



# Japan International Mediation Center in Kyoto (JIMC-Kyoto)

June 1, 2018

Japan Association of Arbitrators

Chairman of the Committee of Preparation for Establishment of the JIMC-  
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# Why is Mediation attracting worldwide attention now ?

## 1. LOW COST

Recently the cost of litigation and arbitration can be extremely high.  
The cost of mediation is much lower.

## 2. SPEEDY

-Generally, only a few days for concentrated mediation.  
-Speedier than litigation and arbitration  
-Even complicated large cases are sometimes resolved in only a few days.  
(Ex) Settlement of Intel-AMD antitrust disputes in several countries, with the payment of \$1.25 billion and cross license.  
(Ex) The rules of several famous international mediation organizations aim to resolve cases within 2-3 months.

## 3. PARTIES CAN CONTROL THE OUTCOME OF THE RESOLUTION

-Mediator prompts settlement between the parties in dispute. Parties are not forced to accept an unagreeable resolution; if parties fail to reach a solution, the mediation proceeding terminates.  
-The mediation proceeding can be used easily.

## 4. Less Adversarial (Less Conflict)



Mediation is a less adversarial (and with less conflict) resolution system as compared to litigation or arbitration.



Now, mediation attracts world-wide attention despite its short history. Many Asian countries recently promote mediation (see next slide).

# Mediation in Asian Countries

Some Asian countries have a permanent infrastructure, with meeting rooms, hearing rooms, waiting rooms, translation booths and bilingual staff, as well as mediator panels.

Name of Organization	Permanent Facility (Not exclusive for mediation)	Rules for Mediation	Mediator Panel	Notes
Singapore International Mediation Centre (SIMC)	 <small>Photo: Maxwell Cham</small>	○	○	22 new case filings in 2017
Hong Kong International Arbitration Centre (HKIAC)	○	○	○	22 cases in 2015 (Construction 1, commercial 15, Family 3, Probation 2, personal injury 1)
Asian International Arbitration Centre (AIAC) (Malaysia)		○	○	5 domestic cases in 2016 (no international cases)

## Japanese Culture Having High Affinity with Mediation

- Japanese traditional culture has a high affinity with mediation.
  - Feel more comfortable to resolve a dispute by mediation rather than by an adversarial system such as arbitration or litigation.
  - Resolve by mutual agreement, not by a forced compulsory decision.
- Actually, Japan has a long history of mediation domestically and mediation has been actively used domestically.

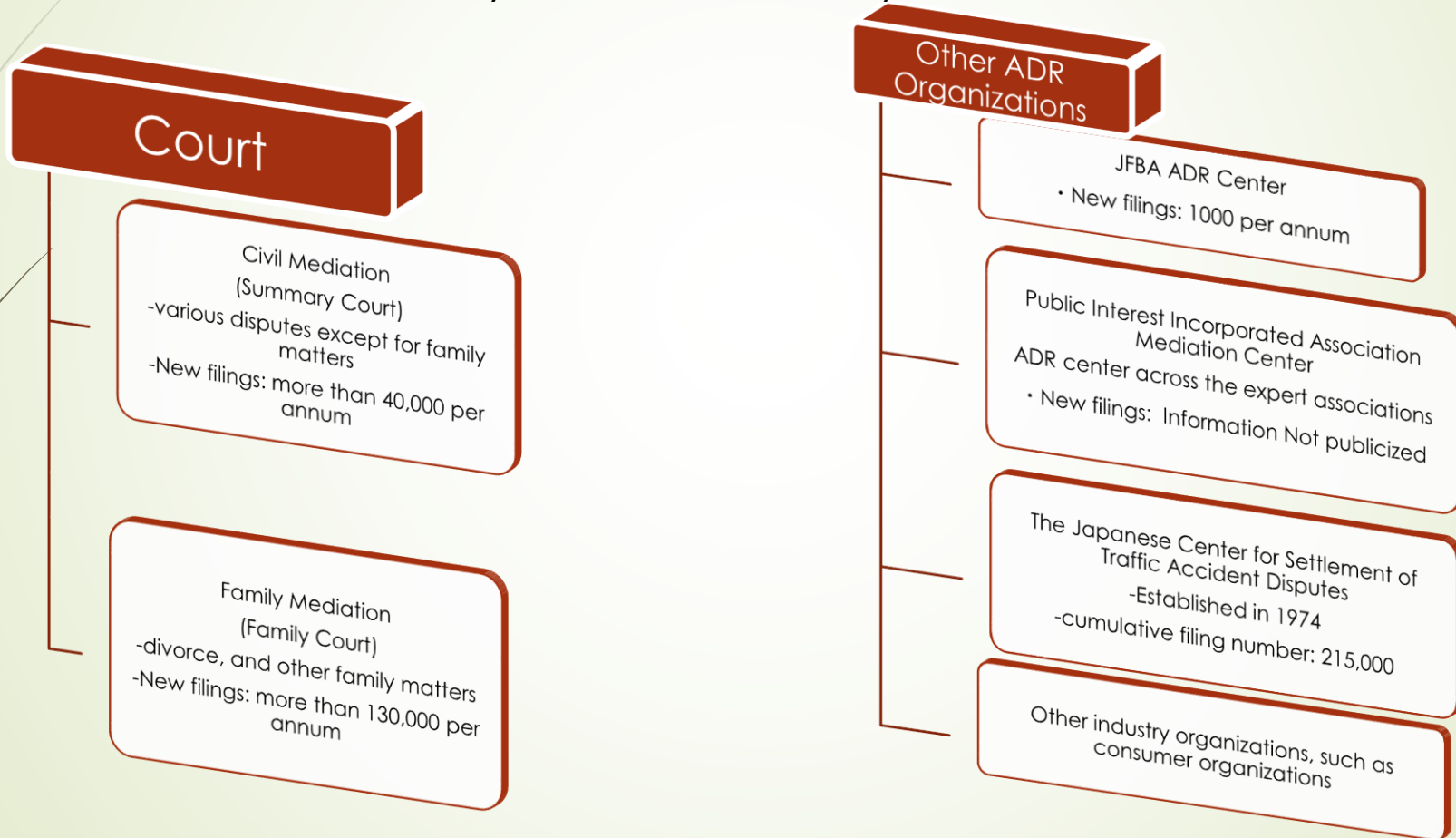
# Domestic Mediation System in Japan

## ▶ Court-annexed mediation

- ▶ Japanese civil mediation has more than 90 years of history, whose origin can be traced back to the Land and House Rent Law (1922).
- ▶ Actively used court-annexed mediation (family conciliation, civil conciliation).
- ▶ Mediation by the Court has fairness and high reliability because it is operated by the court and a judge is involved.
- ▶ As a panel, in addition to lawyers, other experts (i.e. real estate appraisers, architects, certified public accountants, etc.) join if needed, which facilitates the appropriate resolution for each case.
- ▶ Regarding Family cases, filing for mediation to the Family Court is required before filing the lawsuit (Conciliation First Principle).

# Domestic Mediation System in Japan

Japan has a long history of mediation.  
Mediation has been actively used domestically.



- The Japanese Government enacted the Act on Promotion of Use of Alternative Dispute Resolution in 2007 ("ADR Act") to promote ADRs.

# Present Situation and Issues of Japanese International Mediation

- ▶ As stated, Japanese traditional culture has a high affinity with mediation and mediation has been actively used domestically.
- ▶ However, presently, international mediation is seldom utilized.

Reason 1: Very poor infrastructures in terms of both hardware and software

No hardware infrastructure (facilities)

No institution specialized in international mediation

No international mediator panel (the training for international mediators started very recently)

(Differences in approaches for international mediation are described in the next slide)

Reason 2: Differences in practice between international mediation and domestic mediation

Due to such differences, Japanese international mediation is recognized as being hardly usable (see next slide).



The enhancement of the hardware and software infrastructures for international mediation is imminent. In this regard, the establishment of the center (JIMC -Kyoto) in Japan specialized in international mediation is very important.

# Domestic Mediation vs International Mediation in Japan

Domestic Mediation	International Mediation
Actively used	Seldom used
Rich infrastructure, in terms of both hardware and software	Very poor infrastructure, in terms of both hardware and software ← JIMC-Kyoto will provide
<u>Evaluative type</u> is overwhelmingly used Submission of pleadings and evidence by the parties is rather extensive ↓	<u>Facilitative type</u> is mainly used <u>But</u> evaluative type also coexists (Hybrid usage exists) Submission of pleadings and evidence by the parties is rather limited made up by education and training via international seminars and workshops
Intermittent style, loose schedule, hearings conducted several times	Intensive, tight schedule, hearings last only few days (usually, consecutive 1-2 days) JIMC-Kyoto will be involved
Pleadings and evidence and contents of mediation may be disclosed in the succeeding litigation or arbitration procedure.	Pleadings and evidence and contents of mediation may not be disclosed in the succeeding litigation or arbitration procedure.

Not only the subject of the mediation differs (not only whether it is domestic or international), but the approaches (e.g., evaluative vs. facilitative) are different to some extent.



# Evaluative type vs. Facilitative type

\* The classification of “Evaluative type” and “Facilitative type” is ambiguous. They have broad meanings. But generally, it is possible to describe as below:

	Evaluative type	Facilitative type
Overview	<p>After the parties produce their claims and evidence, mediator makes a statement regarding the evaluation of such claims and/or prospective result of the litigation. This type is often used for difficult/complicated cases where the difference between the parties is broad.</p> <p>Mediator often plays an active role (ex. make a proposal for settlement or statement regarding the merit and the mediator's view about the specific issue) .</p>	<p>Parties and their attorneys can control the outcome of the result. Parties exchange necessary information, mediator facilitates the parties to communicate, tries to find means for settling the dispute. Mediator assists the parties to try to settle the dispute by themselves.</p>
Mediator's role	<p>Mediator evaluates parties' allegations, produces the mediator's opinion, persuades the parties to be in line with the mediator's opinion.</p>	<p>Mediator neither evaluates parties' claims nor produces his/her opinion; instead, the mediator facilitates the parties to recognize a way to resolve dispute.</p>
Difference between domestic mediation	<p>Domestic mediations in Japan are said to be evaluative type.</p>	<p>Facilitative type is mainly used in international mediation, though it is not the common practice in Japan. This is the reason why we need to train international mediators.</p>

# Plan for JIMC-Kyoto

Under preparation, aimed to be established in the first half of this year.  
Aim is to become one of Asia's leading organizations in the field of international mediation.

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- ◆ Setting in Kyoto (see slide11)
- ◆ Can use, at low cost, excellent infrastructures having the same quality as those of leading ADR centers in the world
  - Hardware infrastructure (see slide12)
    - Mediation facilities
  - Software infrastructure (see slide13)
    - Mediation rules
    - Mediator panel
- ◆ User-friendly (see slide14)
  - Low and easily estimated fees, etc.
- ◆ Speedy procedure in line with international standards (see slide15)



# Plan for JIMC-Kyoto

## Why Kyoto ?

- ◆ International mediation is a concentrated procedure lasting a short period. Since it ends shortly, it need not be situated in a business center.
- ◆ Symbolic city of Japanese traditional culture having a high affinity with mediation.
- ◆ As a world famous tourist city, the psychologically preferable influence on the amicable resolution of disputes can be expected.
  - ⇒ A famous international mediator favors Hawaii, a famous tourist location, as a place of mediation, having successfully mediated many cases.
- ◆ A city which mediators, parties and attorneys desire to visit. Especially attractive to non-Japanese.
- ◆ Able to use the first-rank facilities of Doshisha University, comparable to the facilities of leading ADR centers in the world, at very low cost.

# Hardware Infrastructure of JIMC-Kyoto

## ▣ Mediation Facilities

- Use of Facilities of Doshisha University (see photo: there is a simultaneous interpreters' booth)

## ▣ Management Office

Doshisha University and JAA signed the MOU on December 1, 2017.



## Software Infrastructure of JIMC-Kyoto

- Rules of international mediation
- International mediator panel
  - Preparing the panel with the cooperation of foreign international mediation institutions
- Training programs for international mediators
  - Utilizing the training programs of foreign international mediation institutions
- Seminars on international mediation
  - \* SIMC and JAA signed an MOU for cooperation with respect to the above items on December 1, 2017

## Design of the Mediation Procedure of JIMC-Kyoto

Design as a “user-friendly” procedure

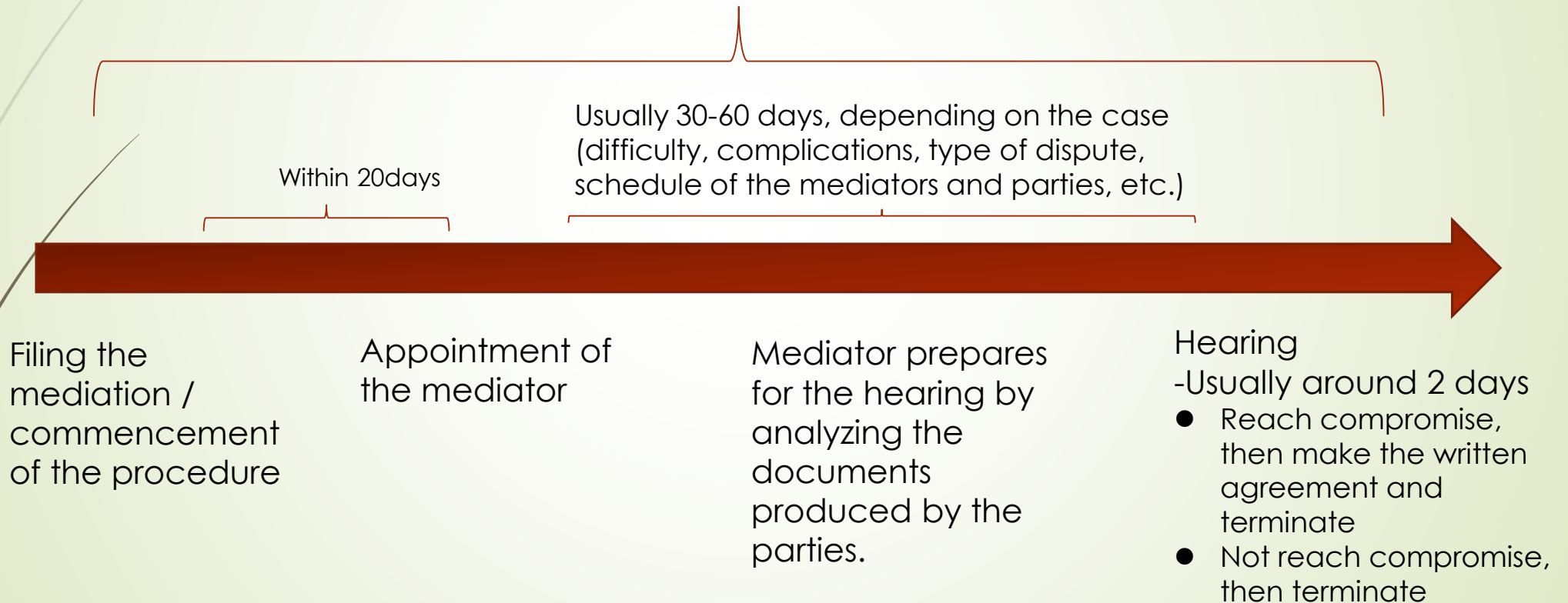
The following is currently under deliberation, for the purpose of making the center easy to use.

- ◆ Rather low cost (filing fee, administrative fee), as compared with other International mediation organizations.
- ◆ Transparent cost structure – to see the cost easily before submitting a request for mediation; filing fee will be fixed, administrative fee will be fixed depending on the amount in dispute
- ◆ To have a good idea of the total amount of the mediator's fee beforehand.

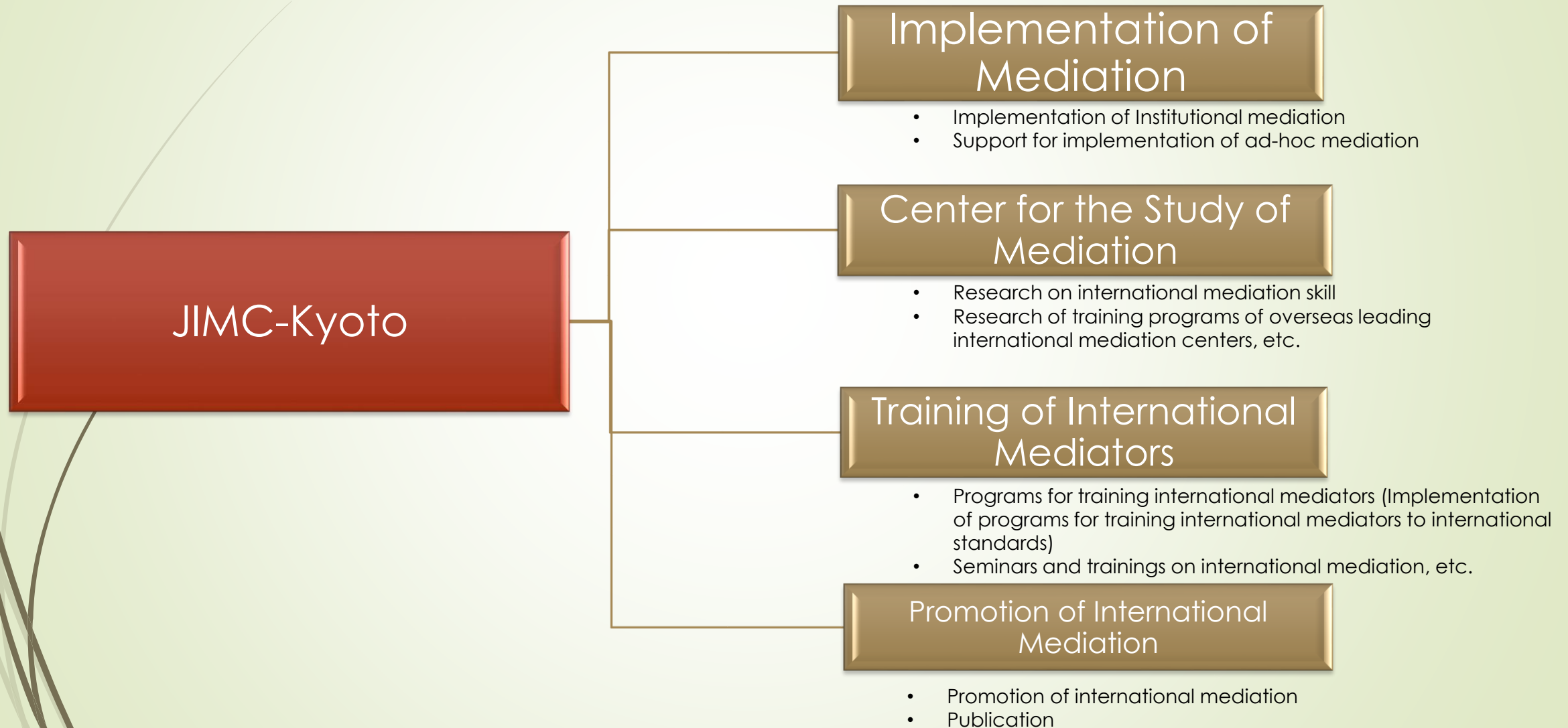
# Mediation Procedure of JIMC-Kyoto

## Speedy Procedure in line with International Standards

Usually 2-3 months depending on the case



# Role of JIMC-Kyoto





## For effective dispute resolution, Arbitration and Mediation working together, not necessarily an alternative choice

- ❑ Many international disputes are resolved by arbitration (or courts).
- ❑ Need not select only either mediation or arbitration.
  - File for mediation but if fail to reach solution in mediation, then move to an arbitration proceeding (“Med-Arb”)
  - File for arbitration, move to a mediation proceeding but if fail to reach solution, then move back to the arbitration proceeding (“Arb-Med(-Arb”))
  - File for mediation and reach agreement, then move to an arbitration proceeding and enter the agreement as a consent award (Use “Med-Arb” for consent award)
- ❑ May use JIMC-Kyoto for mediation in connection with arbitration or court cases conducted in Japan or foreign countries (e.g., for cases involving Japanese companies)