

Provisional Minutes of the 13th Meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On March 29, 2022, the 13th 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.

Continuing from the 12th session, the Subcommittee reviewed and deliberated, with reference to the meeting materials, the rules in the legislation concerning mandatory agreements about custody of a child when parents get divorced.

The Subcommittee also addressed rules concerning (i) provision of information on divorce and (ii) divorce by agreement involving a minor child. Regarding (i), most of the members provided positive feedback regarding the idea of parenting classes for parents who get divorced in order to provide parents with the legal information necessary for parenting after divorce. However, there were arguments for and against mandating participation in classes for divorce by agreement. Also, some suggested that the objectives of parenting classes need to be specified and that parenting classes need to be given in ways that do not make the participants feel uncomfortable.

Regarding (ii), there were few objections to the establishment of rules to facilitate compliance with child support agreements between the parents when they divorce by agreement. However, regarding the particular rules about agreements for child custody including child support, the subcommittee members posed a variety of questions and offered their opinions: (a) How effective will the process be at facilitating agreements if lawyers participate in the process of negotiating such agreements? (b) If such agreements are considered as enforceable obligations, careful consideration must be taken to ensure the legitimacy of such obligations in terms of both substance and procedure; (c) Although it is preferable for the parent to enforce obligation in a simple and prompt manner, there are many issues to be considered, such as the entities that confirm the agreements, methods to confirm the agreements, or whether an approval system should be introduced or not; and (d) Granting of enforcement powers also needs to be carefully reviewed.

In addition, with the objective of facilitating child support agreements, the subcommittee members' opinions were largely divided as to whether or not a divorce by agreement without an agreement on child support should – as a matter of policy – be allowed as a common practice.

An official of the court then gave an explanation over the handling of domestic violence

claims on a practical level. The Subcommittee reviewed and deliberated how the rules should address the procedures for child support and visitation etc., with reference to the meeting materials.

Due to time restrictions, the Subcommittee decided to carry over the further reviews with reference to the meeting materials to the next meeting. Prior to adjournment, several subcommittee members shared their opinions on a variety of matters. For example, there were positive comments regarding an exception for child support claims in which the claimant-parent could use the public notice procedure without a firsthand investigation of the respondent's home address (usually a failed attempt at an investigation is required to use the public notice procedure) under specific conditions, as long as the burden on single parents is taken into consideration. On the other hand, it was suggested that notice procedures when a party's home address is unknown should be carefully reviewed or that the separated parents should specify an address for receiving notices in advance. Furthermore, there were arguments for and against the introduction of temporary visitation orders; there were opinions that maintaining parent-child interaction does not always reduce conflict between the parents; there were opinions that the objectives and requirements for the system, and the effectiveness thereof, should be reviewed carefully, after sorting out the differences between the temporary visitation orders and measures under the current law such as temporary order for another purpose or provisional visitation for testing.

※These provisional minutes are the summarized results of the subcommittee meeting and are to be provided by the Secretariat of the Subcommittee in both Japanese and English on an as-needed-basis. The official meeting minutes (in Japanese) will be published at a later date.