC will send a copy of the agreement for your file. Please thoroughly confirm the contents of the agreement and store the same carefully.

(2) Attorney Fees

After the agreement is submitted to the JLSC, a retainer fee and the actual costs described in the agreement will be paid by the JLSC to the attorney on your behalf. You do not have to make payment directly to your attorney unless it is otherwise set forth in the decision or agreement. Please also review “Section 10 Payment of Costs” below.

8. Matters for attention while the case is pending

(1) Relation with the attorney

You are not allowed to settle the case with the opposing party or withdraw the case without consulting with your attorney. Please properly consult with your attorney in pursuing the procedures of the case.

Please also note that dismissal of the attorney is not allowed without permission of the Head of JLSC’s District Office.

(2) When any changes occur in address, phone number or name, etc.

Please inform the attorney and the JLSC of any changes in your contact details and name, etc. Please be sure that the JLSC can contact you by both postal mail and phone until you have completed repayment of the entire amount. Please note that if you become inaccessible without providing of any change, aid may be cancelled. Even if aid is cancelled, attorney fees must be paid.

9. Conclusion of Aid

(1) Conclusion Procedures

When (i) the case has concluded and a conclusion report is submitted by the attorney or (ii) aid is discontinued, conclusion of aid will be decided upon examination, and the amount of remuneration and additional actual costs to be paid as well as the repayment

methods will be decided. The amount of the actual costs decided at the time of commencement of aid will not be adjusted or cleared at the conclusion of the case. The aid recipient may state his/her opinion at the examination for the conclusion, unless there are exceptional circumstances.

(2) Remuneration

After the case has concluded, remuneration will be paid to the attorney. The amount of remuneration will be decided through the JLSC's District Office's examination, considering the related matters, including benefits obtained as the result of the case and the difficulty of the case. Please refer to "Section 5 Standard Amount to be Loaned" above for the standard remuneration amount.

Further, in the event that you have received any amount of money from the opposing party, the remuneration amount will be about ten percent (10%) of the amount received. The JLSC will not make payment of the remuneration on your behalf, in principle, if you have received any money because you could pay the remuneration amount from it.

(3) If you have received any money from the opposing party

If you become eligible to receive any amount of cash from the opposing party as a result of the conclusion of the case, such money will be kept by the attorney. After the repayment methods of the amount of remuneration and the amount loaned by the JLSC are examined, the amount received with the balance deducted will be paid by the attorney to the aid recipient. In such case, the amount of remuneration and the amount loaned by the JLSC will be, in principle, repaid in a lump sum from the amount so received from the opposing party.

(4) Decision on Repayment of the Amount Loaned and the Extension of Repayment, etc. at the Time of Conclusion of Aid

At the time that conclusion of aid is decided, the repayment of the amount loaned and the extension or exemption of repayment will be decided, considering the living conditions informed by you and the conditions of the proprietary benefits obtained.

(5) Exemption of Repayment

You may be exempted from repayment when it is recognized that repayment will be difficult due to harsh living conditions and that the possibility of recovery of your financial means is limited, even in the future. Please note, however, that not necessarily all requests for exemption can be accepted.

10. Payment of Costs

Japanese Civil Legal Aid is a system that tentatively makes payment on behalf of the aid recipient of attorney fees and actual costs. In principle, the aid recipient is required to repay the entire amount to the JLSC. Under exceptional circumstances where the attorney is dismissed or resigns, the amount the aid recipient shall bear may be limited to a certain portion.

- (1) Though there is a system in other countries where the defeated party bears all court costs, Japan has not implemented such a system. Therefore, you must bear all of the actual costs and retainer fee incurred to retain the attorney, regardless of the result of the case.
- (2) With respect to the actual costs, some cases may incur additional costs for interpretation, translation and correspondence, in which case the JLSC will make additional payments on your behalf, up to a certain amount. In the event that the certain amount is exceeded, you must bear the costs directly, as the JLSC cannot pay them on your behalf.
- (3) If the aid recipient receives any benefits, remuneration will be additionally incurred. If the aid recipient receives any amount of money from the other party, it shall be used to pay the remuneration of the attorney and the amount loaned by the JLSC. There may be a case where the JLSC makes a payment on behalf of the aid recipient for the attorney's remuneration as well, if the aid recipient does not receive any money from the opposing party. In such case, the entire loaned amount will be different from that decided at the time of commencement of aid.

11. Appeal against Decisions that Head of the District Office did

If aid recipient is not satisfied with the decisions of Head of the JLSC's District Office decision, he/she may appeal the decision. In order to make an appeal, a written complaint stating the details of the complaint and the name and address of the petitioner

either in Japanese or English must be submitted to the Head of the JLSC's District Office within thirty (30) days from the receipt of the decision.

12. Request for Re-examination

If aid recipient is dissatisfied with the decision to the request for an appeal, a request for re-examination can be made to the director. In order to make a request for re-examination, a written request stating the details of the request and the name and address of the petitioner either in Japanese or English must be submitted to the JLSC's district office manager within fourteen (14) days from the receipt of the decision to the request for the appeal.

13. Legal Consultation Aid

(1) Requirements

The following requirements must be met:

- (a) The applicant satisfies the criteria set forth in "Means Test (income and assets criteria)" (Section 3 above).
- (b) The applicant is a citizen of a member state of the Hague Convention or has habitual residence in such state.
- (c) The case is eligible as a Hague Convention Case and is consistent with the purpose of Civil Legal Aid.

(2) Details of the Aid

Legal consultation will be provided orally and only face-to-face consultation is available. Consultation through e-mail, Skype, phone, etc. will not be eligible for aid. Legal consultation will be provided free of charge. Legal consultation will be provided up to three (3) times for one particular issue.

14. Handling of Personal Information and Other Submitted Documents

Personal information and other information received by the JLSC ("**Personal Information**") will be treated as follows in accordance with the applicable laws and regulations:

- (1) Personal Information may be used only for the purpose of the operations of the JLSC.
- (2) Personal Information may be provided to subcontractors if necessary for the disposition of services (such as a bank that handles repayment procedures)
- (3) Personal Information will be provided to the attorney in charge, the Central Authority (MOFA of Japan), Japan Federation of Bar Association and the local bar association.
- (4) Whether or not you provide Personal Information to the JLSC is at your discretion. However, please note that it may be disadvantageous to you and aid may not be provided, if certain Personal Information is not provided, depending on the information.
- (5) Personal Information provided will be properly disposed of after being kept for the period decided under the JLSC's policies. Personal Information will not be returned or disposed before the time period decided by the policies has elapsed.
- (6) If a request for disclosure is made for the Personal Information provided to the JLSC, or any misinformation is found in the disclosed Personal Information, please contact the JLSC's district office to which the application was made.

End