

# Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (Tentative translation)

(Act No. 48 of June 19, 2013)

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## **Chapter I General Provisions**

(Purpose)

Article 1 The purpose of this Act is, in order to ensure proper implementation of

the Convention on the Civil Aspects of International Child Abduction (hereinafter referred to as the "Convention") which sets forth the return of a child to the state where the child held his/her habitual residence, etc. in the case of his/her wrongful removal or retention, to designate a Central Authority in Japan and to stipulate its authority, etc., as well as to provide for necessary court procedures, etc. for promptly returning a child to the state where the child held his/her habitual residence , and thereby promote the interests of children.

(Definitions)

Article 2 In this Act, the meanings of the terms listed in the following items shall be as prescribed respectively in those items:

- (i) "Contracting State" means Japan and contracting state(s) (or in the case where said contracting state has made a declaration under the provision of Article 39 (1) or Article 40 (1) of the Convention, the portion of its territories or the territorial unit(s) to which the Convention extends by said declaration) to the Convention for which the Convention has entered into force with Japan;
- (ii) "Child" means a person who is under the care of his/her parent(s) or other person(s);
- (iii) "Removal" means to have a child depart from the state where he/she holds his/her habitual residence, for the purpose of having the child leave said state;
- (iv) "Retention" means a situation where, after his/her departure from the state where he/she holds his/her habitual residence, a child is prevented from traveling to said state;
- (v) "State of habitual residence" means a state (or in cases where said state is a contracting state to the Convention and has made a declaration under the provision of Article 39 (1) or Article 40 (1) of the Convention, the portion of its territories or its territorial unit(s) to which the Convention extends by said declaration) where a child held his/her habitual residence at the time of his/her removal or immediately before the commencement of his/her retention;
- (vi) "Wrongful removal" means a removal which is in breach of rights of custody that are attributed to a person under the laws and regulations of the state of habitual residence and at the time of which said rights have actually been exercised or would have been so exercised but for the removal or retention;
- (vii) "Wrongful retention" means a retention of which is in breach of rights of custody that are attributed to a person under the laws and regulations of the state of habitual residence and at the time of the commencement of which

said rights have actually been exercised or would have been so exercised but for the retention;

(viii) "Return of child" means a return of a child to a Contracting State which is his/her state of habitual residence.

**Chapter II Assistance relating to Return of Child and Assistance in  
Visitation or Other Contacts with Child  
Section 1 Designation of Central Authority**

Article 3 The Central Authority of Japan set forth in Article 6 (1) of the Convention shall be the Minister for Foreign Affairs.

**Section 2 Assistance in Return of Child  
Subsection 1 Assistance in Child's Return to Foreign State**

(Application for Assistance in Child's Return to Foreign State )

Article 4 (1) With respect to a child who has been subject to a removal to or a retention in Japan and whose state of habitual residence is a Contracting State, a person who has the rights of custody of said child under the laws and regulations of said state of habitual residence, if he/she considers that his/her rights of custody are breached due to said removal or retention, may file an application to the Minister for Foreign Affairs for assistance in realizing the return of child from Japan (hereinafter referred to as "assistance in child's return to foreign state").

(2) A person who intends to file an application for assistance in child's return to foreign state shall submit an application form describing the following matters (limited to those written in Japanese or English) to the Minister for Foreign Affairs, as provided for by Ordinance of the Ministry of Foreign Affairs:

(i) Name of a person who intends to file the application for assistance in child's return to foreign state (hereinafter referred to as an "applicant" in this Subsection) and his/her/its domicile, residence or location of office (limited to those located in the state of habitual residence of a child who is sought to be returned in the application for assistance in child's return to foreign state (hereinafter referred to as a "child pertaining to the application" in this Subsection; the same shall apply in Article 7 (1) (iv))) ;

(ii) Name, birth date, and domicile or residence of the child pertaining to the application (if these matters are not identified, a statement to that effect) and any other necessary matters to identify the child pertaining to the application;

(iii) Name of a person who is considered to have done a removal or retention of the child pertaining to the application and any other necessary matters to

- identify said person;
- (iv) Necessary matters to clarify that the state of habitual residence of the child pertaining to the application is a Contracting State;
  - (v) Necessary matters to clarify that the applicant has the rights of custody with respect to the child pertaining to the application under the laws and regulations of the state of habitual residence of said child and that the applicant's rights of custody are breached due to the removal or retention of the child pertaining to the application;
  - (vi) Name and domicile or residence of a person who is considered to live together with the child pertaining to the application and any other matters necessary to identify said person (if these matters are not identified, a statement to that effect).
- (3) Documents proving the matters listed in item (v) of the preceding paragraph and any other documents as specified by Ordinance of the Ministry of Foreign Affairs shall be attached to the application form set forth in said paragraph.
- (4) An application for assistance in child's return to foreign state may be filed via the Central Authority (which means the Central Authority as prescribed in Article 6 of the Convention; the same shall apply hereinafter.) of a Contracting State other than Japan. In this case, the applicant shall submit to the Minister for Foreign Affairs a document describing the matters listed in each item of paragraph (2) (limited to those written in Japanese or English, or those to which a Japanese or English translation is attached) and the documents prescribed in the preceding paragraph.

(Request for Provision of Information relating to Child's Domicile, etc.)

- Article 5 (1) The Minister for Foreign Affairs, when an application for assistance in child's return to foreign state is filed and he/she finds it necessary, in order to identify the name and the domicile or residence of the child pertaining to the application and the person who lives together with the child, may request, as provided for by Cabinet Order, the heads of organs or judicial persons listed below (referred to as "administrative organs of the State, etc." in Article 15 (1)), the heads of local public entities or other executive agencies, or any other persons specified by Cabinet Order as those having the information with regard to the child pertaining to the application and any person who lives together with the child, to provide the information on said name, domicile, or residence in their possession:
- (i) Organs established within the Cabinet under the provisions of laws (excluding the Cabinet Office);
  - (ii) The Cabinet Office and organs as prescribed in Article 49 (1) and (2) of the Act for Establishment of the Cabinet Office (Act No. 89 of 1999);
  - (iii) Organs prescribed in Article 3 (2) of the National Government

- Organization Act (Act No. 120 of 1948);
- (iv) Extraordinary organs set forth in Article 40 (2) and Article 56 of the Act for Establishment of the Cabinet Office;
  - (v) Facilities and other organs set forth in Article 8-2 of the National Government Organization Act, and extraordinary organs set forth in Article 8-3 of said Act;
  - (vi) Incorporated administrative agencies prescribed in Article 2 (1) of the Act on General Rules for Incorporated Administrative Agency (Act No. 103 of 1999);
  - (vii) Incorporated national universities prescribed in Article 2 (1) of the Incorporated National Universities Act (Act No. 112 of 2003).
- (2) In the case referred to in the preceding paragraph, those who are requested to provide the information prescribed in said paragraph shall provide the Minister for Foreign Affairs with said information without delay.
- (3) The Minister for Foreign Affairs, in cases where the information provided pursuant to the provision of the preceding paragraph is not sufficient to identify the whereabouts of the child pertaining to the application or the person who lives together with the child while it shows that the child is located in Japan, may request, as provided for by Ordinance of the Ministry of Foreign Affairs, the prefectural police to take necessary measures to specify their whereabouts by providing the police with said information.
- (4) In addition to what is provided for in the preceding paragraph, the provision by the Minister for Foreign Affairs of the information provided pursuant to the provision of paragraph (2) and the information obtained through the measures taken by the prefectural police pursuant to the provision of the preceding paragraph may be permitted only in the following cases:
- (i) When, in cases where requested by the applicant who needs to know the name of the person who lives together with the child pertaining to the application for the purpose of filing a petition for the return of child under the provision of Article 26, or filing a petition for an adjudication of domestic relations or a conciliation of domestic relations seeking to provide for the visitation or other contacts with the child or to change such provision, to disclose the name of said person, the Minister for Foreign Affairs discloses the name of said person to the applicant;
  - (ii) When, in cases where requested by the court before which the case relating to the return of child as prescribed in Article 29 or the case pertaining to the compulsory execution of the return of child is pending, or by the court before which the case relating to the visitation or other contacts with the child pertaining to the application or the case pertaining to the compulsory execution of the visitation or other contacts with the child is pending, to confirm the domicile or residence of the child pertaining to the application

and the person who lives together with the child, for the purpose of conducting the procedures thereof, the Minister for Foreign Affairs discloses said domicile or residence to such court;

- (iii) When, in cases where, pursuant to the provision of Article 10 (1), the Minister for Foreign Affairs notifies a municipality, or a welfare office (which means the welfare office as prescribed in the Social Welfare Act (Act No. 45 of 1951); the same shall apply in this item and said paragraph.) or a child guidance center (which means the child guidance center as prescribed in the Child Welfare Act (Act No. 164 of 1947); the same shall apply in this item and said paragraph.) established by a prefecture, that there are reasonable grounds to believe that the child pertaining to the application might be subjected to abuse, the Minister notifies said municipality, or welfare office or child guidance center established by a prefecture of the name and domicile or residence of the child pertaining to the application and the person who is considered to live together with said child.

(Decision and Notice of Assistance in Child's Return to Foreign State)

Article 6 (1) The Minister for Foreign Affairs, when an application for assistance in child's return to foreign state is filed, shall make a decision to provide assistance in child's return to foreign state (hereinafter referred to as "decision for assistance in child's return to foreign state") and shall give a notice (in the case where the applicant files an application for assistance in child's return to foreign state via the Central Authority of a Contracting State other than Japan pursuant to the provision of Article 4 (4), a notice via said Central Authority; the same shall apply in paragraph (2) of the following Article and Article 8 (2)) to the applicant to that effect without delay, except where the Minister dismisses it pursuant to the provision of paragraph (1) of the following Article and where he/she sends a copy of the documents with regard to the application for assistance in child's return to foreign state pursuant to the provision of Article 8 (1).

(2) The Minister for Foreign Affairs, when he/she makes a decision for assistance in child's return to foreign state, shall take the following measures as necessary:

- (i) Measures prescribed in Article 9 or Article 10;
- (ii) Communication with the Central Authority(ies) of Contracting State(s) other than Japan to implement the Convention;
- (iii) Provision to the applicant of the information relating to the procedures provided for in this Act and other systems under the laws and regulations of Japan relating to the realization of the return of child or the visitation or other contacts with the child.

(Dismissal of Application for Assistance in Child's Return to Foreign State)

Article 7 (1) The Minister for Foreign Affairs shall dismiss an application for assistance in child's return to foreign state if it falls under any of the following items:

- (i) The child pertaining to the application has attained the age of 16;
  - (ii) It is obvious that the child pertaining to the application is not located in Japan and the state or territory where the child pertaining to the application is located is unknown;
  - (iii) It is obvious that the child pertaining to the application is located in a state or territory other than Contracting States;
  - (iv) It is obvious that the location of the child pertaining to the application and the domicile or residence (or the location of the office if the applicant is a juridical person or other entity) of the applicant are in the same Contracting State;
  - (v) At the time of the removal or the commencement of the retention of the child pertaining to the application, the state of habitual residence of said child is not a Contracting State;
  - (vi) It is obvious that the applicant does not have the rights of custody with respect to the child pertaining to the application under the laws and regulations of the state of habitual residence of said child or that said rights of custody are not breached by the removal or retention of the child pertaining to the application.
- (2) The Minister for Foreign Affairs, when he/she dismisses an application for assistance in child's return to foreign state pursuant to the provisions of the preceding paragraph, shall immediately give a notice to the applicant to that effect and of the reason thereof.

(Sending of Copy of Documents pertaining to Application for Assistance in Child's Return to Foreign State to Central Authority of Contracting State)

Article 8 (1) The Minister for Foreign Affairs, where it is obvious that the child pertaining to the application is located in a Contracting State other than Japan and if the application for assistance in child's return to foreign state does not fall under item (iv), paragraph (1) of the preceding Article, shall send without delay a copy of the application form set forth in Article 4 (2) (or if the applicant files an application for assistance in child's return to foreign state pursuant to the provision of paragraph (4) of said Article, the documents prescribed in said paragraph) and the documents prescribed in paragraph (3) of said Article to the Central Authority of said Contracting State.

- (2) The Minister for Foreign Affairs, when he/she sends the documents pursuant to the provision of the preceding paragraph, shall give a notice to the applicant to that effect.



(Facilitation of Return of Child, etc. upon Agreement)

Article 9 The Minister for Foreign Affairs, when he/she makes a decision for assistance in child's return to foreign state, in order to realize the return of child or visitation or other contacts by the applicant with regard to the child pertaining to the application based on an agreement between the applicant and the person who takes care of the child pertaining to the application, may take necessary measures, such as facilitating the discussion between them.

(Notification pertaining to Child Abuse)

Article 10 (1) The Minister for Foreign Affairs, when the child pertaining to the application is located in Japan and there are reasonable grounds to believe that the child might be subjected to abuse, shall notify a municipality, or a welfare office or a child guidance center established by a prefecture to that effect.

(2) The provisions of Article 6 (2) and (3) and Articles 7 and 8 of the Act on the Prevention, etc. of Child Abuse (Act No. 82 of 2000) shall apply to the notification under the provision of the preceding paragraph by deeming it to be given pursuant to the provision of Article 6 (1) of said Act.

### **Subsection 2 Assistance in Child's Return to Japan**

(Application for Assistance in Child's Return to Japan)

Article 11 (1) With respect to a child who has been subject to a removal to or a retention in a Contracting State other than Japan and whose state of habitual residence is Japan, a person who has the rights of custody of said child under the laws and regulations of Japan, if he/she considers that said rights of custody are breached due to said removal or retention, may file an application to the Minister for Foreign Affairs for assistance in realizing the return of child to Japan (hereinafter referred to as "assistance in child's return to Japan").

(2) The provisions of Article 4 (2) and (3) shall apply mutatis mutandis to the application for assistance in child's return to Japan (hereinafter referred to as an "application for assistance in child's return to Japan"). In this case, the term "Article 7 (1) (iv)" in item (i) of paragraph (2) of said Article shall be deemed to be replaced with "Article 13 (1) (iv)" and the term "Contracting State" in item (iv) of said paragraph and the term "the state of habitual residence of the child pertaining to the application" in item (v) of said paragraph shall be deemed to be replaced with "Japan".

(Decision and Notice of Assistance in Child's Return to Japan)

Article 12 (1) The Minister for Foreign Affairs, when an application for

assistance in child's return to Japan is filed, shall make a decision to provide assistance in child's return to Japan (hereinafter referred to as "decision for assistance in child's return to Japan") and notify the person who files an application for assistance in child's return to Japan (hereinafter referred to as "applicant" in this Subsection) to that effect without delay, except where the Minister dismisses it pursuant to the provisions of paragraph (1) of the following Article.

- (2) The Minister for Foreign Affairs, when he/she makes a decision for assistance in child's return to Japan, shall take the measures prescribed in Article 14.
- (3) In addition to what is provided for in the preceding paragraph, the Minister for Foreign Affairs, when he/she makes a decision for assistance in child's return to Japan, shall take the following measures as necessary:
  - (i) Measures prescribed in Article 15;
  - (ii) Communication with the Central Authority(ies) of Contracting State(s) other than Japan to implement the Convention.

(Dismissal of Application for Assistance in Child's Return to Japan)

Article 13 (1) The Minister for Foreign Affairs shall dismiss an application for assistance in child's return to Japan if it falls under any of the following items:

- (i) A child who is sought to be returned in the application for assistance in child's return to Japan (hereinafter referred to as a "child pertaining to the application" in this Subsection) has attained the age of 16;
  - (ii) The state or territory where the child pertaining to the application is located is unknown;
  - (iii) It is obvious that the child pertaining to the application is located in Japan or any state or territory other than Contracting States;
  - (iv) It is obvious that the location of the child pertaining to the application and the domicile or residence (or the location of the office if the applicant is a juridical person or other entity) of the applicant are in the same Contracting State;
  - (v) It is obvious that the state of habitual residence of the child pertaining to the application is not Japan;
  - (vi) At the time of the removal or the commencement of the retention of the child pertaining to the application, the state or territory where said child is considered to have been located was not a Contracting State;
  - (vii) It is obvious that the applicant does not have the rights of custody with respect to the child pertaining to the application under the laws or regulations of Japan, or that said rights of custody are not breached by the removal or retention of the child pertaining to the application.
- (2) The Minister for Foreign Affairs, when he/she dismisses an application for assistance in child's return to Japan pursuant to the provisions of the

preceding paragraph, shall immediately give a notice to the applicant to that effect and of the reason thereof.

(Sending of Copy of Document pertaining to Application for Assistance in Child's Return to Japan to Central Authority of Contracting State)

Article 14 (1) The Minister for Foreign Affairs, where he/she makes a decision for assistance in child's return to Japan, shall send without delay, a copy of the application form set forth in Article 4 (2) and the documents prescribed in paragraph (3) of said Article as applied mutatis mutandis pursuant to Article 11 (2) to the Central Authority of the Contracting State where the child pertaining to the application is located.

(2) The Minister for Foreign Affairs, when he/she sends the documents pursuant to the provision of the preceding paragraph, shall give a notice to the applicant to that effect.

(Provision of Information relating to Social Background of Child to Central Authority of Contracting State)

Article 15 (1) Where the case relating to the return of child to Japan is pending before the court or any other organ that conducts an adjudication of a Contracting State other than Japan (hereinafter referred to as "foreign court, etc." in this paragraph and the following paragraph) and the Minister for Foreign Affairs is sought by the Central Authority of said Contracting State to provide the information on living or surrounding conditions, such as physical, psychological, nurturing and school conditions, of the child pertaining to said return of child, and if it falls under all of the following items, the Minister may request, as provided for by Cabinet Order, the heads of administrative organs of the State, etc., the heads of local public entities or other executive agencies, or any other persons designated by Cabinet Order as those having the information with regard to the child pertaining to the application, to provide the information in their possession, in order to provide the Central Authority of said Contracting State with the information:

(i) Where said Central Authority requests the Minister for Foreign Affairs to provide said information upon request of said foreign court, etc. in order to conduct an examination on said case, and it is found that there is no risk of using said information for any other purpose than said examination;

(ii) Where the parties to the proceedings at the foreign court, etc. pertaining to said case (if said child is the party to said proceedings, excluding the child) have consented to the provision of said information to said Central Authority.

(2) In the case referred to in the preceding paragraph, those who are requested to provide the information prescribed in said paragraph, when it falls under all of the following items, shall provide the Minister for Foreign Affairs with said

information without delay:

- (i) Where it is found that there is no risk that the provision of said information to the Central Authority prescribed in the preceding paragraph will cause unjust harm to the rights and interests of the child prescribed in said paragraph or of the parties to the proceedings at the foreign court, etc. pertaining to the case prescribed in said paragraph;
  - (ii) Where said information is in a situation where it can be made available to the child prescribed in the preceding paragraph and the parties to the proceedings at the foreign court, etc. pertaining to the case prescribed in said paragraph, and it does not include any information that can identify a specific individual other than them.
- (3) The Minister for Foreign Affairs may provide the information provided pursuant to the provisions of the preceding paragraph only to the Central Authority prescribed in paragraph (1).

**Section 3 Assistance in Visitation or Other Contacts with Child**  
**Subsection 1 Assistance in Visitation or Contacts with Child in Japan**

(Application for Assistance in Visitation or Contacts with Child in Japan)

Article 16 (1) With respect to a child who is located in Japan and who held his/her habitual residence in a state or territory that is a Contracting State immediately before the visitation or other contacts with him/her became unable to be made, a person who is entitled to such visitation or other contacts with said child under the laws and regulations of said state or territory (limited to those who have a domicile or residence in a Contracting State other than Japan), when he/she considers that the visitation or other contacts with the child is interfered, may file an application to the Minister for Foreign Affairs for assistance in realizing the visitation or other contacts with the child (hereinafter referred to as "assistance in visitation or contact with child in Japan").

- (2) A person who intends to file an application for assistance in visitation or contact with child in Japan (hereinafter referred to as "application for assistance in visitation or contact with child in Japan") shall submit an application form describing the following matters (limited to those written in Japanese or English) to the Minister for Foreign Affairs, as provided for by Ordinance of the Ministry of Foreign Affairs:
- (i) Name and domicile or residence of a person who intends to file an application for assistance in visitation or contact with child in Japan (hereinafter referred to as an "applicant" in this Subsection) ;
  - (ii) Name, birth date, and domicile or residence (if these matters are not identified, a statement to that effect) of a child with whom the visitation or

- other contacts is sought in the application for assistance in visitation or contact with child in Japan (hereinafter referred to as a "child pertaining to the application" in this Subsection) and any other necessary matters to identify the child pertaining to the application;
- (iii) Name of a person who is considered to be interfering with the visitation or contact with the child pertaining to the application and any other necessary matters to identify said person;
  - (iv) Necessary matters to clarify that the state or the territory where the child pertaining to the application held his/her habitual residence immediately before the visitation or other contacts with him/her by the applicant became unable to be made is a Contracting State;
  - (v) Necessary matters to clarify that the applicant is entitled to visitation or other contacts with the child pertaining to the application under the laws and regulations of the state or territory where the child pertaining to the application held his/her habitual residence immediately before the visitation or other contacts with him/her by the applicant became unable to be made and that the visitation or other contacts with the child by the applicant has been interfered;
  - (vi) Name and domicile or residence of a person who is considered to live together with the child pertaining to the application and any other matters necessary to identify said person (if these matters are not identified, a statement to that effect).
- (3) Documents proving the matters listed in item (v) of the preceding paragraph and any other documents as specified by Ordinance of the Ministry of Foreign Affairs shall be attached to the application form set forth in said paragraph.
- (4) An application for assistance in visitation or contact with child in Japan may be filed via the Central Authority of a Contracting State other than Japan. In this case, the applicant shall submit to the Minister for Foreign Affairs the document describing the matters listed in each item of paragraph (2) (limited to those written in Japanese or English or those to which a Japanese or English translation is attached) and the documents prescribed in the preceding paragraph.

(Decision and Notice of Assistance in Visitation or Contact with Child in Japan)

Article 17 (1) The Minister for Foreign Affairs, when an application for assistance in visitation or contact with child in Japan is filed, shall make a decision to provide assistance in visitation and contact with child in Japan (hereinafter referred to as "decision for assistance in visitation or contact with child in Japan") , and shall give a notice (in the case where the applicant files an application for assistance in visitation or contact with child in Japan via the

Central Authority of a Contracting State other than Japan pursuant to the provision of paragraph (4) of the preceding Article, a notice via said Central Authority; the same shall apply in paragraph (2) of the following Article and Article 19 (2).) to the applicant to that effect without delay, except where the Minister dismisses it pursuant to the provision of paragraph (1) of the following Article and where he/she sends a copy of the documents with regard to the application for assistance in visitation or contact with child in Japan pursuant to the provisions of Article 19 (1),.

- (2) The Minister for Foreign Affairs, when he/she makes a decision for assistance in visitation or contact with child in Japan, shall take the following measures as necessary:
- (i) Measures prescribed in Article 9 or Article 10 as applied mutatis mutandis pursuant to Article 20;
  - (ii) Communication with the Central Authority(ies) of Contracting State(s) other than Japan to implement the Convention;
  - (iii) Provision to the applicant of the information relating to the procedures provided for in this Act and other systems under the laws and regulations of Japan relating to the realization of, the visitation or other contacts with the child.

(Dismissal of Application for Assistance in Visitation or Contact with Child in Japan)

Article 18 (1) The Minister for Foreign Affairs shall dismiss an application for assistance in visitation or contact with child in Japan if it falls under any of the following items:

- (i) The child pertaining to the application has attained the age of 16;
- (ii) It is obvious that the child pertaining to the application is not in Japan and the state or territory where the child pertaining to the application is located is unknown;
- (iii) It is obvious that the child pertaining to the application is located in a state or territory other than Contracting States;
- (iv) It is obvious that the location of the child pertaining to the application and the domicile or residence of the applicant are in the same Contracting State;
- (v) It is obvious that the applicant has a domicile or residence in Japan or that the applicant does not have a domicile or residence in a Contracting State other than Japan;
- (vi) The state or territory where the child pertaining to the application held his/her habitual residence immediately before the visitation or other contacts with him/her by the applicant became unable to be made is not a Contracting State;
- (vii) It is obvious that the applicant is not entitled to visitation or any other

contacts with the child pertaining to the application under the laws or regulations of the state or territory where the child pertaining to the application held his/her habitual residence immediately before the visitation or other contacts with him/her by the applicant became unable to be made or that the visitation or other contacts by the applicant with the child pertaining to the application is not interfered.

- (2) The Minister for Foreign Affairs, when he/she dismisses an application for assistance in visitation or contact with child in Japan pursuant to the provisions of the preceding paragraph, shall immediately notify the applicant to that effect and of the reason thereof.

(Sending of Copy of Document pertaining to Application for Assistance in Visitation or Contact with Child in Japan to Central Authority of Contracting State)

Article 19 (1) The Minister for Foreign Affairs, where it is obvious that the child pertaining to the application is located in a Contracting State other than Japan and if the application for assistance in visitation or contact with child in Japan does not fall under item (iv) of paragraph (1) of the preceding Article, shall send without delay a copy of the application form set forth in Article 16 (2) (or if the applicant files an application for assistance in visitation or contact with child in Japan pursuant to the provision of paragraph (4) of said Article, the documents prescribed in said paragraph) and the documents prescribed in paragraph (3) of said Article to the Central Authority of said Contracting State.

- (2) The Minister for Foreign Affairs, when he/she sends the documents pursuant to the provision of the preceding paragraph, shall give a notice to the applicant to that effect.

(Provisions Applied Mutatis Mutandis concerning Assistance in Visitation or Contact with Child in Japan)

Article 20 The provisions of Articles 5, 9, and 10 shall apply mutatis mutandis where an application for assistance in visitation or contact with child in Japan is filed to the Minister for Foreign Affairs. In this case, the term "filing a petition for the return of child under the provisions of Article 26, or filing a petition for an adjudication of domestic relations or a conciliation of domestic relations seeking to provide for the visitation or other contacts with the child or to change such provision" in Article 5 (4) (i) shall be deemed to be replaced with "filing a petition for an adjudication of domestic relations or a conciliations of domestic relations seeking to provide for the visitation or other contacts with the child or to change such provision," the term "the court before which the case relating to the return of child as prescribed in Article 29 or the case pertaining to the compulsory execution of the return of child is pending or

by the court before which the case relating to the visitation or other contacts with the child pertaining to the application or" in Article 5(4)(ii) shall be deemed to be replaced with "by the court before which the case relating to the visitation or any other contacts with the child pertaining to the application or", the term " the return of child or visitation or other contacts" in Article 9 shall be deemed to be replaced with "visitation or other contacts."

### **Subsection 2 Assistance in Visitation or Contact with Child in Foreign State**

(Application for Assistance in Visitation or Contact with Child in Foreign State)

Article 21 (1) With respect to a child who is located in a Contracting State other than Japan and who held his/her habitual residence in a state or territory that is a Contracting State immediately before visitation or other contacts with him/her became unable to be made, a person who is entitled to such visitation or other contacts with the child under the laws and regulations of said state or territory (limited to those who have a domicile or residence in Japan), when he/she considers that the visitation or other contacts with said child is interfered, may file an application to the Minister for Foreign Affairs for assistance in realizing the visitation or other contacts with said child (hereinafter referred to as "assistance in visitation or contact with child in foreign state") .

(2) The provisions of Article 16 (2) and (3) shall apply mutatis mutandis to the application for assistance in visitation or contact with child in foreign state (hereinafter referred to as "application for assistance in visitation or contact with child in foreign state").

(Decision and Notice of Assistance in Visitation or Contact with Child in Foreign State)

Article 22 (1) The Minister for Foreign Affairs, when an application for assistance in visitation or contact with child in foreign state is filed, shall make a decision to provide assistance in visitation or other contacts with child in foreign state (hereinafter referred to as "decision for assistance in visitation or contact with child in foreign state") , and shall notify the person who files an application for assistance in visitation or contact with child in foreign state (hereinafter referred to as an "applicant" in this Subsection) to that effect without delay, except where he/she dismisses it pursuant to the provisions of paragraph (1) of the following Article,.

(2) The Minister for Foreign Affairs, when he/she makes a decision for assistance in visitation or contact with child in foreign state, shall take the measures



prescribed in Article 24.

- (3) In addition to what is provided for in the preceding paragraph, the Minister for Foreign Affairs, when he/she makes a decision for assistance in visitation or contact with child in foreign state, shall take the following measures as necessary:
- (i) Measures prescribed in Article 15 as applied mutatis mutandis pursuant to Article 25;
  - (ii) Communication with the Central Authority(ies) of Contracting State(s) other than Japan to implement the Convention;

(Dismissal of Application for Assistance in Visitation or Contact with Child in Foreign State)

Article 23 (1) The Minister for Foreign Affairs shall dismiss an application for assistance in visitation or contact with child in foreign state if it falls under any of the following items:

- (i) A child with whom the visitation or other contacts is sought in the application for assistance in visitation or contact with child in foreign state (hereinafter referred to as "the child pertaining to the application" in this Subsection) has attained the age of 16;
  - (ii) The state or territory where the child pertaining to the application is located is unknown;
  - (iii) It is obvious that the child pertaining to the application is located in Japan or in a state or territory other than Contracting States;
  - (iv) It is obvious that the location of the child pertaining to the application and the domicile or residence of the applicant are in the same Contracting State;
  - (v) It is obvious that the applicant does not have a domicile or residence in Japan;
  - (vi) The state or territory where the child pertaining to the application held his/her habitual residence immediately before the visitation or other contacts with the child by the applicant became unable to be made is not a Contracting State;
  - (vii) It is obvious that the applicant is not entitled to visitation or other contacts with the child pertaining to the application under the laws or regulations of the state or territory where the child pertaining to the application held his/her habitual residence immediately before the visitation or other contacts with him/her by the applicant became unable to be made or that the visitation or other contacts by the applicant with the child pertaining to the application is not interfered.
- (2) The Minister for Foreign Affairs, when he/she dismisses an application for assistance in visitation or contact with child in foreign state pursuant to the provisions of the preceding paragraph, shall immediately notify the applicant

to that effect and of the reason thereof.

(Sending of Copy of Document pertaining to Application for Assistance in Visitation or Contact with Child in Foreign State to Central Authority of Contracting State)

Article 24 (1) The Minister for Foreign Affairs, where he/she makes a decision for assistance in visitation or contact with child in foreign state, shall send without delay a copy of the application form set forth in Article 16 (2) and the documents prescribed in paragraph (3) of said Article as applied mutatis mutandis pursuant to Article 21 (2) to the Central Authority of said Contracting State where the child pertaining to the application is located.

(2) The Minister for Foreign Affairs, when he/she sends the documents pursuant to the provisions of the preceding paragraph, shall give a notice to the applicant to that effect.

(Provisions Applied Mutatis Mutandis concerning Assistance in Visitation or Contact with Child in Foreign State)

Article 25 The provisions of Articles 15 shall apply mutatis mutandis where an application for assistance in visitation or contact with child in foreign state is filed to the Minister for Foreign Affairs. In this case, the term "the return of child to Japan" in paragraph (1) of said Article shall be deemed to be replaced with "the visitation or other contacts with the child pertaining to the application" and the term "the child pertaining to said return of child" in said paragraph shall be deemed to be replaced with "the child pertaining to the application."

### **Chapter III Procedures for Case relating to Return of Child, etc.**

#### **Section 1 Grounds for Return, etc.**

(Return of Child based on Convention)

Article 26 A person whose rights of custody with respect to a child are breached due to removal to or retention in Japan may file a petition against the person who takes care of the child with a family court to seek an order to return the child to the state of habitual residence pursuant to the provisions of this Act.

(Grounds for Return of Child)

Article 27 The court, when it finds that the petition for the return of child falls under all of the grounds listed in the following items, shall order the return of child:

- (i) The child has not attained the age of 16;
- (ii) The child is located in Japan;

- (iii) Pursuant to the laws or regulations of the state of habitual residence, said removal or retention breaches the rights of custody with respect to the child attributed to the petitioner;
- (iv) At the time of said removal or the commencement of said retention, the state of habitual residence was a Contracting State.

(Grounds for Refusal of Return of Child, etc.)

Article 28 (1) Notwithstanding the provisions of the preceding Article, the court shall not order the return of child when it finds that any of the grounds listed in the following items exists; provided, however, that even in cases where there exist grounds prescribed in items (i) to (iii) or item (v), the court may order the return of child if it finds that it serves the interests of the child to have him/her returned to his/her state of habitual residence after taking into account all the circumstances:

- (i) The petition for the return of child was filed after the expiration of the period of one year since the time of the removal or the commencement of the retention of the child, and the child is now settled in his/her new environment;
  - (ii) The petitioner was not actually exercising the rights of custody at the time of the removal or the commencement of the retention of the child (except in the case where it could be deemed that the rights of custody would have actually been exercised by the petitioner but for said removal or retention);
  - (iii) The petitioner had given prior consent or subsequently approved the removal or retention of the child;
  - (iv) There exists a grave risk that his/her return to the state of habitual residence would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation;
  - (v) The child objects to being returned, in a case where it is appropriate to take account of the child's views in light of his/her age and degree of development;
  - (vi) It would not be permitted by the fundamental principles of Japan relating to the protection of human rights and fundamental freedoms to return the child to the state of habitual residence.
- (2) The court, when judging whether or not the grounds listed in item (iv) of the preceding paragraph exist, shall consider all circumstances such as those listed below:
- (i) Whether or not there is a risk that the child would be subject to the words and deeds, such as physical violence, which would cause physical or psychological harm (referred to as "violence, etc." in the following item) by the petitioner, in the state of habitual residence;
  - (ii) Whether or not there is a risk that the respondent would be subject to violence, etc. by the petitioner in such a manner as to cause psychological

harm to the child, if the respondent and the child entered into the state of habitual residence;

(iii) Whether or not there are circumstances that make it difficult for the petitioner or the respondent to provide care for the child in the state of habitual residence.

(3) The court shall not dismiss the petition for the return of child only on the grounds that a judicial decision relating to the custody of the child has been issued in Japan or that there is a possibility that a judicial decision relating to the custody of the child issued in a foreign state becomes effective in Japan; provided, however, that the court is not precluded from taking into account the reasons for the aforementioned judicial decision relating to custody of the child in its judicial decision on the petition for the return of child.

## **Section 2 General Rules for Procedures for Case relating to Return of Child**

(Procedures for Case relating to Return of Child)

Article 29 Procedures for the case relating to the return of child (which means the case seeking the return of child as prescribed in Article 32 (1), the case on the examination and recommendation as prescribed in Article 121 and the case on the ne exeat order as prescribed in Article 123 (2); the same shall apply hereinafter.) shall be governed by the provisions of this Act, in addition to what is provided for in other laws and regulations.

(Responsibilities of Courts and Parties)

Article 30 Courts shall endeavor to ensure that the proceedings of the case relating to the return of child are carried out fairly and expeditiously, and the parties shall carry out the proceedings of the case in good faith.

(Rules of the Supreme Court)

Article 31 In addition to what is provided for in this Act, the necessary matters concerning procedures for the case relating to the return of child shall be prescribed by the Rules of the Supreme Court.

## **Section 3 Procedures for Case Seeking Return of Child**

### **Subsection 1 General Provisions**

#### **Division 1 Jurisdiction**

(Jurisdiction)

Article 32 (1) In the cases listed in the following items, the case seeking the return of child (which means the case pertaining to the petition for the return

of child under the provision of Article 26; the same shall apply hereinafter.) shall be subject to the jurisdiction of the respective family courts specified in each of said items:

- (i) In cases where the place of domicile of the child (when the child has no domicile in Japan or his/her domicile is unknown, his/her residence; the same shall apply in the following item) is located within the jurisdictional district of the Tokyo High Court, the Nagoya High Court, the Sendai High Court, or the Sapporo High Court: The Tokyo Family Court;
- (ii) In cases where the place of domicile of the child is located within the jurisdictional district of the Osaka High Court, the Hiroshima High Court, the Fukuoka High Court, or the Takamatsu High Court: The Osaka Family Court.

- (2) A case seeking the return of child shall be subject to the jurisdiction of the Tokyo Family Court where the child has no domicile in Japan or his/her domicile is unknown, and when he/she has no residence in Japan or his/her residence is unknown.

(Jurisdiction over Joint Claim)

Article 33 Where the return of child with regard to two or more children is to be sought by a single petition, such petition may be filed with the family court which shall have jurisdiction over a petition for the return of child with regard to one of the children pursuant to the provisions of the preceding Article.

(Designation of Court with Jurisdiction)

Article 34 Where the court with jurisdiction is unable to exercise its jurisdiction by law or in fact or if a court with jurisdiction is not determined due to ill-defined jurisdictional districts of courts, the Supreme Court, upon petition, shall designate a court with jurisdiction.

(Base Time for Determining Jurisdiction)

Article 35 The jurisdiction of a court shall be determined on the basis of the time of the filing of a petition for the return of child.

(Agreement on Jurisdiction)

- Article 36 (1) The parties may determine one of the family courts specified in each item of Article 32 (1) as a court with jurisdiction by an agreement only in the first instance.
- (2) The agreement set forth in the preceding paragraph shall not become effective unless it is made with respect to a petition for the return of child and is made in writing.
  - (3) If the agreement set forth in paragraph (1) is made by means of an

electromagnetic record (which means a record made in an electronic form, a magnetic form, or any other form not recognizable to human perception, which is used in information processing by computers), the provision of the preceding paragraph shall be applied by deeming such agreement to have been made in writing.

(Transfer, etc.)

Article 37 (1) The court, when it finds that the case seeking the return of child is not subject to its jurisdiction, upon petition or by its own authority, shall transfer the case to the family court that has the jurisdiction.

(2) A family court, in the case prescribed in the preceding paragraph and when it finds it particularly necessary for handling a case seeking the return of child, by its own authority, may transfer the whole or part of said case to a family court other than the family court which has jurisdiction over the case (limited to the family courts specified in each item of Article 32 (1)).

(3) Any of the family courts specified in each item of Article 32 (1), in the case prescribed in paragraph (1) and when it finds it particularly necessary for handling a case seeking the return of child, by its own authority, may handle the whole or part of said case by itself.

(4) A family court, even where a case seeking the return of child is subject to its jurisdiction and when it finds it particularly necessary for handling said case, by its own authority, may transfer the whole or part of said case to another family court (limited to the family courts specified in each item of Article 32 (1)).

(5) An immediate appeal may be filed against a judicial decision on a transfer under the provisions of paragraphs (1) and (2) and the preceding paragraph and a judicial decision to dismiss without prejudice the petition set forth in paragraph (1).

(6) An immediate appeal against a judicial decision on a transfer under the provision of the preceding paragraph shall have the effect of stay of execution.

(7) The provision of Article 22 of the Code of Civil Procedure (Act No. 109 of 1996) shall apply mutatis mutandis to the judicial decision on a transfer of the case seeking the return of child.

## **Division 2 Disqualification of and Challenge to Court Officials**

(Disqualification of Judge)

Article 38 (1) A judge shall, in the following cases, be disqualified from performing his/her duties; provided, however, that in the case listed in item (vi), this shall not preclude a judge from performing his/her duties as a commissioned judge based on the commission from another court:

- (i) Where a judge or his/her spouse or person who was his/her spouse is a party to the case, or a person who has the status to become a party to the case;
  - (ii) Where a judge is or was a party's relative by blood within the fourth degree, or relative through marriage within the third degree or relative living together;
  - (iii) Where a judge is, in relation to a party or the child, a guardian, supervisor of a guardian, curator, supervisor of a curator, assistant, or a supervisor of an assistant;
  - (iv) Where a judge has served as a witness or expert witness in the case, or is requested to attend the hearing for the case;
  - (v) Where a judge is or was a party's or the child's agent or assistant in court in the case;
  - (vi) Where a judge has participated in making an arbitral award in the case or participated in making a judicial decision in the prior instance against which an appeal is entered.
- (2) If any of the grounds for disqualification prescribed in the preceding paragraph exist, the court, upon petition or by its own authority, shall make a judicial decision of disqualification.

(Challenge to Judge)

- Article 39 (1) If there are circumstances with regard to a judge that would prejudice the impartiality of a judicial decision, a party may challenge such judge.
- (2) A party, if he/she, in the presence of a judge, has made statements on the case, may not challenge the judge; provided, however, that this shall not apply where the party did not know of the existence of any grounds for challenge or where any grounds for challenge occurred thereafter.

(Judicial Decision of Disqualification or Challenge, and Stay of Proceedings)

- Article 40 (1) A judicial decision of the disqualification of or a challenge to a judge who is a member of a panel or a single judge of a family court shall be made by the court to which the judge belongs.
- (2) The judicial decision set forth in the preceding paragraph shall be made by a panel.
- (3) A judge may not participate in making a judicial decision on the disqualification of or a challenge to him/herself.
- (4) When a petition for disqualification or challenge is filed, the proceedings of the case seeking the return of child shall be stayed until a judicial decision on the petition becomes final and binding; provided, however, that this shall not apply to any urgent act.
- (5) When a judicial decision to dismiss without prejudice the petition for

challenge is made for the reason that any of the grounds listed in the following items exists, the provision of paragraph (3) shall not apply:

- (i) When it is obvious that the petition has been made only for the purpose of delaying the proceedings of the case seeking the return of child;
  - (ii) When it is in violation of the provision of paragraph (2) of the preceding Article;
  - (iii) When it is in violation of the procedures provided for by the Rules of the Supreme Court.
- (6) Notwithstanding the provisions of paragraphs (1) and (2), a judicial decision set forth in the preceding paragraph may be made by an authorized judge, etc. (which means an authorized judge, a commissioned judge, or a judge of the family court handling the case seeking the return of child; the same shall apply in the proviso of paragraph (3) of the following Article) who is subject to a challenge.
- (7) When a judicial decision set forth in paragraph (5) is made, notwithstanding the provision of the main clause of paragraph (4), the proceedings of the case seeking the return of child shall not be stayed.
- (8) No appeal may be entered against a judicial decision that the disqualification or challenge is well-grounded.
- (9) An immediate appeal may be filed against a judicial decision to dismiss without prejudice the petition for the disqualification or challenge.

(Disqualification of and Challenge to Court Clerk)

- Article 41 (1) The provisions of Article 38, Article 39, and paragraphs (3), (5), (8), and (9) of the preceding Article shall apply *mutatis mutandis* to the disqualification of and challenge to the court clerks.
- (2) When a petition is filed for the disqualification of or a challenge to a court clerk, the court clerk may not participate in the case seeking the return of child for which said petition is filed until a judicial decision on such petition becomes final and binding; provided, however, that this shall not apply to the case where a judicial decision to dismiss without prejudice the petition for a challenge to the court clerk is made for the reason that any of the grounds listed in each item of paragraph (5) of the preceding Article as applied *mutatis mutandis* pursuant to the preceding paragraph exists.
- (3) A judicial decision of the disqualification of or a challenge to the court clerk shall be made by the court to which a court clerk in question belongs; provided, however, that a judicial decision set forth in the proviso of the preceding paragraph may be made by an authorized judge, etc. (with respect to an authorized judge or a commissioned judge, limited to the case where a petition is filed for a challenge to the court clerk who attends the proceedings of said judge).



(Disqualification of Family Court Probation officer)

- Article 42 (1) The provisions of Article 38 and Article 40 (2), (8), and (9) (excluding the part relating to challenge) shall apply mutatis mutandis with respect to the disqualification of a family court probation officer.
- (2) When a petition is filed for the disqualification of a family court probation officer, the family court probation officer may not participate in the case seeking the return of child for which said petition is filed until a judicial decision on such petition becomes final and binding.
- (3) A judicial decision of the disqualification of a family court probation officer shall be made by the court to which the family court probation officer in question belongs.

### **Division 3 Capacity to Be a Party and Capacity to Perform Procedural Acts**

(Principle of Capacity to Be a Party and Capacity to Perform Procedural Acts, etc.)

- Article 43 (1) The provisions of Articles 28, 29, 33, 34 (1) and (2), and Article 36 (1) of the Code of Civil Procedure shall apply mutatis mutandis to the capacity to be a party, the capacity to perform procedural acts in the proceedings of the case seeking the return of child (hereinafter referred to as "procedural acts"), the statutory representation for a person without the capacity to perform procedural acts, the delegation of powers necessary for performing procedural acts, and the extinction of authority of statutory representation.
- (2) A minor or an adult ward may perform procedural acts by him/herself without being required to obtain the consent of a statutory agent or without a statutory agent. The same shall apply where a person under curatorship or a person under assistance does not have the consent of the curator or supervisor of the curator, or assistant or supervisor of the assistant.
- (3) In order for a guardian to perform procedural acts with regard to a petition or an appeal on the return of child filed by other persons, he/she is not required to obtain the consent of the supervisor of the guardian.
- (4) In order for a guardian to perform any of the following procedural acts, he/she shall be required to obtain the consent of the supervisor of the guardian:
- (i) Withdrawing a petition for the return of child or entering into a settlement;
  - (ii) Withdrawing an immediate appeal against a final order, an appeal set forth in Article 108 (1) or a petition set forth in Article 111 (2);
  - (iii) Giving consent set forth in Article 144.

(Statutory Agent of Minor or Adult Ward)

Article 44 A person who exercises parental authority or a guardian may perform procedural acts on behalf of a minor or an adult ward.

(Special Agent)

Article 45 (1) Where there is no statutory agent or where a statutory agent is unable to exercise the authority of representation with respect to a minor or an adult ward, and when damage is likely to be incurred due to a delay in the proceedings of the case seeking the return of child, the presiding judge, upon petition of an interested person or by his/her own authority, may appoint a special agent.

(2) A judicial decision on the appointment of a special agent shall be made based on a prima facie showing.

(3) The court may replace a special agent at any time.

(4) In order for a special agent to perform procedural acts, he/she shall be required to obtain the same delegation of powers as a guardian.

(5) An immediate appeal may be filed against a judicial decision to dismiss without prejudice the petition set forth in paragraph (1).

(Application Mutatis Mutandis to Representative of Juridical Person, etc.)

Article 46 The provisions concerning statutory representation and a statutory agent in this Act shall apply mutatis mutandis to a representative of a juridical person and to a representative or administrator of an association or foundation that is not a juridical person but has the capacity to be a party.

#### **Division 4 Intervention**

(Intervention as Party)

Article 47 (1) A person who has the status to become a party may intervene as a party in the proceedings of the case seeking the return of child.

(2) The court, when it finds it appropriate, upon petition of a party or by its own authority, may allow other persons who have the status to become a party to intervene as a party in the proceedings of the case seeking the return of child.

(3) An application for intervention under the provision of paragraph (1) and a petition set forth in the preceding paragraph shall be made by means of a document describing the purpose of and reasons for intervention.

(4) An immediate appeal may be filed against a judicial decision to dismiss without prejudice the application for intervention under the provision of paragraph (1).

(Intervention of Child)

Article 48 (1) A child who is sought to be returned in the case seeking the return

- of child may intervene in the proceedings of the case seeking the return of child.
- (2) The court, when it finds it appropriate, by its own authority, may allow a child who is sought to be returned to intervene in the proceedings of the case seeking the return of child.
  - (3) An application for intervention under the provision of paragraph (1) shall be made by means of a document.
  - (4) The court, when it finds that it would harm the interests of the child who intends to intervene in the proceedings of the case seeking the return of child for said child to intervene in said proceedings while taking into account the age and degree of development of the child and all other circumstances, shall dismiss the application for intervention under the provision of paragraph (1) without prejudice.
  - (5) An immediate appeal may be filed against a judicial decision to dismiss without prejudice the application for intervention under the provision of paragraph (1).
  - (6) The child who intervenes in the proceedings of the case seeking the return of child pursuant to the provisions of paragraphs (1) and (2) (hereinafter simply referred to as an "intervening child") may perform such procedural acts that a party to the case is able to perform (excluding the withdrawal and change of the petition for the return of child, and the withdrawal of an appeal against a judicial decision and of an objection to disposition made by a court clerk); provided, however, that, with respect to an appeal against a judicial decision and an objection to disposition made by a court clerk, this shall apply only where the intervening child is able to perform such procedural acts pursuant to other provisions of this Act concerning an appeal and objection.

(Exclusion from Proceedings)

Article 49 (1) The court may exclude a person who has no status to become a party or has lost such status from the proceedings of the case seeking the return of child.

- (2) An immediate appeal may be filed against a judicial decision on the exclusion under the provision of paragraph (1).

**Division 5 Counsel and Assistant in Court**

(Qualification of Counsel)

Article 50 (1) Except for an agent who may perform judicial acts under the laws and regulations, no person other than an attorney at law may serve as a counsel; provided, however, that in a family court, with its permission, a person who is not an attorney at law may be appointed as a counsel.

- (2) The permission set forth in the proviso of the preceding paragraph may be

rescinded at any time.

(Appointment of Counsel by Presiding Judge, etc.)

- Article 51 (1) Where a minor, an adult ward, a person under curatorship, or a person under assistance (hereinafter referred to as "minor, etc." in this Article) intends to perform procedural acts, and when the presiding judge finds it necessary, he/she may, upon petition, appoint an attorney at law as a counsel.
- (2) Even where a minor, etc. does not file a petition set forth in the preceding paragraph, the presiding judge may order that an attorney at law be appointed as a counsel, or may, by his/her own authority, appoint an attorney at law as a counsel.
- (3) The amount of remuneration to be paid by a minor, etc. to the attorney at law appointed as a counsel by the presiding judge pursuant to the provision of the preceding two paragraphs shall be the amount that the court finds reasonable.

(Scope of Authority of Representation of Counsel)

- Article 52 (1) A counsel, with regard to a case entrusted thereto, may perform acts concerning an intervention and compulsory execution, and may receive payment.
- (2) A counsel shall be specially entrusted in order to perform the following:
- (i) Withdrawing the petition for the return of child or entering into a settlement;
  - (ii) Filing an immediate appeal against a final order, an appeal set forth in Article 108 (1) or a petition set forth in Article 111 (2), or withdrawing such appeal or petition;
  - (iii) Filing a petition for the ne exeat order as prescribed in Article 122 (3) or withdrawing such petition;
  - (iv) Giving consent set forth in Article 144;
  - (v) Appointing an agent.
- (3) The authority of representation of a counsel may not be restricted; provided, however, that this shall not apply to a counsel who is not an attorney at law.
- (4) The provisions of the preceding three paragraphs shall not preclude the powers of an agent who may perform judicial acts pursuant to laws and regulations.

(Application Mutatis Mutandis of Code of Civil Procedure concerning Counsel and His/her Authority of Representation)

- Article 53 The provisions of Article 34 (excluding paragraph (3)), Article 36 (1) and Articles 56 to 58 (excluding Article 58 (3)) of the Code of Civil Procedure shall apply mutatis mutandis to a counsel and his/her authority of representation.

(Assistant in Court)

Article 54 The provisions of Article 60 of the Code of Civil Procedure shall apply mutatis mutandis to an assistant in court in the proceedings of the case seeking the return of child.

### **Division 6 Procedural Costs**

(Burden of Procedural Costs)

Article 55 (1) With regard to procedural costs for the procedures for the case seeking the return of child (hereinafter referred to as "procedural costs"), the parties shall bear their own costs.

(2) With respect to the procedural costs that should be borne by a party and an intervening child, respectively, pursuant to the provision of the preceding paragraph, the court, depending on the circumstances, may have any other party to the case bear all or part of said procedural costs.

(Judicial Decision on Burden of Procedural Costs, etc.)

Article 56 (1) The court, when making a judicial decision to conclude a case, by its own authority, shall make a judicial decision on the burden of all procedural costs incurred in the instance thereof (including the costs for the procedures relating to the conciliation of domestic relations where the court has referred the case to the conciliation of domestic relations pursuant to the provision of Article 144); provided, however, that depending on the circumstances, the court, when making a judicial decision on part of a case or on an interlocutory dispute, may make a judicial decision on the burden of costs thereof.

(2) Where an upper instance court modifies a judicial decision on merits, it shall make a judicial decision on the burden of the total costs of the proceedings (including the costs for the procedures relating to the conciliation of domestic relations where the court has referred the case to the conciliation of domestic relations pursuant to the provision of Article 144). The same shall apply where a court that has accepted a case remanded or transferred thereto makes a judicial decision to conclude the case.

(3) Where the court has referred the case to the conciliation of domestic relations pursuant to the provision of Article 144, and if the conciliation has been settled without any special provision on the burden of the procedural costs for the case seeking the return of child, the parties shall bear their own costs.

(Lending of Procedural Costs)

Article 57 Costs required for acts necessary for the procedures for the case seeking the return of child, such as examination of the facts, examination of

evidence, summons and notification, may be lent by the national treasury.

(Application Mutatis Mutandis of Code of Civil Procedure concerning Procedural Costs, etc.)

Article 58 (1) The provisions of Articles 68 to 74 (excluding the part relating to an immediate appeal against a judicial decision on an objection to disposition made by a court clerk) of the Code of Civil Procedure shall apply mutatis mutandis to the burden of the procedural costs. In this case, the term "an application for assisting intervention is withdrawn or an objection to assisting intervention" in Article 73 (1) of said Code shall be deemed to be replaced with "an application for intervention under the provisions of Article 47 (1) or Article 48 (1) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction (Act No. 48 of 2013)", and the term "The provisions of Article 61 to Article 66 and Article 71(7)" in paragraph (2) of said Article of said Code shall be deemed to be replaced with "The provisions of Article 71(7) as applied mutatis mutandis pursuant to Article 58 (1) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction."

(2) An immediate appeal under the provision of Article 69 (3) of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding paragraph and an immediate appeal against a judicial decision on an objection set forth in Article 71 (4) (including cases where it shall apply mutatis mutandis in the second sentence of Article 72 of said Code as applied mutatis mutandis pursuant to the preceding paragraph), Article 73 (2) and Article 74 (2) of said Code shall have the effect of stay of execution.

(Procedural Aid)

Article 59 (1) For a person who lacks the financial resources to pay the costs necessary for preparing for and conducting the proceedings of a case seeking the return of child or for a person who will suffer substantial detriment in his/her standard of living by paying such costs, the court, upon petition, may make a judicial decision to grant procedural aid; provided, however, that this shall not apply where it is obvious that the person seeking such aid has performed procedural acts, such as filing a petition for the return of child, for an unjustifiable purpose.

(2) The provisions of Article 82 (2) and Articles 83 to 86 of the Code of Civil Procedure (excluding Article 83 (1) (iii) of said Code) shall apply mutatis mutandis to the procedural aid. In this case, the term "the main clause of Article 82 (1)" in Article 84 of said Code shall be deemed to be replaced with "the main clause of Article 59 (1) of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction."

## **Division 7 Proceedings of Case Seeking Return of Child, etc.**

(Closed Proceedings)

Article 60 Proceedings of the case seeking the return of child shall not be open to the public; provided, however, that the court may permit observation by a person whom it considers to be appropriate.

(Preparation of Record, etc.)

Article 61 A court clerk shall prepare a record of the proceedings on each date for the proceedings of the case seeking the return of child; provided, however, that the record of the proceedings on the date other than the date for examination of evidence may be substituted by the summary clarifying the proceedings where the presiding judge finds it unnecessary.

(Inspection of Record, etc.)

Article 62 (1) The parties and a third party who has made a prima facie showing of his/her interest may, with permission of the court, make a request to a court clerk for inspection of or copying of the record of the case seeking the return of child, or issuance of an authenticated copy, transcript, or extract thereof (referred to as "inspection, etc." in item (i) of paragraph (4) and Article 69 (2)), or issuance of a certificate of matters concerning the case seeking the return of child.

(2) The provision of the preceding paragraph shall not apply with respect to the record of the case seeking the return of child which is prepared in the form of audiotapes or videotapes (including objects on which certain matters are recorded by any means equivalent thereto). In this case, a party or a third party who has made a prima facie showing of his/her interest, with permission of the court, may make a request to a court clerk for reproduction of these objects.

(3) The court, when a petition for the permission under the provision of the preceding two paragraphs is filed by a party, shall grant the permission pertaining to said petition.

(4) With respect to the part describing or recording the place of domicile or residence of the respondent or the child provided by the Minister for Foreign Affairs pursuant to the provision of Article 5 (4) (limited to the part pertaining to item (ii)) (referred to as "the part that indicates address, etc." in item (i) and Article 149 (1)) within the record of the case seeking the return of child, the court, notwithstanding the provision of the preceding paragraph, shall not grant the permission pertaining to the petition set forth in said paragraph; provided, however, that this shall not apply to either of the following items:

- (i) Where the respondent has given consent to the inspection, etc. of the part that indicates address, etc., or reproduction thereof;
  - (ii) Where it is necessary to carry out the compulsory execution relating to a final order to order the return of child after said final order has become final and binding.
- (5) The court, notwithstanding the provisions of paragraph (3) and the proviso of the preceding paragraph, may refrain from granting the permission pertaining to the petition set forth in paragraph (3), where it is found that there is a risk of causing harm to the interests of the child who is sought to be returned in the case seeking the return of child, a risk of causing harm to the private life and business of a party or a third party, or, a risk of disclosing significant secrets regarding the private life of a party or a third party, thereby causing considerable interference with social life of the party or third party or substantial harm to the reputation of the parties. The same shall apply when it is found that special circumstances exist that make it inappropriate to grant the permission pertaining to the petition set forth in said paragraph to said party in light of the nature of the case, the state of the proceedings, the contents of the record, etc.
- (6) When a petition for the permission under the provision of paragraph (1) or (2) is filed by a third party who has made a prima facie showing of his/her interest, the court, when it finds it appropriate, may grant the permission pertaining to said petition.
- (7) With respect to an authenticated copy, transcript, or extract of a written judicial decision, or a certificate of matters concerning the case seeking the return of child, a party to the case, notwithstanding the provision of paragraph (1), may make a request to a court clerk for issuance thereof without permission of the court.
- (8) A request for inspection, copying, and reproduction of the record of a case seeking the return of child may not be made if these acts would be detrimental to the preservation of the record of the case seeking the return of child or the performance of the court's duties.
- (9) An immediate appeal may be filed against a judicial decision to dismiss without prejudice the petition set forth in paragraph (3).
- (10) Where it is found that an immediate appeal under the provision of the preceding paragraph has been filed for the purpose of unreasonably delaying the proceedings of the case seeking the return of child, the court of prior instance shall dismiss the immediate appeal without prejudice.
- (11) An immediate appeal may be filed against a judicial decision under the provision of the preceding paragraph.

(Date and Period)



- Article 63 (1) The date for the proceedings of the case seeking the return of child shall be designated by the presiding judge by his/her own authority.
- (2) The date for the proceedings of the case seeking the return of child, only if unavoidable, may be designated on a Sunday or any other general holiday.
- (3) A change of the date for the proceedings of the case seeking the return of child shall be allowed only if there are obvious reasons therefor.
- (4) The provisions of Articles 94 to 97 of the Code of Civil Procedure shall apply mutatis mutandis to the date and period for the proceedings of the case seeking the return of child.

(Consolidation of Proceedings, etc.)

- Article 64 (1) The court may consolidate or separate the proceedings of the case seeking the return of child.
- (2) The court may revoke the judicial decision under the provision of the preceding paragraph.
- (3) When the court has ordered the consolidation of the proceedings of the case seeking the return of child involving different parties, if a party has requested examination of a witness who has already been examined before the consolidation but whom the party had no chance to examine, such witness shall be examined.

(Taking Over of Action by Person who is to Continue Case pursuant to Laws and Regulations)

- Article 65 (1) If a party to the case seeking the return of child is not able to continue the case (except for a party's death), a person who has the status to continue the proceedings of the case pursuant to laws and regulations shall take over said proceedings.
- (2) Where a person who has the status to continue the proceedings of the case pursuant to laws and regulations files a petition for the taking over of action under the provision of the preceding paragraph and when a judicial decision is made to dismiss the petition without prejudice, an immediate appeal may be filed against said judicial decision.
- (3) In the case referred to in paragraph (1), the court, upon petition of any other party or by its own authority, may have the person who has the status to continue the case pursuant to laws and regulations take over the proceedings of the case seeking the return of child.

(Taking Over of Action by Other Petitioner, etc.)

- Article 66 (1) Where it is impossible to continue the proceedings of the case seeking the return of child due to the petitioner's death, a person who has the status to become a petitioner in said case may take over the case.

- (2) A petition for the taking over of action under the provision of the preceding paragraph shall be filed within one month from the date of death of the petitioner of the case seeking the return of child.
- (3) Where it is impossible to continue the proceedings of the case seeking the return of child due to the respondent's death, the court, upon petition or by its own authority, may have the person who takes care of the child after the respondent's death take over said proceedings, but only within three months from the date of the respondent's death.

(Service and Suspension of Proceedings)

Article 67 The provisions of Part I, Chapter V, Section 4 and Articles 130 to 132 (excluding Article 132 (1)) of the Code of Civil Procedure shall apply mutatis mutandis to the service and suspension of the proceedings of the case seeking the return of child. In this case, the term "the claim that is the subject matter of the suit or the allegations and evidence for defense" in Article 113 of said Code shall be deemed to be replaced with "matters for which the judicial decision is sought."

(Objection to Disposition by Court Clerk)

- Article 68 (1) With regard to an objection to a disposition made by a court clerk, the court to which the court clerk belongs shall make a judicial decision.
- (2) An immediate appeal may be filed against a judicial decision set forth in the preceding paragraph.

**Division 8 Petition, etc. by Means of Electronic Data Processing System**

- Article 69 (1) The provisions of Article 132-10 (1)-(5) (excluding the part relating to the demand for payment) of the Code of Civil Procedure shall apply mutatis mutandis to the statements, such as petition, in the proceedings of the case seeking the return of child (referred to as a "petition, etc." in the following paragraph).
- (2) Inspection, etc. of the record of the case seeking the return of child under the provision of Article 62 (1) pertaining to the petition, etc. filed pursuant to the provision of the main clause of Article 132-10 (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding paragraph shall be made by means of the document set forth in Article 132-10 (5) of said Code. The same shall apply to serving or sending a document pertaining to such petition, etc.

**Subsection 2 Proceedings of Case Seeking Return of Child in Court of**

**First Instance**  
**Division 1 Petition for Return of Child**

(Method of Filing Petition, etc.)

Article 70 (1) A petition for the return of child shall be filed by submitting a written petition (hereinafter referred to as a "written petition for the return of child") to the family court.

(2) A written petition for the return of child shall state the following matters. In this case, the object of the petition listed in item (ii) shall be stated by specifying the child who is sought to be returned and the Contracting State to which the child is to be returned:

(i) The parties and statutory agents;

(ii) The object of petition;

(iii) A statement to the effect that the filing of the petition is in accordance with the procedures for the case seeking the return of child.

(3) A petitioner may request the return of two or more children by one petition.

(4) Where a written petition for the return of child is in violation of the provision of paragraph (2), the presiding judge shall specify a reasonable period and order that such defect should be corrected within that period. The same shall apply where fees for filing a petition required under the provisions of the Act on Costs of Civil Procedure (Act No. 40 of 1971) are not paid.

(5) In the case referred to in the preceding paragraph, if the petitioner fails to correct the defect, the presiding judge, by a direction, shall dismiss the written petition for the return of child without prejudice.

(6) An immediate appeal may be filed against the direction set forth in the preceding paragraph.

(Amendment of Petition)

Article 71 (1) The petitioner, unless there is no change to the basis for a petition, may amend the object of the petition; provided, however, that this shall not apply after the proceedings is concluded pursuant to the provisions of Article 89.

(2) An amendment of the object of the petition shall be made by means of a document, except where it is made on the date for the proceedings of the case seeking the return of child.

(3) The family court, when it finds that an amendment of the object of the petition is unlawful, shall make a judicial decision not to permit such amendment.

(4) The family court, when an amendment of the object of the petition would substantially delay the proceedings of the case seeking the return of child, may make a judicial decision not to permit such amendment.

(Sending of Copy of Written Petition, etc.)

Article 72 (1) Where a petition for the return of child is filed, the family court shall send a copy of the written petition for the return of child to the respondent except where the petition is unlawful or it is obvious that the petition is groundless.

- (2) Sending of a copy of the written petition for the return of child under the provision of the preceding paragraph shall not be made through the method of service by publication.
- (3) The provisions from Article 70 (4) to (6) shall apply mutatis mutandis to the case where it is impossible to send a copy of the written petition for the return of child under the provision of paragraph (1).
- (4) The presiding judge, where he/she has specified a reasonable period and ordered the petitioner to prepay the costs for sending a copy of the petition for the return of child under the provision of paragraph (1), but such costs are not prepaid, shall, by a direction, dismiss the petition for the return of child without prejudice.
- (5) An immediate appeal may be filed against the direction set forth in the preceding paragraph.

## **Division 2 Date for Proceedings of Case Seeking Return of Child**

(Presiding Judge's Control of Proceedings)

Article 73 (1) On the date for the proceedings of the case seeking the return of child, the presiding judge shall direct the proceedings.

- (2) The presiding judge may permit a person to speak or prohibit a person who does not comply with his/her direction from speaking.
- (3) When a party has made an objection to a direction issued by the presiding judge with regard to the control of the proceedings, the family court shall make a judicial decision on such objection.

(Proceedings by Authorized Judge)

Article 74 (1) The family court may have an authorized judge conduct proceedings on the date for the proceedings of the case seeking the return of child; provided, however, that, with respect to the examination of the facts and the examination of evidence, this shall apply only where an authorized judge may conduct the examination of the facts or the examination of evidence pursuant to the provision of Article 82 (3) or the provisions of Part II, Chapter IV, Sections 1 to 6 of the Code of Civil Procedure as applied mutatis mutandis pursuant to Article 86 (1).

- (2) In the case referred to in the preceding paragraph, said judge shall perform

the duties of the family court and the presiding judge.

(Proceedings through Communication by Audio Transmissions)

Article 75 (1) When a party lives in a remote place or the family court finds it appropriate for any other reasons, the family court, after hearing opinions of the parties, may conduct proceedings (excluding the examination of evidence) on the date for the proceedings of the case seeking the return of child, as provided for by the Rules of the Supreme Court, by a method that enables the family court and both parties to simultaneously communicate with one another by audio transmissions.

(2) The party who has participated in the proceedings set forth in the preceding paragraph without appearing on the date for the proceedings of the case seeking the return of child shall be deemed to have appeared on that date.

(Other Measures including Attendance of Interpreter, etc.)

Article 76 The provision of Article 154 of the Code of Civil Procedure shall apply mutatis mutandis to the attendance of an interpreter, etc. on the date for the proceedings of the case seeking the return of child, and the provision of Article 155 of said Code shall also apply mutatis mutandis to the measures taken for a party, intervening child, agent, or assistant in court, who is unable to make the statements necessary to clarify the matters related to the proceedings of the case seeking the return of child.

### **Division 3 Examination of Facts and Examination of Evidence**

(Examination of Facts and Examination of Evidence, etc.)

Article 77 (1) The family court, by its own authority, shall conduct an examination of the facts and, upon petition or by its own authority, shall conduct an examination of evidence deemed to be necessary.

(2) The petitioner and the respondent shall present the materials on the grounds prescribed in Article 27 (including the grounds relating to the case prescribed in Article 28 (1) (ii)) and the materials on the grounds prescribed in said paragraph, respectively and shall cooperate in the examination of the facts and the examination of evidence.

(Prima Facie Showing)

Article 78 A prima facie showing shall be made by materials that can be examined immediately.

(Examination of Facts by Family Court Probation Officer)

Article 79 (1) The family court may have a family court probation officer conduct

an examination of the facts.

- (2) In urgent circumstances, the presiding judge may have a family court probation officer conduct an examination of the facts.
- (3) A family court probation officer shall report the results of the examination of the facts in writing or orally to the family court.
- (4) A family court probation officer may attach his/her opinion to the report under the provision of the preceding paragraph.

(Attendance by Family Court Probation Officer on Date for Proceedings, etc.)

Article 80 (1) The family court, when it finds it necessary, may have the attendance of a family court probation officer on the date for the proceedings of the case seeking the return of child.

- (2) The family court, when it finds it necessary, may have the family court probation officer who attends the proceedings pursuant to the provision of the preceding paragraph state his/her opinion.

(Examination by Technical Officials of Courts, etc.)

Article 81 (1) The family court, when it finds it necessary, may have a technical official of the court who is a physician examine the physical and psychological conditions of the persons concerned in the case.

- (2) The provisions from Article 79 (2) to (4) shall apply mutatis mutandis to the examination set forth in the preceding paragraph, and the provision of the preceding Article shall also apply mutatis mutandis to the attendance of said technical official on the date for the proceedings and the statement of his/her opinion thereat.

(Commission of Examination of Facts, etc.)

Article 82 (1) The family court may commission another family court to conduct an examination of the facts.

- (2) A commissioned judge who performs his/her duties based on the commission under the provision of the preceding paragraph, when he/she finds it appropriate for another family court to conduct the examination of the facts, may further commission such other family court to conduct the examination of the facts.
- (3) The family court, when it finds it appropriate, may have an authorized judge conduct an examination of the facts.
- (4) When a commissioned judge or an authorized judge conducts an examination of the facts pursuant to the provisions of the preceding three paragraphs, the respective judge shall perform the duties of the family court and the presiding judge.

(Commission of Examination, etc.)

Article 83 The family court may commission the Minister for Foreign Affairs as well as a government agency, a public office, or any other person that it deems appropriate to conduct necessary examination or may request a school, nursery center, or any other person that it finds appropriate to submit a necessary report relating to such matters as the physical and psychological conditions and living circumstances of the child.

(Notice of Examination of Facts)

Article 84 The family court, when it conducts an examination of the facts, shall notify the parties and the intervening child to that effect, except where it finds it specifically unnecessary.

(Hearing of Statements)

Article 85 (1) The family court shall hear statements from the parties except where the petition for the return of child is unlawful or it is obvious that the petition is groundless.

(2) When the family court conducts an examination of the facts by setting a hearing date and hearing one party's statements, the other party may attend on said date; provided, however, that this shall not apply where the other party's attendance would risk hindering the examination of the facts.

(Examination of Evidence)

Article 86 (1) The provisions of Part II, Chapter IV, Sections 1 to 6 of the Code of Civil Procedure (excluding the provisions of Articles 179, 182, 187 to 189, and Article 207 (2) of said Code) shall apply mutatis mutandis to the examination of evidence in the proceedings of the case seeking the return of child. In this case, the term "a district court or summary court" in Article 185 (1) of said Code shall be deemed to be replaced with "another family court" and the term "district court or summary court" in Article 185 (2) of said Code shall be deemed to be replaced with "family court."

(2) An immediate appeal under the provisions of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding paragraph shall have the effect of stay of execution.

(Submission of Document Proving Wrongfulness)

Article 87 The family court, when the petitioner may obtain a document proving that there has been a wrongful removal or a wrongful retention in the state of habitual residence, may request him/her to submit said document.

#### **Division 4 Understanding of Intention of Child in Proceedings of**

### **Case Seeking Return of Child, etc.**

Article 88 In the proceedings of the case seeking the return of child, the family court shall endeavor to understand the intention of the child through appropriate means such as hearing of his/her statements and examination by a family court probation officer, and shall take into account his/her intention according to his/her age and degree of development in making a final order.

### **Division 5 Conclusion of Proceedings, etc.**

(Conclusion of Proceedings)

Article 89 In the proceedings of the case seeking the return of child, except where the petition is unlawful or it is obvious that the petition is groundless, the family court shall decide the day on which proceedings are to be concluded, giving a reasonable grace period; provided, however, that on the date for the proceedings of the case seeking the return of child which both parties can attend, a court may immediately declare the conclusion of proceedings.

(Date of Judicial Decision)

Article 90 The family court, when it concludes the proceedings pursuant to the provision of the preceding Article, shall set the date to make a judicial decision.

### **Division 6 Judicial Decision**

(Method of Judicial Decision)

Article 91 In the proceedings of the case seeking the return of child, the family court shall make a judicial decision by an order.

(Final Order)

Article 92 (1) The family court, when the case seeking the return of child is ripe for making a judicial decision, shall make a final order.

(2) The family court, when part of the case seeking the return of child is ripe for making a judicial decision, may make a final order with regard to such part. The same shall apply where one of multiple cases seeking the return of child for which consolidation of the proceedings has been ordered is ripe for making a judicial decision.

(Notice of Final Order and Effectuation, etc.)

Article 93 (1) A final order shall be notified to the parties and the child by a method that is considered to be appropriate; provided, however, that this shall not apply where it is found that a notice to the child (excluding the intervening



child) would harm his/her interests, taking into consideration his/her age and degree of development and all other circumstances.

- (2) A final order shall become effective when it is notified to the parties; provided, however, that the final order to order the return of child shall not become effective until it becomes final and binding.
- (3) A final order shall not become final and binding until the expiration of the period for filing an immediate appeal.
- (4) The process of a final order becoming final and binding shall be interrupted by the filing of an immediate appeal within the period set forth in the preceding paragraph.

(Formality of Final Order and Written Order)

Article 94 (1) A final order shall be made by preparing a written judicial decision.

- (2) A written judicial decision for a final order shall state the following matters:
  - (i) The main text;
  - (ii) The reasons;
  - (iii) The parties and statutory agents;
  - (iv) The court.

(Order of Correction)

Article 95 (1) If there is a clerical error or any other clear error similar thereto in a final order, the family court, upon petition or by its own authority, may make an order of correction at any time.

- (2) An order of correction shall be made by preparing a written judicial decision.
- (3) An immediate appeal may be filed against an order of correction only by a person who is entitled to file an immediate appeal if the final order after correction were the original order.
- (4) An immediate appeal may be filed against a judicial decision to dismiss without prejudice the petition set forth in paragraph (1) as unlawful.
- (5) Where a lawful immediate appeal is filed against a final order, an immediate appeal set forth in the preceding two paragraphs may not be filed.

(Application Mutatis Mutandis of Code of Civil Procedure concerning Final Order)

Article 96 The provisions of Article 247, Article 256 (1), and Article 258 (excluding the second sentence of paragraph (2)) of the Code of Civil Procedure shall apply mutatis mutandis to final order. In this case, the term "after the rendition" in Article 256 (1) of said Code shall be deemed to be replaced with "from the date when the final order is first notified to the person who is to receive such notice."

(Interlocutory Order)

- Article 97 (1) The family court, when the case is ripe for making a judicial decision with regard to a dispute on legal matters which would be the basis of a final order or any other interlocutory dispute, may make an interlocutory order.
- (2) An interlocutory order shall be made by preparing a written judicial decision.

(Judicial Decision other than Final Order)

- Article 98 (1) A judicial decision other than a final order shall be notified to a person who is to receive such notice by a method that is considered to be appropriate.
- (2) A judicial decision other than a final order shall become effective by notifying a person who is to receive such notice (if there are several such persons, one of them).
- (3) The provisions of Article 92 to Article 96 (excluding Article 93 (1) and (2), and Article 94 (1)) shall apply mutatis mutandis to the judicial decision set forth in the preceding paragraph. In this case, the term "the reasons" in Article 94 (2) (i) shall be deemed to be replaced with "the gist of the reasons."
- (4) A judicial decision concerning the control of the proceedings of the case seeking the return of child may be rescinded at any time.
- (5) A judicial decision other than a final order may be made by an assistant judge independently.

**Division 7 Conclusion of Case Seeking Return of Child other than by  
Judicial Decision**

(Withdrawal of Petition for Return of Child)

- Article 99 (1) A petition for the return of child may be withdrawn in whole or part before a final order becomes final and binding; provided, however, that a withdrawal of the petition after a final order is made shall not become effective without the consent of the respondent.
- (2) Where the consent of the respondent is required to withdraw the petition pursuant to the proviso of the preceding paragraph, the family court shall notify the respondent that the petition is withdrawn; provided, however, that this shall not apply where the petition is withdrawn orally on the date for the proceedings of the case seeking the return of child and the respondent appears on that date.
- (3) If the respondent does not make an objection within two weeks from the day on which he/she receives a notice under the provision of the main clause of the preceding paragraph, he/she shall be deemed to have consented to the withdrawal of the petition. The same shall apply where, in the case under the provision of the proviso of said paragraph, the respondent does not make an

objection within two weeks from the day on which the petition is withdrawn.  
(4) The provisions of Article 261 (3) and Article 262 (1) of the Code of Civil Procedure shall apply mutatis mutandis to the withdrawal of the petition. In this case, the term "the date for oral argument, preparatory proceedings or settlement (hereinafter referred to as the 'date for oral argument, etc.' in this Chapter)" in the proviso of Article 261 (3) of said Code shall be deemed to be replaced with "the date for the proceedings of the case seeking the return of child."

(Settlement)

Article 100 (1) The provisions of Articles 89, 264, and 265 of the Code of Civil Procedure shall apply mutatis mutandis to the settlement of the case seeking the return of child. In this case, the terms "the appearance date" in Articles 264 and "the date for oral argument, etc." in Article 265 (3) of said Code shall be deemed to be replaced with "the date for the proceedings of the case seeking the return of child."

- (2) In the case seeking the return of child, settlement may be also entered into with respect to the matters regarding the custody of child, the matters regarding cooperation and mutual assistance between husband and wife, and the matters regarding sharing of living expense.
- (3) When a settlement on the matters listed in the following items is stated in a record, such statement shall have the same effect as a judicial decision specified in each of said items:
- (i) The return of child: a final order to order the return of child which has become final and binding;
  - (ii) The matters regarding the custody of child, the matters regarding cooperation and mutual assistance between husband and wife, and the matters regarding sharing of living expense: an adjudication under the provision of Article 39 of the Domestic Relations Case Procedure Act (Act No.52 of 2011) which has become final and binding;
  - (iii) Other matters: a final and binding judgment.

### **Subsection 3 Appeal**

#### **Division 1 Immediate Appeal against Final Order**

(Judicial Decision subject to Immediate Appeal)

- Article 101 (1) A party may file an immediate appeal against a final order.
- (2) A child may file an immediate appeal against a final order to order the return of child.
- (3) An immediate appeal may not be filed independently against a judicial decision on the burden of procedural costs.

(Period for Filing Immediate Appeal)

- Article 102 (1) An immediate appeal against a final order shall be filed within an unextendable period of two weeks; provided, however, that this shall not preclude the effect of an immediate appeal filed prior to that period.
- (2) The period of filing an immediate appeal by a party or an intervening child shall commence to run at the time when he/she is notified of the final order.
- (3) The period of filing an immediate appeal by a child (excluding an intervening child) shall commence to run at the time when a party is notified of the final order (when there are two or more dates, the latest date among them).

(Formality of Filing of Immediate Appeal, etc.)

- Article 103 (1) An immediate appeal shall be filed by submitting a petition for appeal to the court of prior instance.
- (2) A petition for appeal shall state the following matters:
- (i) The parties and statutory agents;
  - (ii) The indication of the order of prior instance and a statement to the effect that an immediate appeal is filed against said order.
- (3) If an immediate appeal is unlawful and it is obvious that such defect cannot be corrected, the court of prior instance shall dismiss such appeal without prejudice.
- (4) An immediate appeal may be filed against the final order under the provision of the preceding paragraph.
- (5) An immediate appeal set forth in the preceding paragraph shall be filed within an unextendable period of one week; provided, however, that this shall not preclude the effect of an immediate appeal filed prior to that period.
- (6) The provisions of Article 70 (4) and (5) shall apply mutatis mutandis where the petition for appeal is in violation of the provision of paragraph (2), and where fees for filing a petition for immediate appeal required under the provisions of the Act on Costs of Civil Procedure are not paid.

(Sending of Copy of Petition for Appeal, etc.)

- Article 104 (1) Where an immediate appeal is filed against a final order, the court in charge of an appeal shall send a copy of the petition for appeal to the parties and the intervening child (excluding the appellant) in the prior instance, except where the immediate appeal is unlawful or it is obvious that the immediate appeal is groundless.
- (2) The presiding judge, where he/she has specified a reasonable period and ordered the appellant to prepay costs necessary for sending a copy of the petition for appeal pursuant to the provision of the preceding paragraph, but such costs are not prepaid, shall, by a direction, dismiss the petition for appeal

without prejudice.

(Hearing of Statement)

Article 105 The court in charge of an appeal shall hear statements from the parties in the prior instance (excluding the appellant), except where the immediate appeal is unlawful or it is obvious that the immediate appeal is groundless.

(Judicial Decision by Court in charge of Appeal)

Article 106 The court in charge of an appeal, where it finds that an immediate appeal is well-grounded, shall make a judicial decision by itself; provided, however, that this shall not apply where the court in charge of an appeal remands the case to the court of first instance pursuant to the provisions of Article 307 or Article 308 (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to paragraph (3) of the following Article.

(Application Mutatis Mutandis of Proceedings in First Instance and Code of Civil Procedure)

Article 107 (1) Except as otherwise provided, the provisions of the preceding Subsection (excluding the provisions of Article 70 (6), Article 72 (2) and (5), Article 93 (3) and (4), Article 95 (3) to (5) and Article 98 (5)) shall apply mutatis mutandis to the procedures relating to the immediate appeal against a final order and said appeal instance.

(2) The court in charge of an appeal, where it is not required to send a copy of the petition for appeal pursuant to the provision of Article 104 (1), may dismiss with or without prejudice an immediate appeal without following the procedures of conclusion of the proceedings under the provision of Article 89 as applied mutatis mutandis pursuant to the preceding paragraph.

(3) The provisions of Articles 283, 284, 292, Article 298 (1), Articles 299, 302, 303, and 305 to 309 of the Code of Civil Procedure shall apply mutatis mutandis to the procedures relating to the immediate appeal against a final order and said appeal instance. In this case, the term "Article 261 (3), Article 262 (1) and Article 263" in Article 292 (2) of said Code shall be deemed to be replaced with "Article 99 (4) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction," and the term "any of the items of Article 6 (1)" in Article 299 (2) of said Code shall be deemed to be replaced with "any of the items of Article 32 (1) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction," and the term "Article 189" in Article 303 (5) of said Code shall be deemed to be replaced with "Article 150 of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction."

## **Division 2 Special Appeal against Final Order**

(Judicial Decision subject to Special Appeal, etc.)

Article 108 (1) Against a final order made by a high court, a special appeal against such order may further be filed with the Supreme Court on the grounds that said order contains a misconstruction of the Constitution or any other violation of the Constitution.

(2) The court in charge of an appeal before which the appeal set forth in the preceding paragraph (hereinafter referred to as a "special appeal") is pending shall conduct an examination only on the reasons for the special appeal stated in the petition for appeal or the statement of the reasons for the appeal.

(Stay of Execution of Judicial Decision of Prior Instance)

Article 109 (1) A special appeal shall not have the effect of stay of execution; provided, however, that, the court in charge of an appeal set forth in paragraph (2) of the preceding Article or the court of prior instance may order, upon petition, a stay of execution of the judicial decision of prior instance or any other necessary disposition until a judicial decision for a special appeal is made, while requiring or not requiring the provision of security.

(2) Where security is to be provided pursuant to the provision of the proviso of the preceding paragraph, if it is provided as a statutory deposit, such deposit shall be made at the official depository located in the jurisdictional district of the family court that has jurisdiction over the location of the court that has ordered the provision of security.

(3) The provisions of Articles 76, 77, 79, and 80 of the Code of Civil Procedure shall apply mutatis mutandis to the security set forth in the preceding paragraph.

(Application Mutatis Mutandis of Provisions on Immediate Appeal and Code of Civil Procedure)

Article 110 (1) The provisions of Article 102 (2) and (3), Article 103 (excluding paragraphs (4) and (5)), Articles 104, 105, and 107 shall apply mutatis mutandis to the procedures relating to the special appeal and said appeal instance.

(2) The provisions of Article 314 (2), Article 315, Article 316 (1) (limited to the part pertaining to item (ii)), Article 321 (1), Article 322, the first sentence of Article 325 (1), Article 325 (2), the second sentence of Article 325 (3) and Article 325 (4), Article 326, and Article 336 (2) of the Code of Civil Procedure shall apply mutatis mutandis to the procedures relating to the special appeal and said appeal instance. In this case, the term "Article 288 and Article 289 (2)

as applied mutatis mutandis pursuant to the preceding Article" in Article 314 (2) of said Code shall be deemed to be replaced with "Article 103 (6) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction as applied mutatis mutandis pursuant to Article 110 (1) of said Act," the term "the preceding two Articles" in Article 322 of said Code shall be deemed to be replaced with "Article 108 (2) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction and the provision of Article 321 (1) as applied mutatis mutandis pursuant to Article 110 (2) of said Act," the term "Article 312 (1) or (2)" in the first sentence of Article 325 (1) and Article 325 (2) of said Code shall be deemed to be replaced with "Article 108 (1) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction," the term "In this case" in the second sentence of paragraph (3) of said Article shall be deemed to be replaced with "Where a court that has accepted a case remanded or transferred thereto makes a judicial decision," and the term "set forth in the preceding paragraph" in paragraph (4) of said Article shall be deemed to be replaced with "in a court that has accepted a case remanded or transferred thereto."

### **Division 3 Appeal with Permission against Final Order**

(Judicial Decision subject to Appeal with Permission, etc.)

Article 111 (1) Against a final order made in a high court (excluding an order on a petition set forth in the following paragraph), in addition to the case under the provision of Article 108 (1), an appeal may be specially filed with the Supreme Court only if the high court permits it pursuant to the provision of the following paragraph.

- (2) The high court set forth in the preceding paragraph, where the final order set forth in said paragraph contains a determination that is inconsistent with precedents rendered by the Supreme Court (or precedents rendered by the former Supreme Court or those rendered by high courts as the final appellate court or the court in charge of an appeal, if there are no precedents rendered by the Supreme Court) or where said final order is found to involve material matters concerning the construction of laws and regulations, shall permit an appeal against the final order.
- (3) The petition set forth in the preceding paragraph may not state the grounds prescribed in Article 108 (1) as reasons for petition.
- (4) Where permission is granted pursuant to the provision of paragraph (2), it shall be deemed that an appeal against a final order set forth in paragraph (1) (hereinafter referred to as an "appeal with permission" in this Article and paragraph (1) of the following Article) is filed.

- (5) The court in charge of an appeal before which an appeal with permission is pending shall conduct an examination only on the reasons for the appeal with permission stated in the written petition for the permission under the provision of paragraph (2) or the statement of the reasons for the petition set forth in said paragraph.
- (6) The court in charge of an appeal before which an appeal with permission is pending may quash the order of prior instance if there is a violation of laws or regulations that apparently affects a final order.

(Application Mutatis Mutandis of Provisions on Immediate Appeal, etc. and Code of Civil Procedure)

Article 112 (1) The provisions of Article 102 (2) and (3), Article 103 (excluding paragraphs (4) and (5)), Articles 104, 105, 107, and 109 shall apply mutatis mutandis to the procedures relating to the appeal with permission and said appeal instance. In this case, the terms "an (the) immediate appeal" in Article 102 (2) and (3), Article 103 (1), (2)(ii), and (3), Article 104 (1), and Article 105, "filing a petition for an immediate appeal" in Article 103 (6), and "a special appeal" in the main clause of Article 109 (1) shall be deemed to be replaced with "a (the) petition set forth in Article 111 (2)," and the term "a (the) petition for appeal" in Article 103 (1), (2), and (6), Article 104, and Article 107 (2) shall be deemed to be replaced with "a written petition for the permission under the provision of Article 111 (2)," and the term "an (the) immediate appeal" in said Article and "a special appeal" in the proviso of Article 109 (1) shall be deemed to be replaced with "an appeal with permission prescribed in Article 111 (4)."

(2) The provisions of Article 315 and Article 336 (2) of the Code of Civil Procedure shall apply mutatis mutandis to the petition set forth in paragraph (2) of the preceding Article, and the provision of Article 318 (3) of said Code shall apply mutatis mutandis where a permission is granted pursuant to the provision of paragraph (2) of the preceding Article, and the provisions of the second sentence of Article 318 (4), Article 321 (1), Article 322, the first sentence of Article 325 (1), Article 325 (2), the second sentence of Article 325 (3), Article 325 (4), and Article 326 of said Code shall apply mutatis mutandis where permission has been granted pursuant to the provision of paragraph (2) of the preceding Article. In this case, the term "Article 320" in the second sentence of Article 318 (4) shall be deemed to be replaced with "Article 111 (5) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction," and the term "the preceding two Articles" in Article 322 of said Code shall be deemed to be replaced with "the provisions of Article 111 (5) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction and Article 321 (1) as applied mutatis mutandis pursuant to Article 112 (2) of said Act," and the term "Article 312 (1)



or (2)" in the first sentence of Article 325 (1) and Article 325 (2) of said Code shall be deemed to be replaced with "Article 111 (2) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction," and the term "In this case" in the second sentence of paragraph (3) of said Article shall be deemed to be replaced with "Where a court that has accepted a case remanded or transferred thereto makes a judicial decision," and the term "set forth in the preceding paragraph" in paragraph (4) of said Article shall be deemed to be replaced with "in a court that has accepted a case remanded or transferred thereto."

#### **Division 4 Appeal against Judicial Decision other than Final Order**

(Subject of Appeal)

Article 113 An immediate appeal may be filed against a judicial decision other than a final order, only in cases where there are special provisions allowing such filings.

(Objection against Judicial Decision made by Authorized Judge or Commissioned Judge)

Article 114 (1) A party who disagrees with a judicial decision made by an authorized judge or a commissioned judge may make an objection to the court before which the case seeking the return of child is pending; provided, however, that this shall apply only where an immediate appeal may be filed against the judicial decision if said judicial decision is made by the family court.

(2) An immediate appeal may be filed against a judicial decision on the objection set forth in the preceding paragraph.

(Period for Filing Immediate Appeal, etc.)

Article 115 (1) An immediate appeal against a judicial decision other than a final order shall be filed within an unextendable period of one week; provided, however, that this shall not preclude the effect of an immediate appeal filed prior to that period.

(2) An immediate appeal set forth in the preceding paragraph, except as otherwise provided, shall not have the effect of stay of execution; provided, however, that, the court in charge of an appeal or the court of prior instance may order, upon petition, a stay of execution of the judicial decision of prior instance or any other necessary disposition until a judicial decision is made with respect to such immediate appeal, while requiring or not requiring the provision of security.

(3) The provisions of Article 109 (2) and (3) shall apply mutatis mutandis to the deposit and security in the case where security is to be provided pursuant to

the provision of the proviso of the preceding paragraph.

- (4) The court, the judge, or the presiding judge which or who has made the judicial decision of prior instance, when it or he/she finds that an immediate appeal is well-grounded, shall correct the judicial decision.

(Application Mutatis Mutandis of Provisions on Appeal against Final Order, etc.)

Article 116 (1) The provisions of the preceding three Divisions (excluding the provisions of Article 101 (1) and (2), Article 102 (1) and (3), Articles 104 and 105 (including the cases where these provisions are applied mutatis mutandis pursuant to Article 112 (1)) and Article 110) shall apply mutatis mutandis to the appeal against a judicial decision other than a final order made by a court, a judge, or a presiding judge. In this case, the term "a final order made in a high court" in Article 108 (1) shall be deemed to be replaced with "a judicial decision other than a final order made by a family court against which an appeal may not be filed, and a judicial decision other than a final order made by a high court," and the term "pursuant to the provision of the following paragraph." in Article 111 (1) shall be deemed to be replaced with "pursuant to the provision of the following paragraph; provided, however, that this shall apply only where an immediate appeal may be filed against the order if said order is made by the family court."

- (2) The provisions of Article 102 (2) and (3) and Articles 103 and 107 shall apply mutatis mutandis to the procedures relating to the special appeal against a judicial decision other than a final order made by a court, a judge, or a presiding judge and said appeal instance. In this case, the term "and paragraph (5)" in Article 103 (6) shall be deemed to be replaced with "to paragraph (6)."

- (3) The provisions of Article 314 (2), Article 315, Article 316 (excluding item (i) of paragraph(1)), Article 321 (1), Article 322, the first sentence of Article 325 (1), Article 325 (2), the second sentence of Article 325 (3), Article 325 (4), Article 326, and Article 336 (2) of the Code of Civil Procedure shall apply mutatis mutandis to the procedures relating to the special appeal against a judicial decision other than a final order made by a court, a judge, or a presiding judge and said appeal instance. In this case, the term "Article 288 and Article 289 (2) as applied mutatis mutandis pursuant to the preceding Article" in Article 314 (2) of said Code shall be deemed to be replaced with "Article 103 (6) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction as applied mutatis mutandis by replacing the term pursuant to Article 116 (2) of said Act," and the term "against" in Article 316 (2) of said Code shall be deemed to be replaced with "within an unextendable period of one week, against", and the term "the preceding two Articles" in Article 322 of

said Code shall be deemed to be replaced with "Article 108 (2) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction as applied mutatis mutandis pursuant to Article 116 (1) of said Act and the provisions of Article 321 (1) of said Code as applied mutatis mutandis pursuant to Article 116(3) of said Act," and the term "Article 312 (1) or (2)" in the first sentence of Article 325 (1) and Article 325 (2) of said Code shall be deemed to be replaced with "Article 108 (1) of the Act for Implementation of the Convention on the Civil Aspect of International Child Abduction as applied mutatis mutandis by replacing the term pursuant to Article 116 (1) of said Act," and the term "In this case" in the second sentence of paragraph (3) of said Article shall be deemed to be replaced with "Where a court that has accepted a case remanded or transferred thereto makes a judicial decision," and the term "set forth in the preceding paragraph" in paragraph (4) of said Article shall be deemed to be replaced with "made by a court that has accepted a case remanded or transferred thereto."

#### **Subsection 4 Modification of Final Order**

(Modification of Final Order)

- Article 117 (1) After a final order to order the return of child has become final and binding, when the court which made the final order to order the return of child (or where an immediate appeal was filed against such order and the court in charge of an appeal made a final order to dismiss such immediate appeal with prejudice (excluding the order under the provision of Article 107 (2); the same shall apply in this paragraph), said court in charge of the appeal) finds that it is no longer appropriate to maintain said order due to change in circumstances, said court, upon petition of a party, may modify said order (or where the court in charge of an appeal made a final order to dismiss such immediate appeal with prejudice, said final order); provided, however, that this shall not apply after the child has been returned to the state of habitual residence.
- (2) A written petition for modification of a final order under the provision of the preceding paragraph shall state the following matters:
- (i) The parties and statutory agents;
  - (ii) The indication of the final order to which modification is sought and a statement to the effect that modification to said order is sought;
  - (iii) The reasons for seeking modification to the final order.
- (3) The court, when modifying the final order pursuant to the provision of paragraph (1), shall hear statements from the parties (excluding the person who has filed a petition set forth in said paragraph).
- (4) Against a final order to dismiss without prejudice a petition set forth in

paragraph (1), the party who has filed said petition may file an immediate appeal.

- (5) An immediate appeal may be filed against an order to modify a final order pursuant to the provision of paragraph (1).
- (6) In addition to what is provided for in each of the preceding paragraphs, with respect to proceedings for modification of a final order under the provision of paragraph (1) , unless contrary to the nature thereof, the provisions concerning proceedings in their respective instances shall apply mutatis mutandis.

(Judicial Decision of Stay of Execution)

Article 118 (1) In cases where a petition set forth in paragraph (1) of the preceding Article is filed, if the circumstances alleged as the reasons for modification under the provision of said paragraph appear to be legally well-grounded and a prima facie showing is made on factual matters, the court may, upon petition, order a temporary stay of compulsory execution while requiring or not requiring the provision of security, or order revocation of a disposition of execution already made while requiring the provision of security.

- (2) An appeal may not be filed against the judicial decision on the petition under the provision of the preceding paragraph.
- (3) The provisions of Article 109 (2) and (3) shall apply mutatis mutandis to the deposit and security in the case where security is to be provided pursuant to the provision of paragraph (1).

### **Subsection 5 Retrial**

(Retrial)

Article 119 (1) A petition for retrial may be filed against a judicial decision, such as a final order, which has become final and binding (limited to those concluding the case; the same shall apply in paragraph (5)).

- (2) With regard to proceedings for retrial, unless contrary to the nature thereof, the provisions concerning proceedings in their respective instances shall apply mutatis mutandis.
- (3) The provisions of Part 4 of the Code of Civil Procedure (excluding Articles 341 and 349 of said Code) shall apply mutatis mutandis to the petition for retrial set forth in paragraph (1) and its proceedings. In this case, the term "shall conduct a trial and make a judicial decision on the merits to the extent that an appeal is entered" in Article 348 (1) of said Code shall be deemed to be replaced with "shall conduct a trial and make a judicial decision on the merits."
- (4) An immediate appeal against an order of commencement of retrial set forth in Article 346 (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding paragraph shall have the effect of stay of execution.

- (5) Against an order to dismiss the petition for retrial against a final order or other judicial decision pursuant to the provision of Article 348 (2) of the Code of Civil Procedure as applied mutatis mutandis pursuant to paragraph (3), an immediate appeal may be filed only by a person who is entitled to file an immediate appeal against said final order or other judicial decision.

(Judicial Decision of Stay of Execution)

Article 120 (1) In cases where a petition for retrial set forth in paragraph (1) of the preceding Article is filed, if the circumstances alleged as the reason of objection appear to be legally well-grounded and a prima facie showing is made on factual matters and a prima facie showing is made to the effect that execution is likely to cause damage for which compensation cannot be made, the court may, upon petition, order a temporary stay of compulsory execution while requiring or not requiring the provision of security, or order revocation of a disposition of execution already made while requiring the provision of security.

- (2) An appeal may not be filed against the judicial decision on the petition under the provision of the preceding paragraph.
- (3) The provisions of Article 109 (2) and (3) shall apply mutatis mutandis to the deposit and security in the case where security is to be provided pursuant to the provision of paragraph (1).

**Section 4 Examination on Status of Performance of Obligation and Recommendation of Performance**

Article 121 (1) The family court which made a final order to order the return of child (where a court in charge of an appeal made a final order to order the return of child, the family court which is the court of first instance; the same shall apply hereinafter.), when requested by the right holder, may examine the status of the performance of the obligations of the return of child and recommend the obligor to perform such obligations.

- (2) The family court which made a final order to order the return of child may commission another family court to conduct the examination and make the recommendation under the provision of the preceding paragraph.
- (3) The family court which made a final order to order the return of child and the family court which is commissioned to conduct the examination and make the recommendation pursuant to the provision of the preceding paragraph (said family courts shall be referred to as a "family court which conducts the examination and makes the recommendation" in the following paragraph and paragraph (5)) may have a family court probation officer conduct the examination and make the recommendation under the provision of paragraph

- (1).
- (4) A family court which conducts the examination and makes the recommendation may commission the Minister for Foreign Affairs as well as a government agency, a public office, or any other person that it finds appropriate to conduct a necessary examination for the examination and the recommendation under the provision of paragraph (1) or may request a school, nursery center, or any other person that it finds appropriate to submit a necessary report relating to the living circumstances of a child or any other matters.
- (5) A family court which conducts the examination or makes the recommendation, where a request has been made from a person concerned to the case on the examination and recommendation under the provision of paragraph (1) for inspection, copying or reproduction of the record of the case, issuance of an authenticated copy, transcript, or extract thereof, or issuance of a certificate of the matters concerning the case, and when it finds it appropriate, may grant the permission thereof.
- (6) With respect to the proceedings for the examination and the recommendation under the provision of paragraph (1), unless contrary to the nature thereof, the provisions of Subsection 1 of the preceding Section shall apply mutatis mutandis.
- (7) The provisions of the preceding paragraphs shall apply mutatis mutandis to the performance of the obligations provided for by the settlement.

### **Section 5 Ne Exeat Order**

(Ne Exeat Order)

- Article 122 (1) Where there is a risk that a party to the case seeking the return of child has the child depart from Japan, the family court before which the case seeking the return of child is pending, upon petition by either party to the case, may order the other party not to have the child depart from Japan.
- (2) The family court, when it finds that the respondent of the case pertaining to the petition under the provision of the preceding paragraph holds the passport of which the child is the registered holder, upon petition, shall make a judicial decision under the provision of said paragraph to order the surrender of said passport to the Minister for Foreign Affairs.
- (3) Where a case seeking the return of child is pending before a high court, said high court shall make the judicial decision under the provisions of the preceding two paragraphs (hereinafter referred to as "ne exeat order").
- (4) An ne exeat order shall cease to be effective when a final order on a petition for the return of child becomes final and binding.

(Petition for Ne Exeat Order, etc.)

Article 123 (1) A petition for ne exeat order shall be filed by clarifying the object thereof and the grounds to seek the ne exeat order.

(2) With respect to the grounds to seek an ne exeat order, the petitioner of the case pertaining to the petition for the ne exeat order (hereinafter referred to as the "case on the ne exeat order") shall submit materials.

(3) A petition for the judicial decision under the provision of paragraph (2) of the preceding Article may be withdrawn before an ne exeat order is made.

(4) The provisions of Article 261 (3) and Article 262 (1) of the Code of Civil Procedure shall apply mutatis mutandis to the withdrawal of a petition for the ne exeat order. In this case, the term "the date for oral argument, preparatory proceedings, or settlement (hereinafter referred to as the "date for oral argument, etc." in this Chapter)" in the proviso of Article 261 (3) of said Code shall be deemed to be replaced with "the date for the proceedings of the case on the ne exeat order as prescribed in Article 123 (2) of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction."

(Hearing of Statement)

Article 124 An ne exeat order may not be made without hearing the statement of the respondent of the case on the ne exeat order; provided, however, that this shall not apply where there are circumstances under which the purpose of the petition for the ne exeat order cannot be achieved if the proceedings to hear statements are held.

(Inspection of Record, etc.)

Article 125 The court, with respect to the case on the ne exeat order, notwithstanding the provision of Article 62 (3) as applied mutatis mutandis pursuant to Article 133, where a party to the case on the ne exeat order files a petition for permission under the provision of paragraph (1) or (2) of Article 62, may grant said permission only where it finds it appropriate, until it notifies the respondent to the case that the case on the ne exeat order is pending or that an ne exeat order is made.

(Notice and Effect of Ne Exeat Order)

Article 126 (1) A judicial decision on the petition for the ne exeat order shall be notified to the parties to the case on the ne exeat order by a method that is considered to be appropriate.

(2) An ne exeat order shall become effective by notifying the respondent of the case on the ne exeat order, and a judicial decision to dismiss the petition for the ne exeat order shall become effective by notifying the petitioner of the case

on the ne exeat order.

(Immediate Appeal)

Article 127 A party to the case on the ne exeat order may file an immediate appeal against a judicial decision on the petition for the ne exeat order.

(Stay of Execution in Connection with Immediate Appeal)

Article 128 (1) In cases where an immediate appeal is filed pursuant to the provision of the preceding Article, if a prima facie showing is made to show circumstances that are clearly grounds for revocation of the judicial decision of prior instance, and of the likelihood that the execution of the judicial decision of prior instance will cause damage which cannot be compensated, the court in charge of the appeal may, upon petition, order a stay of execution of the judicial decision of prior instance, while requiring or not requiring the provision of security or requiring it as a condition, until a judicial decision for said immediate appeal becomes effective. While the record of the case on the ne exeat order still exists at a family court, the family court may also order such dispositions.

(2) The provision of Article 123 (2) shall apply mutatis mutandis to the petition set forth in the preceding paragraph, and the provisions of Article 109 (2) and (3) shall also apply mutatis mutandis to the deposit and security where security is to be provided pursuant to the provision of the preceding paragraph.

(Revocation of the Ne Exeat Order)

Article 129 (1) Where the grounds to seek the ne exeat order no longer exists or there has been any other change in circumstances after the judicial decision under the provision of Article 122 (1) has become final and binding, the court before which the case seeking the return of child is pending may, upon petition by a person who has received said judicial decision, make a judicial decision to revoke said judicial decision.

(2) Where the court revokes the judicial decision under the provision of Article 122 (1), if the judicial decision under the provision of paragraph (2) of said Article has been made, the court shall also revoke said judicial decision.

(3) The provisions of Article 123 and the preceding three Articles shall apply mutatis mutandis to the petition set forth in paragraph (1) and the judicial decision on said petition.

(Preparation of Record)

Article 130 A court clerk shall prepare a record of the proceedings on each date for the proceedings of the case on the ne exeat order and the case pertaining to the petition under the provision of paragraph (1) of the preceding Article



(referred to as the "case on revocation of the ne exeat order" in Article 133); provided, however, that this shall not apply where the presiding judge finds it unnecessary.

(Retention of Passport by Minister for Foreign Affairs)

Article 131 (1) When the Minister for Foreign Affairs receives a passport pertaining to the judicial decision under the provision of Article 122 (2) surrendered by the person who has received said judicial decision, the Minister shall retain said passport.

(2) When a ne exeat order ceases to be effective, the Minister for Foreign Affairs, upon request of the person who has surrendered the passport pursuant to the preceding paragraph, shall return said passport to said person.

(Judicial Decision of Non-Penal Fine)

Article 132 The court, if a person who has received the judicial decision under the provision of Article 122 (2) does not comply with said judicial decision, shall punish him/her by a non-penal fine of not more than 200,000 yen.

(Application Mutatis Mutandis of Provisions on Proceedings of Case Seeking Return of Child)

Article 133 The provisions of Subsections 1 to 3 and Subsection 5 (excluding Articles 72, 84, 85, 87, 89, 90, 99, and 100) of Section 3 shall apply mutatis mutandis to the proceedings of the case on the ne exeat order and the case on revocation of the ne exeat order except as otherwise provided. In this case, the term "the reasons" in Article 94 (2) (ii) shall be deemed to be replaced with "the gist of the reasons."

#### **Chapter IV Special Provisions of Civil Execution Act relating to Execution Procedure for Return of Child**

(Compulsory Execution of Return of Child)

Article 134 (1) Compulsory execution of the return of child shall be carried out by the method in which the execution court issues an order to have a third party implement the return of child pursuant to the provision of Article 171 (1) of the Civil Execution Act (Act No. 4 of 1979) or by the method prescribed in Article 172 (2) of said Act.

(2) Compulsory execution set forth in the preceding paragraph shall be implemented on the basis of an authenticated copy of the final order to order the return of child which has become final and binding (including those having the same effect as the final order to order the return of child which has become final and binding).

(Limitation of Compulsory Execution due to Age of Child)

Article 135 (1) Where the child has attained the age of 16, the compulsory execution under the provision of Article 171 (1) of the Civil Execution Act (including the implementation of the return of child based on the order under the provision of said paragraph; hereinafter referred to as the "execution by substitute of the return of child") may not be carried out.

(2) The execution court, in the proceedings of the compulsory execution of the return of child by the method prescribed in Article 172 (1) of the Civil Execution Act, shall not order a payment of money under the provision of said paragraph for the reason that the child is not returned after the date following the day on which the child attains the age of 16.

(Preposition of Indirect Compulsory Execution)

Article 136 A petition for the execution by substitute of the return of child may not be filed until two weeks have elapsed from the day on which the order under the provision of Article 172 (1) of the Civil Execution Act became final and binding (where the elapse of a certain period to perform the obligations specified by said order comes after the elapse of said two weeks, until the elapse of said period).

(Petition for Execution by Substitute of Return of Child)

Article 137 A petition for the execution by substitute of the return of child shall be filed by specifying a person who is to return the child to the state of habitual residence on behalf of the obligor (hereinafter referred to as the "return implementer").

(Order to Have Return of Child Implemented)

Article 138 An order set forth in Article 134 (1) shall be issued by designating a court execution officer as a person who carries out necessary acts for releasing the child from the care of the obligor and by designating the return implementer.

(Dismissal of Petition for Execution by Substitute of Return of Child)

Article 139 The execution court, where it finds it inappropriate in light of the interests of the child to designate the person who is to be a return implementer set forth in Article 137 pursuant to the provision of the preceding Article, shall dismiss the petition set forth in Article 137 without prejudice.

(Authority of Court Execution Officer)

Article 140 (1) A court execution officer may carry out the following acts, in

addition to persuading the obligor, in the residence of the obligor or any other place possessed by the obligor, as necessary acts for releasing the child from the care of the obligor:

- (i) To enter the residence of the obligor or any other place possessed by the obligor and to search for the child at such place, in which case, if it is necessary, to take a necessary disposition to open a closed door;
  - (ii) To have the return implementer meet the child or to have the return implementer meet the obligor;
  - (iii) To have the return implementer enter the residence of the obligor or any other place possessed by the obligor.
- (2) A court execution officer, in any place other than those prescribed in the preceding paragraph, when he/she finds it appropriate while taking into consideration the impact on the physical and psychological conditions of the child, the situation of said place and the surroundings thereof, and any other circumstances, may carry out the acts listed in each of the items of said paragraph, as necessary acts for releasing the child from the care of the obligor, with the consent of the person who possesses said place, in addition to persuading the obligor.
- (3) Necessary acts for releasing the child from the care of the obligor under the provisions of the preceding two paragraphs may be carried out only when the child is with the obligor.
- (4) A court execution officer, if he/she faces resistance when carrying out necessary acts for releasing the child from the care under the provision of paragraph (1) or (2), may use force or request police assistance in order to eliminate such resistance.
- (5) A court execution officer, notwithstanding the provision of the preceding paragraph, shall not use force against the child. Where there is a risk that use of force against persons other than the child would cause physical or psychological harm to the child, the same shall apply to said persons.
- (6) A court execution officer, in carrying out necessary acts for releasing the child from the care under the provision of paragraph (1) or (2), may give necessary instructions to the return implementer.

(Authority of Return Implementer)

Article 141 (1) A return implementer may carry out necessary acts, such as providing care for the child, in order to return the child to the state of habitual residence.

(2) The provision of Article 171 (6) of the Civil Execution Act shall not apply to the proceedings of the execution by substitute of the return of child.

(Cooperation by Minister for Foreign Affairs)

Article 142 The Minister for Foreign Affairs may provide necessary cooperation, such as attendance, with regard to the execution by substitute of the return of child.

(Inspection of Record of Execution Case, etc.)

Article 143 The provisions of Article 62 shall apply mutatis mutandis to the request of inspection, copying or reproduction of the record of the case pertaining to the compulsory execution of the return of child, issuance of an authenticated copy, transcript, or extract thereof, or issuance of a certificate of matters concerning said case.

## **Chapter V Special Provisions relating to Procedures for Domestic Relations Case**

### **Section 1 Procedures for Conciliation of Domestic Relations relating to Case Seeking Return of Child, etc.**

(Referral to Conciliation)

Article 144 A family court and a high court, with the consent of the parties, by its own authority, may refer the case seeking the return of child to the conciliation of domestic relations at any time.

(Special Provisions on the Domestic Relations Case Procedure Act)

Article 145 (1) The court, where it refers the case to the conciliation of domestic relations pursuant to the provision of the preceding Article, shall handle said case of conciliation of domestic relations by itself; provided, however, that where it finds it particularly necessary in order to handle the case of conciliation of domestic relations, the court may commission a family court other than itself (limited to the family court specified in each item of Article 32 (1)) to handle the case.

(2) The provision of Article 43 (2) shall apply mutatis mutandis to the capacity to perform procedural acts in the proceedings of the case of conciliation of domestic relations where the case is referred to the conciliation of domestic relations pursuant to the provision of the preceding Article.

(3) Where the case is referred to the conciliation of domestic relations pursuant to the provision of the preceding Article, if an agreement on the return of child is reached between the parties and is stated in a record, a conciliation is deemed to be concluded and the part of the statement regarding the agreement on the return of child, notwithstanding the provision of Article 268 (1) of the Domestic Relations Case Procedure Act, shall have the same effect as a final order to order the return of child that has become final and binding.

(4) With respect to the adjudication under the provision of Article 284 (1) of the

Domestic Relations Case Procedure Act which is made in the proceedings of the case of conciliation of domestic relations where the case has been referred to the conciliation of domestic relations pursuant to the provision of the preceding Article (including the judicial decision in lieu of the adjudication in lieu of the conciliation under the provision of Article 284 (1) of said Act as applied by replacing the terms pursuant to the provision of paragraph (5) of Article 274 of said Act; hereinafter referred to as the "adjudication in lieu of conciliation" in this paragraph and Article 147), if an objection is not filed pursuant to the provision of Article 286 (1) of said Act or if the adjudication to dismiss such objection without prejudice (including the judicial decision in lieu of the adjudication to dismiss the objection prescribed in Article 287 of said Act as applied by replacing the terms pursuant to the provision of Article 274 (5) of said Act) has become final and binding, the part of said adjudication in lieu of conciliation which orders the return of child, notwithstanding the provision of Article 287 of said Act, shall have the same effect as a final order to order the return of child that has become final and binding.

(Suspension of Proceedings of Case Seeking Return of Child)

Article 146 The court, when it refers the case to the conciliation of domestic relations pursuant to the provision of Article 144, may suspend the proceedings of the case seeking the return of child until the case of conciliation of domestic relations is closed.

(Constructive Withdrawal of Petition for Return of Child)

Article 147 Where the court refers the case to the conciliation of domestic relations pursuant to the provision of Article 144, when a conciliation is concluded or an adjudication in lieu of conciliation becomes final and binding, it shall be deemed that the petition for the case seeking the return of child has been withdrawn.

**Section 2 Special Provisions relating to Procedures for Adjudication of Domestic Relations and Conciliation of Domestic Relations concerning Visitation or Other Contacts, etc.**

(Special Provisions for Jurisdiction)

Article 148 (1) Where a person who has received the decision for assistance in child's return to foreign state or the decision for assistance in visitation or contact with child in Japan or a person who has filed the petition for the return of child files a petition for the adjudication of domestic relations or conciliation of domestic relations seeking to provide for the visitation or other contacts with the child or to change such provision, and in the cases listed in the following

items, said petition may also be filed to the respective family courts specified in each of said items:

- (i) When the place of domicile of the child (if the child has no domicile in Japan or his/her domicile is unknown, his/her residence; the same shall apply in the following item.) is located within the jurisdictional district of the Tokyo High Court, the Nagoya High Court, the Sendai High Court, or the Sapporo High Court; the Tokyo Family Court;
  - (ii) When the place of domicile of the child is located within the jurisdictional district of the Osaka High Court, the Hiroshima High Court, the Fukuoka High Court, or the Takamatsu High Court; the Osaka Family Court
- (2) The adjudication case and the conciliation case pertaining to the petition set forth in the preceding paragraph shall be subject to the jurisdiction of the Tokyo Family Court where the child has no domicile in Japan or his/her domicile is unknown and he/she has no residence in Japan or his/her residence is unknown.

(Special Provisions for Inspection, etc. of Record)

Article 149 (1) Where there is the part that indicates address, etc. within the record of the case pertaining to the petition for an adjudication of domestic relations seeking to provide for the visitation or other contacts with the child or to change such provision, the court, notwithstanding the provision of Article 47 (3) of the Domestic Relations Case Procedure Act, shall not grant the permission pertaining to the petition set forth in said paragraph; provided, however, that this shall not apply when any of the items of Article 62 (4) applies.

(2) Where there is the part describing or recording the information provided by the Minister for Foreign Affairs pursuant to the provision of Article 5 (4) (limited to the part pertaining to item (ii)) within the record of the case pertaining to the petition for the compulsory execution based on an authenticated copy of the written adjudication or the record of conciliation to provide for the visitation or other contacts with the child or to change such provision, the provisions of Article 62 shall apply mutatis mutandis to the request of inspection, copying, or reproduction of the record of the case, issuance of an authenticated copy, transcript, or extract thereof, or issuance of a certificate of matters concerning said case.

## **Chapter VI Execution of Judicial Decision on Non-Penal Fine, etc.**

Article 150 (1) A judicial decision on a non-penal fine under the provisions of this Act shall be executed by order of a judge. This order shall have the same effect as an enforceable title of obligation.

(2) In addition to what is provided for in this Act, the provisions of Part V of the Non-Contentious Cases Procedures Act (Act No. 51 of 2011) (excluding the provisions of Article 119 and Article 121 (1) and the part relating to a public prosecutor in the provisions of Article 120 and Article 122) shall apply mutatis mutandis to the judicial decision on the non-penal fine.

## **Chapter VII Miscellaneous Provisions**

(Explanation concerning Status of Proceedings)

Article 151 A petitioner of the case seeking the return of child or the Minister for Foreign Affairs, where six weeks have elapsed from the date on which a petition for the return of child is filed, may seek explanation concerning the status of the proceedings of the case from the court before which said case is pending.

(Handling of Adjudication Case concerning Designation of Person with Parental Authority, etc.)

Article 152 Where an adjudication case on the designation or modification of a person with parental authority or the disposition regarding custody of a child (including the case pertaining to the judicial decision on the ancillary disposition prescribed in Article 32 (1) of the Personal Status Litigation Act (Act No. 109 of 2003) and the judicial decision on the designation of a person with parental authority set forth in paragraph (3) of said Article; the same shall apply hereinafter in this article) is pending, the court before which said adjudication case is pending, when it is notified by the Minister for Foreign Affairs or the court before which the case seeking the return of child is pending that the child in question has been subject to removal or retention alleged as wrongful removal or wrongful retention, shall not make a judicial decision on said adjudication case; provided, however, that, this shall not apply where a petition for the return of child is not filed within a reasonable period of time or where the judicial decision to dismiss the petition for the return of child without prejudice has become final and binding.

(Special Provisions concerning Application of Comprehensive Legal Support Act)

Article 153 With regard to the application of the Comprehensive Legal Support Act (Act No. 74 of 2004), a person who is a citizen of a Contracting State or holds his/her habitual residence in a Contracting State (excluding a Japanese citizen or a person who has his/her domicile in Japan and lawfully resides in Japan) and who uses the civil court proceedings, etc. (which mean the proceedings relating to civil cases, domestic relations cases, or administrative

cases pending before the courts of Japan) with respect to the return of child with regard to a child pertaining to removal or retention, the visitation or other contacts with a child, or any other matters relating to the application of the Convention, shall be deemed to be citizens prescribed in Article 30 (1) (ii) of said Act only with respect to said matters.

### **Supplementary Provisions**

(Effective Date)

Article 1 This Act shall enter into force on the day on which the Convention takes effect in Japan.

(Transitional Measures)

Article 2 This Act shall not apply to a wrongful removal that has been conducted before the Act enters into force or to a wrongful retention that has been commenced before this Act enters into force.

(Partial Revision of Court Act)

Article 3 The Court Act (Act No. 59 of 1947) shall be partially revised as follows;

In Article 61-2 (2), the term "and any other affairs provided for by other laws" shall be added after the term "pertaining to Judicial Decision for Incidental Disposition."

(Partial Revision of the Residential Basic Book Act)

Article 4 The Residential Basic Book Act (Act No. 81 of 1967) shall be partially revised as follows.

(i) The following shall be added at the row following row 41 in Appended Table 1.

(41) - 2 Ministry of Foreign Affairs	Affairs concerning the assistance in child's return to foreign state set forth in Article 4(1) of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (Act No. 48 of 2013), the assistance in child's return to Japan set forth in Article 11(1) of said Act, the assistance in visitation or contact with child in Japan in Article 16(1) of said Act or the assistance in visitation or contact with child in foreign state in Article 21(1) of said Act, pursuant to said Act, and prescribed in Ordinance of the Ministry of Internal Affairs and Communications.
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(Partial Revision of the Act on Costs of Civil Procedure)

Article 5 The Act on Costs of Civil Procedure shall be partially revised as follows;



In Article 13-2 (2), the term "or a domestic relations case" shall be replaced with ", a domestic relations case or the case relating to the return of child prescribed in Article 29 of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (Act No. 48 of 2013)."

In the Appended Table 1, Row (15)-2, the term "adjudication or" shall be replaced with "adjudication," and the term "or the case seeking the return of child as prescribed in Article 32 (1) of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction" shall be added after the term "conciliation," and the term "said Act" shall be replaced with "these Acts."

In the Appended Table 1, Row (16) (a), the term "any other petition" shall be replaced with ", a petition under the provision of Article 122 (1) of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction and any other petition"

In the Appended Table 1, Row (17) (a)-b, the term "or the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction" shall be added after the term "the Non-Contentious Case Procedure Act" and the term "said Act" shall be replaced with "these Acts."

In the Appended Table 1, Row (18), the term "or Article 97 (2) of the Domestic Relations Case Procedure Act" shall be replaced with ", Article 97 (2) of the Domestic Relations Case Procedure Act or Article 111 (2) of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction."

In the Appended Table 1, Row (19), the term "or Article 103 (1) of the Domestic Relations Case Procedure Act" shall be replaced with ", Article 103 (1) of the Domestic Relations Case Procedure Act or Article 119 (1) of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction" and the term "or a petition for modification of the final order under the provision of Article 117 (1) of said Act" shall be added after the term "a petition"

(Partial Revision of the Act for Establishment of the Reconstruction Agency)  
 Article 6 The Act for Establishment of the Reconstruction Agency (Act No. 125 of 2011) shall be partially revised as follows.

(i) The following shall be added to the table of Article 3 (1) of the Supplementary Provisions

Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (Act No. 48 of 2013)	Article 5 (1) (i)	Cabinet Office	Cabinet Office and the Reconstruction Agency
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	Article 5 (1) (ii)	Organs	Organs and the Reconstructi on Agency
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(Partial Revision of the Act on Preparation, etc. of Relevant Acts Accompanying Enforcement of Act on Use, etc. in Administrative Procedures of Numbers to Identify Specific Individuals)

Article 7 The Act on Preparation, etc. of Relevant Acts Accompanying Enforcement of Act on Use, etc. in Administrative Procedures of Numbers to Identify Specific Individuals shall be partially revised as follows.

In the provision within Article 19 adding as follows at the row following row 41 in Appended Table 1 of the Residential Basic Book Act, "row 41 of said Table" shall be replaced with "row 41-2 of said Table", and "41-2" and "41-3" shall be replaced with "41-3" and "41-4", respectively.