

Overview of the Interim Proposal Concerning the Review of the Family Law

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This document was prepared by the Office of the Counselor of the Civil Affairs Bureau of the Ministry of Justice, which is the secretariat of the Family Law Subcommittee of the Legislative Council, to explain the overview of the "Interim Proposal Concerning the Review of the Family Law" (hereinafter simply referred to as the "Proposal") summarized by the Family Law Subcommittee of the Legislative Council on November 15, 2022. Please note that [Proposal A] and [Proposal B] should be treated equally as they were not written in the order of priority.

About the Note of the proposal:

The note added to the proposal states that terms in the current law such as "parental authority" might be reviewed if better alternatives are found and that the matters included in the proposal are intended to respond appropriately to both spousal violence cases and parental abuse cases.

1: Consolidating the Basic Rules on Parent-Child Relationships

Proposal 1-1: it is proposed that parents have responsibility to parent a minor child, and that they must consider the best interests of the child as the basic rules concerning parent-child relationships.

Proposal 1-2: it is proposed that the obligation of parents to support a minor child is greater than that of other lineal relatives, and as the levels of parental obligation to support an adult child, several ideas are provided.

2: Review of Rules on Parental Authority After Divorce, etc.

2-1: Article 819 of the Civil Code provides that only one of the parents shall have parental authority after they divorce. Concerning this article, two options are provided: [Proposal A] states that this rule should be amended to allow both parents to have parental authority after divorce, and [Proposal B] states that the current rule should remain unchanged. If [Proposal A] is adopted, whether both parents or one parent shall have parental authority will be determined by agreement between parents or a decision of the family court.

In addition, if [Proposal A] is adopted, three options of specific rules are provided

in Proposal 2-2; [Proposal A-1] states that, in principle, both parents shall have parental authority, but parental authority may be granted to only one parent if certain requirements are met; [Proposal A-2] states that, in principle, only one of the parents shall have parental authority, but parental authority may be granted to both parents if certain requirements are met; [Proposal A-3] states that who shall have parental authority should be determined on a case-by-case basis, instead of establishing rules concerning the requirements or criteria for making decisions.

2-2: According to [Proposal A], if both parents shall have parental authority after divorce and a custodial parent is undecided, both parents generally shall exercise parental authority jointly over the matters related to custody arrangements, property management, and legal representation. Moreover, if the parents fail to reach agreement, the family court shall mediate the conflict between them according to the relevant procedures (Proposal 2- 3 (3)).

2-3: On the other hand, according to [Proposal A], if both parents shall have parental authority after divorce and a custodial parent is decided, the custodial parent is to care for and educate the child as provided in Proposal 2-3(2)(a). The following proposals are stated in Proposal 2-3(1) as to whether a custodial parent should be decided mandatorily.

[Proposal A-A] If both parents shall have parental authority after divorce, they must agree upon which parent shall have custody over a child.

[Proposal A-B] If both parents shall have parental authority after divorce, they may agree that one parent shall have custody over a child, or that a custodial parent will not be decided (as mentioned in 2-2, both parents may agree to share parental authority including physical custody jointly).

In addition, [Proposal A-B] includes following options: (1) a custodial parent should not be decided as a general rule unless certain requirements are met, (2) a custodial parent should be decided as a general rule unless certain requirements are met, and (3) no rules should be established by legislation concerning the requirements or criteria for custodial parents, and decisions on this matter should be left to parents or the courts.

2-4: In addition, if both parents shall have parental authority after divorce and a custodial parent is decided based on [Proposal A], the proposals for property management and legal representation are stated in Proposal 2-3(2)(b) as follows:

[Proposal α] The custodial parent shall be solely responsible for exercising parental authority regarding property management and legal representation but shall notify the other parent having parental authority

after such exercising.

[Proposal β] Parental authority shall be exercised jointly by both parents. If they fail to agree on exercising parental authority, the custodial parent shall be solely responsible for exercising it.

[Proposed γ] Parental authority shall be exercised jointly by both parents. If the parents fail to agree, the family court shall mediate the conflict between them according to relevant procedures.

2-5: If both parents shall have parental authority after divorce and a custodial parent is decided based on [Proposal A], the proposed options for changing the residential address of a child are listed in Proposal 2-3(4) as follows:

[Proposal X] The custodial parent shall make the decision solely.

[Proposal Y] Both parents having parental authority shall be involved in the decision-making process in accordance with the rules of aforementioned [Proposal α], [Proposal β] or [Proposed γ].

2-6: Moreover, Proposal 2-4 states that rules applicable to cases where one parent shall have parental authority while the other parent shall be a custodial parent should be consolidated. Proposal 2-5 mentions the case of paternity and includes [Proposal A], which allows both parents to have parental authority after paternity is established, and [Proposal B], which allows one parent to have parental authority after paternity is established.

3: Review of the Rules Concerning Child Custody Arrangements After Divorce

Proposal 3-1 focuses on a review of the procedures for parents of a minor child to file for divorce by agreement, and the main question is whether completion of a parenting class should be required for divorce by agreement.

Regarding Proposal 3-2, several proposals were presented as means to promote the agreements for child support payments and parent-child contact (visitation and other contacts) after divorce by agreement. It is proposed that as a means to improve the effectiveness of the agreements for child support payments, a new system to provide an enforceable document easily for child support claim or to establish a general statutory lien for child support claims should be created. In addition, as a system to respond to cases where parents are unable to negotiate child support payments, a new statutory system for child support payments has been proposed under which a right to claim a certain amount of child support payments is to be granted based on certain requirements without agreement by parents.

Proposal 3-3 states that, if certain requirements are fulfilled, such as where a

married couple lives separately and they are unable to exercise joint custody, a rule should be established that allows parents to make custody and/or visitation arrangements by themselves or a rule that allows the family court to make such arrangements if parents fail to reach an agreement.

Proposal 3-4 states that the factors considered by the family court should be clearly stated when it makes a decision on custody and visitation arrangements.

4: Establishing a New Rule on Custody of Child and Visitation by Third Parties Other than Legal Parents

Proposal 4 states that rules should be established to allow third parties other than legal parents to become a custodial parent and to allow visitation by third parties other than legal parents.

5: Review of the Rules Concerning Procedures for Making Child Custody Arrangements

Proposal 5 presents the following topics for discussion on judicial proceedings concerning child custody, such as child support claims and visitation:

- A system to look up the address of the other party
- A system to disclose information related to other party's income
- With regard to court procedures for visitation, enabling temporary visitation while court proceedings are pending and before the conclusion of mediation or adjudication, and measures to improve the effectiveness of the signed mediation agreement or the court adjudication of visitation.
- Measures to reduce the creditor's burden in executing civil proceedings for child support claims etc.
- A system to quickly reject abusive petitions, and a system to appropriately respond to suspected cases of domestic violence or abuse

6: Review of the Rules of the Adoption System

According to Article 798 of the current Civil Code, as a fundamental rule, the permission of the family court is required to adopt a minor; however, the family court's permission is not required if a person adopts their spouse's child or adopts their grandchild. Proposal 6-1 includes [Proposal A] stating that requirement of the permission of the family courts should be expanded to include the adoption of a spouse's child or one's grandchild and [Proposal B] stating that the current rule should remain unchanged.

Proposal 6-3 provides the rule for parental authority after adoption, stating that if

the same child is adopted more than once, the last adoptive parents shall have parental authority.

Furthermore, the agendas for discussion on other requirements for the adoption of a minor and the obligation of biological parents to support their child after adoption (Proposal 6-2 and 4) are also included.

7: Review of the Rules for the System for Division of Property

Proposal 7 states that the factors to be considered should be clearly stated when the family court makes a decision on the division of property, that the legal limitation period for filing a case for division of property should be extended, and that a system to disclose information related to the other party's property should be established.

8: Other Necessary Measures

Proposal 8 states that necessary measures should be taken in terms of court proceedings, the family register system and other arrangements related to the matters included in Proposals 1 through 7 mentioned above.