

Provisional Minutes of the 28th Meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On June 20, 2023, the 28th 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 made a deliberation on the pending issues on divorce and related systems for the third round, considering the previous discussions, public comments and Subcommittee interviews. During the meeting, the Subcommittee discussed the following issues.

First, based on the meeting materials, the Subcommittee discussed the rules for parents to seek a judicial divorce. Many members and non-voting members expressed their support on the proposal that in the case of a judicial divorce 1) the court will decide whether one or both parents should have parental authority, and 2) if both parents agree on who should have parental authority, the court will determine parental authority based on the agreement. Moreover, with regard to the framework for determining parental authority if the parents are still unable to reach an agreement, many members and non-voting members pointed out that the court should make its decision considering the best interests of a child, and they expressed various opinions on how the best interests of the child should be defined.

Second, based on the meeting materials, the Subcommittee discussed the rules when determining either of the parents as the person with parental authority and the other as the custodial parent after divorce, and the rules for acknowledgement of paternity. It was proposed that if the parental authority is granted to one parent and custodial authority to the other, the custodial parent is to handle the physical custody issues as a general rule, and the person who has parental authority is to handle the issues concerning property management, and there were no objections from most of the members and non-voting members to the proposal. Accordingly, it was pointed out that codifying the rights of the person who has parental authority (who is not a custodial parent) needs to be further discussed, including the rules for joint parental authority while one parent has custodial authority. Regarding the rules for acknowledgement of paternity, many members and voting-members suggested that it would be necessary to review and revise Article 819 of the current Civil Code which does not allow both parents to have parental authority in the same manner in the case of acknowledgement of paternity. However, some members

expressed concern about the review.

Furthermore, based on the meeting materials, the Subcommittee discussed on the review of the rules concerning the adoption of minors. Regarding the rules concerning an adoption which is likely to undermine the best interests of the minor, many members and non-voting members stated that even though it would be practically difficult to request the permission of the family court for all adoptions of minors, the involvement of the family court before and after adoptions of minors should be discussed further.

The Subcommittee will review and deliberate the pending issues for the third round in the next and subsequent meetings.

※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.