

Provisional Minutes of the 14th Meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On April 26, 2022, the 14th 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 13th meeting, the Subcommittee reviewed and deliberated the procedural rules for child support, visitation, etc., that need to be established, with reference to the meeting material.

The Subcommittee also addressed issues concerning: (i) introduction of specific rules for provisional visitation; (ii) whether direct compulsory execution (enforcement) of visitation by a court execution officer should be allowed or not; and (iii) simplification of civil enforcement proceedings for child support claims.

Regarding issue (i), as in the last meeting, there were arguments for and against the introduction of such provisional rules. Some members provided positive feedback because there were cases where it was beneficial for children to have an opportunity for visitation at an early stage of court proceedings, but under the current rules such cases cannot be handled properly. However, there were also opinions against revising the current law to make it easier for provisional visitation orders to be granted because such visitation is not always beneficial for children and there were concerns about domestic violence and child abuse. Regarding issue (ii), most of the members provided negative feedback due to the reasons that direct enforcement of visitation by a court execution officer may affect the child's mind and body greatly and so forth. Regarding issue (iii), most of the members provided positive feedback regarding changing the current rules to reduce the filing and enforcement burdens of the person entitled to claim child support. However, some members of the Subcommittee suggested that the current judicial practices, such as the requirements for filing child support claims and possible complaints, should be carefully reviewed when deciding whether or not new special procedures should be established.

In addition, the Subcommittee reviewed and deliberated, with reference to the meeting material, the rules for how custody decisions about a child with divorced parents should be made. After reviewing the legal definition of "parental authority" under the current law, the Subcommittee addressed whether or not, by an agreement of both parents or a decision by a court, joint parental authority (i.e., the rights and obligations concerning decisions

on important matters related to child custody, education, and property management) should be possible, and the specific contents of such rule (i.e., which decisions both parents need to be involved in). The Subcommittee members' opinions were largely divided regarding these issues. On the one hand, there were opinions that the current rules should remain unchanged, because a divorced parent living with a child is able to make decisions alone on the matters related to the child in a steady and timely manner. On the other hand, there were opinions that the current rules needed to be changed so that joint parental authority by both parents after their divorce would be possible due to the following reasons: first, regarding the important matters related to the child, it is beneficial for the child if both parents, even though divorced, are involved and provide input; second, several options of parental authority should be available since the relationship between divorced parents differs widely. In addition, it was also suggested that divorced parents should be able to exercise the rights of "parental authority" and "child custody" jointly.

At the next meeting, the Subcommittee decided to review and deliberate the rules for the adoption system and the system of dividing property (in a divorce) that need to be established.

※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.