

Provisional Minutes of the 27th Meeting of the Family Law Subcommittee of the Legislative Council (provisional translation)

On June 6, 2023, the 27th 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, with reference to 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 whether a custodial parent should be determined or not. Some Subcommittee members commented that parents should be required to determine the custodial parent if both parents will have parental authority after divorce, whereas other members and non-voting members commented that parents should not be required to determine the custodial parent. Accordingly, some thought that it would be more productive to discuss this issue in connection with how to designate the child's primary residence and the case when it is determined that one of the parents as the person with parental authority and the other as the custodial parent.

Second, based on the meeting materials, the Subcommittee members expressed support for the possibility that the person with parental authority after divorce may be changed not only from one parent to the other, but also from one parent to both parents and vice versa, if it is necessary to do so in the best interests of the child.

Third, based on the meeting materials, the Subcommittee discussed how to determine parental authority when the parents divorce by agreement, including (1) whether one or both parents have parental authority should be determined by the parents based on the agreement, and (2) the possibility of introducing a system to ensure the legitimacy of such agreements. Many members and non-voting members pointed out that a system to ensure the legitimacy of the agreement is needed, and there were various opinions regarding what kind of system would be appropriate, such as the involvement of a third party before divorce and making changes to the parental agreement after divorce.

Furthermore, based on the meeting materials, the Subcommittee discussed judicial divorce, including how the court is to decide whether to grant parental authority to one or both parents and how to regulate the way in which the court makes such decisions. For

example, the question was whether both parents should agree to joint parental authority before it could be granted by the court. No consensus was reached on this issue, and the Subcommittee decided to discuss this issue at the next meeting due to time constraints.

The Subcommittee is to 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.