

Provisional Minutes of the 16th Meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On June 21, 2022, the 16th 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 an interim proposal draft and supplementary explanations prepared by the Secretariat. The interim proposal draft summarized the various opinions given by the Subcommittee members and non-voting members at the previous meetings. The members exchanged views not only on the appropriateness of the rules included in the meeting material but also on what kind of rules need to be presented when soliciting public comment.

Firstly, with regard to the rights and obligations arising from the parent-child relationship, some members suggested that a rule needs to stipulate, in addition to the parental obligation to consider the best interests of the child, that parents have a responsibility to raise a child regardless of whether they have parental authority or not, and that parents must respect the views of the child. There was also an opinion that such rule needs to be presented in an interim proposal when soliciting public opinions.

Subsequently, regarding the rules for parental authority and child custody after divorce, some members suggested that, rather than proposing specific amendments at the stage of the interim proposal draft, several proposals should be presented. The suggested proposals include: (i) in principle, both parents have parental authority after their divorce, and if certain requirements are met, only one parent will have parental authority; (ii) in principle, only one parent will have parental authority after divorce, and if certain requirements are met, both parents will have parental authority; and (iii) the current law should remain unchanged under which only one parent always has parental authority after divorce. In addition, some members suggested to inform the public in an appropriate manner that there is an alternative (i.e., (iv) the decision to grant parental authority to one parent or to both parents is decided on a case-by-case basis after taking the relevant circumstances into consideration).

Moreover, in cases where both parents have parental authority and one of them has custody of a child, some members suggested that regarding the specific contents of rights and obligation of each parent, the Subcommittee should review the previous discussion and solicit public opinion. There was also an opinion that the Subcommittee needs to

examine specific steps on how to reconcile conflicts when parents disagree, and needs to solicit public opinion.

In addition, regarding whether certain agreements for custody should be necessary or not in the procedure of a divorce by agreement, some members suggested that the Subcommittee should finalize an interim draft proposal in which several proposals are presented in order to solicit diverse public opinions. The suggested proposals include: (a) such an agreement is a requirement for divorce by agreement; (b) not only such agreements but also certain procedures such as the involvement of legal professionals are required for divorce by agreement; and (c) such agreements are not required for divorce by agreement.

At the next meeting, after examining the remaining issues for this meeting, rules for court proceedings regarding child custody, as well as adoption system and equitable distribution of property, etc. will be examined.

※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.