

Minutes of the tenth meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On December 14, 2021, the tenth meeting of the Family Law Subcommittee of the Legislative Council was held at the Ministry of Justice (in person and online). Nearly all the members and non-voting members attended the meeting. The Chairman, Prof. OMURA Atsushi, presided over the meeting.

Following the ninth meeting, the Subcommittee examined property distribution system between spouses in the event of divorce, based on the meeting materials.

The Subcommittee first discussed the legal nature of the property distribution system and whether factors to be taken into account in determining the content of property distribution should be statutory. Under the current law, the legal nature of the property distribution system is generally construed to consist of three elements: liquidation, support, and payment for pain and suffering. In the discussion, although there was no objection to the view that liquidation is the central element, other opinions were presented: (i) that the element of compensation should be included, (ii) that the element of support (including child support) should also be articulated, (iii) that the grounds establishing an obligation of support in property distribution are not clear, and (iv) that child support should be considered in the context of another right to claim payment for child support. Regarding payment for pain and suffering, it was pointed out that the payment through property distribution would facilitate the one-time settlement of disputes, while another opinion was also expressed that such a pecuniary payment should be sought as a claim for damages rather than as the distribution of property. As for the making the factors for property distribution statutory, many positive opinions were shared, and it was viewed that further deliberation is required.

Discussions were then held on the scope of property subject to distribution, the process for distribution by liquidation, and the appropriateness of adopting a rule to permit the former spouse to continue to live in the marital residence after divorce. Regarding the scope of property subject to distribution of properties, discussions were held on whether to formalize the so-called one-half rule, that is, the contribution to the acquisition of the marital property to husband and wife should basically be equal unless it is clear that the husband and wife have contributed in different degrees. In this context, some suggested that it is necessary to clearly establish the one-half rule to ensure equality between husbands and wives, while others expressed different opinions, arguing that it is difficult to set a single rule that fits all situations given the increase in diversity of family lifestyles. Concerning the appropriateness of a special rule on the marital residence, some pointed out that it is necessary to ensure that a former spouse who continues to live in the marital residence with a minor child has legal protection, while others stated that, in the absence of an agreement between spouses, various perspectives need to be considered, such as the time period, and the rights of the owner of the residential building etc..

Subsequently, discussions were held on other issues, including the extension of the

period to claim distribution of property, the appropriateness of ruling on cases where the property of the other party is required to be disclosed, and the relationship between the right to claim distribution of property and the right to claim partition of property in co-ownership.

At the next meeting, the Subcommittee will examine the remaining issues that have not been discussed in previous meetings.

※These minutes are the responsibility of the Secretariat of the Committee, which has provided this summary of the outcome of the meeting as a preliminary report in English.