

Provisional Minutes of the 15th Meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On June 7, 2022, the 15th 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.

The Subcommittee reviewed and deliberated the rules for the adoption system and the system for distributing property (in a divorce), with reference to the meeting material.

First, regarding the adoption system, discussions were held on the requirements to adopt a minor, including whether permission of the family court should be required or not¹. Regarding this point, there were opinions that the permission of the family court should be required to adopt a minor in all cases due to the following reasons: adoptive parents will be aware that they are actually becoming a child's legal parent through their involvement in the family court proceedings; such requirement would help increase opportunities to hear the views of the adopted child, thereby contributing to the welfare of the child. On the other hand, some members raised concerns about requiring the permission of the family court in all cases because the setting criteria for approving adoptions would be more difficult under the new law, even if the family court does not approve the adoption, the applicant may continue to live with the child, which may result in aggravation of the child-rearing environment by creating a legal situation that is inconsistent with the actual situation.

In addition, discussions were held on a variety of issues: how the biological parents should be involved in the process of adoption of the minor (for example, whether the biological parents who do not have parental authority are allowed to participate in the decision-making on whether the adoption of the minor should be approved or not); who should exercise parental authority over the minor after the adoption; how the priority and relationship among biological parents and adoptive parents should be arranged after the adoption as for the financial obligation to support the child; and whether the permission of the family court is required to dissolve the adoption or not; and so forth.

Subsequently, regarding the system for distributing property, there were opinions that it should be stated in the provisions that the purpose and principles for the distribution of property include compensation in addition to equitable distribution of property between

¹ Current Japanese Civil Code Art. 798 stipulates that where a person to be adopted is a minor, the permission of the family court shall be obtained; provided that this shall not apply in the cases where the person to be adopted is a lineal descendant of either the adoptive parent or the adoptive parent's spouse.

the husband and the wife. On the other hand, there were opinions that the grounds for compensation are unclear and that compensation should be included equitable distribution of property between the husband and the wife².

In addition, discussions were held on what circumstances should be taken into consideration when the family court makes a decision on distribution of property, what criteria should be used to determine the kind of property and quantity of distribution, and how the limitation of the period to file a claim for distribution of property by the family court should be revised³. In addition, there were opinions that it is necessary to establish new rules to ensure the effectiveness of disclosure of property of the respondent both in negotiations and during court proceedings.

From the next meeting, discussions are to be held to summarize the interim proposal.

※ 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.

² Current Japanese Civil Code Art. 768 (3) stipulates that the family court shall determine whether to make a distribution, and the amount and method of that distribution, taking into account the amount of property obtained through the cooperation of both parties and all other circumstances.

³ Current Japanese Civil Code Art. 768 (2) stipulates that if the parties do not, or cannot, settle on agreement with regard to the distribution of property pursuant to the provision of the preceding paragraph, either party may make a claim to the family court for a disposition in lieu of agreement; provided that this claim for distribution of property shall be extinguished at the expiration of two years from the day of divorce.