

2024 Family Law Reform in Japan

-Overview of the Act Partially Amending the Civil Act -

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Background

A. Issues

- Serious impact on the upbringing of children.
- Diversification of the circumstances of upbringing of children.
- Less likelihood for divorced parents to agree on child support payments and to conduct parent-child visitation.
- Demand for divorced parents to fulfill their responsibility to raise their children in an appropriate manner.

B. Legislative Process

- February 2021: Consultation of the Legislative Council by the Justice Minister
- February 2024: Proposal by the Legislative Council
- March 2024: Cabinet decision on the bill
- May 2024: Approval by the Diet and promulgation
- Slated to take effect within two years of promulgation.

I. Responsibilities of parents

- Under the Amended Civil Act and other related Acts (Amended Act),
 1. The responsibilities of parents to their child should be fulfilled in the best interests of the child, regardless of whether or not they are married.
 2. Parents should respect:
 - a child's personality for healthy psychological and physical development,
 - each other's personality so that they can cooperate with each other.

II. Parental responsibilities and child custody

A. Who should exercise parental responsibility after divorce?

1. When the parents agree to divorce, they may also agree on whether parental responsibility should be exercised jointly or assigned to one parent.
2. If they cannot agree on parental responsibility, courts may grant joint or sole parental responsibility.
3. The court must grant parental responsibility to one parent if the child's interests would be harmed by granting both parents parental responsibility. This includes cases where:
 - granting both parents parental responsibility could possibly lead to abuse of the child or domestic violence physically or psychologically.
 - joint parental responsibility is impractical under the circumstances.
4. In changing who has parental responsibility, the court shall take into account various factors including how the parents reached their agreement, so as to ensure that the agreement was made in the best interests of the child.

B. How should parental responsibility be exercised when it has been granted to both parents?

Under the Amended Act,

1. In principle, parental responsibility shall be exercised jointly.

2. However, it can be exercised solely when there are:

- urgent circumstances for the best interests of the child, such as escaping from domestic violence/abuse or seeking medical treatment in an emergency.
- daily needs related to child custody and education, including personal care of the child.

3. If there are conflicts in exercising parental responsibility between parents, they may rely on court procedure to resolve their conflicts.

C. Child custody

The Amended Act establishes rules regarding

- Shared child custody and
- Rights and duties of custodians

III. Child support payments

- In order to ensure child support payments are fulfilled, the Amended Act introduced new legal procedures in which a divorced parent (creditor) may:
 1. Initiate the enforcement proceedings without an award (judicial decision that orders the debtor to pay) through priority rights (liens).
 2. Seek child support payments even when there is no agreement on the payments thereof between the parents.
 3. Make more efficient use of judicial procedures including application for enforcement and asset disclosure proceedings.

IV. Parent-child visitation

- In order to ensure safe and secure parent-child visitations, the Amended Act established new rules regarding different types of parent-child visitations as follows:
 - 1 Trial parent-child visitation: trial visitations prior to court decision or mediation as part of the court proceeding.
 - 2 Parent-child visitations for spouses: visitations between a child and married parents living separately.
 - 3 Relative-child visitations: visitations between a child and grandparents or other relatives.

V. Other Revision

A. Adoption

The Amended Act clarifies rules concerning adoption and parental responsibility such as:

- who has parental responsibility for an adopted child.
- requirements to adopt a child under 15.

B. Distribution of property

Regarding distribution of property after divorce, under the Amended Act,

- The period is extended from two years to five years within which the divorced couple may seek distribution of property.
- The court shall take into account various codified factors including the parents' contributions (which is presumed to be equal).

C. Others

The Amended Act revised the provisions regarding marital contracts and grounds for divorce in court.