dered persons' intentions should be respected as far as possible has become increasingly widespread.

In addition to guardianship and assistance, a system of support is newly provided for protecting slightly disordered persons. A supporter may exercise his right to approve or withdraw a supported person's promise or act, only if it is included in the types which have been listed previously by the persons concerned (Civil Code, Art. 16 etc.). Even a guardian may not withdraw a guarded person's ordinary acts, for example the purchase of daily necessaries (Art. 9). A Family Court can appoint plural guardians to cope flexibly with each situation (Art. 843 etc.).

4. **An Act to Promote the Supply of Rented Houses of Good Quality (to Partially Amend the Land and House Lease Law for Providing Fixed Term Rents of House).**

Law No. 153, December 15, 1999 (effective on March 1, 2000).

The Land and House Lease Law requires proper reasons that meet the circumstances of parties, when the owner offers to cancel the lease of a house (Art. 28). It has been the most important part of tenant protection policy that a lease should be in principle renewed. The Amended Law provided newly the fixed-term lease of a house that will be never renewed. For protecting tenants, a written contract and the notification to a tenant of non-renewal are compulsory (Art. 38).

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## 4. Family Law

**Adult Guardianship Law**

(1) An Act to Partially Amend the Civil Code

Law No. 149, December 8, 1999 (effective on April 1, 2000)

(2) An Act Regarding Voluntary Guardianship

Law No. 150, December 8, 1999 (effective on April 1, 2000)

(3) An Act Regarding the Registration of Guardianship
Law No. 151, December 8, 1999 (effective on April 1, 2000)

(4) An Act Regarding the Regulation of the Relevant Acts with the Effectiveness of the Act to Partially Amend the Civil Code
Law No. 152, December 8, 1999 (effective on April 1, 2000)

**Background:**

Since 1970, Japanese society has rapidly become an aged society. The ratio of people whose age is over 65 was more than 7% in 1970 and more than 14% in 1994. The ratio is estimated to rise to 27.4% in 2025. With this social change, to deal with the aged society has become an urgent problem for the government.

As people become older, their abilities decrease by degrees, both mentally and physically. Because of the decrease in the capacity of judgment, many elderly people are in danger of becoming victims of dishonest dealings or fraudulent transactions. Therefore, there has been a need for a legal system to protect elderly people's property adequately on its management. In the area of civil law, there are increasing concerns about what protection the civil law should provide for the administration of property of adults with inadequate capacity of judgement including people who are retarded mentally or with mental disorders.

These circumstances as such are common to almost all of the developed countries and, in recent years, legal reforms regarding the system of adult guardianship have been made one after another in those countries. These legal reforms adopt fundamental ideas such as "the respect for self-determination and the will of the adult" and "normalization" (this is the idea to try to construct a society in which a handicapped person can also live normally in the family and community).

In order to protect adults who have an inadequate capacity of judgement, the previous Civil Code provided two systems, incompetency and quasi-incompetency, corresponding to guardianship and curatorship. In the system of incompetency, when a person develops a habitual condition of mental unsoundness, i.e. when he or she loses completely his or her capacity of judgement, a petition for the adjudi-

cation of incompetency may be made to the Family Court, and the person shall be placed under guardianship if the Court thinks it is suitable to do so. The guardian carries out all transactions on behalf of the person adjudicated incompetent, and the acts of that person are voidable. In the system of quasi-incompetency, when a person becomes feebleminded or a spendthrift, but does not completely lose his or her capacity, that person may be adjudged quasi-incompetent by the Family Court and placed under curatorship. The curator may give consent to certain acts by that person provided in the Code, and the acts of the person adjudged without the consent of curator are voidable by the adjudged.

However, there has been the criticism that these systems are inconvenient in some respects. (1) These systems are formalistic and inflexible. Generally, elderly people do not lose their abilities immediately and completely, but they decrease partially and gradually. Thus, such people need a variety of forms of protection. Therefore, depending on these systems alone, it is impossible to give suitable care to people in each case. (2) These systems do not cover any persons who have not lost their capacity of judgment to the extent that they can be judged to be incompetent or quasi-incompetent, and so cannot give suitable care to such people. (3) Because the guardian can annul all transactions made by a person placed under guardianship, the person can't perform the judicial acts necessary for daily life by himself. (4) When either spouse of an elderly couple is adjudged incompetent or quasi-incompetent, the other spouse necessarily becomes the guardian or curator in law. In such couples, however, the latter also often becomes elderly and can no longer play the role of guardian or curator adequately. (5) The word "incompetent" may be discriminatory, for the meaning of the word is to prohibit a person from transactions of property. The word "Kinchisan" may create an unwanted stigma in Japanese society. (6) When such adjudication is made, the entry for it is made in the family register, the so-called "*koseki*", something to which the person adjudicated and his family usually have a strong aversion.

For these reasons, the task to review the systems of incompetency and quasi-incompetency started in 1995, consulting the systems

of various foreign countries. In March 1998, bills regarding the Adult Guardianship Law were proposed by the Justice Ministry to the 145th annual session of the Diet. Finally, the new system of the adult guardianship was established by the four Acts promulgated on December 8, 1999.

**Main Provisions:**

The new system of adult guardianship consists of "statutory guardianship" and "voluntary guardianship". These systems mutually complement each other and form a system of protection for people with inadequate capacity as a whole. The new adult guardianship is established for the purpose of protecting the person whose capacity of judgement is inadequate for reasons such as senile dementia, mental retardation and mental disorder. Especially, protecting the administration of property of elderly persons with senile dementia was one of most important themes in this legislation. This system has been drawn up with the aim of realizing some fundamental ideas such as "respect for self-determination", "improvement of remaining capacity" and "normalization", just as in other countries.

1. **Summary of the new statutory guardianship**

The new statutory guardianship has the following features:

(1) The new law establishes three types of protection for the person, according to the degree of his or her capacity of judgement.

(a) The type to provide supplementary support

The type to provide supplementary support which has been established by the new law is intended to protect the person whose capacity of judgement is inadequate because of minor mental disorders, who had not been included in the prior protection system (Civil Code, art. 14, para. 2). In this system, the person appointed to provide supplementary support is afforded the power of representation and/or giving consent (and avoidance) regarding certain judicial acts selected by the principal in the adjudication of the Family Court (Art. 16, para. 1; Art. 876.9, para. 1). The application for the adjudication may be made by the principal, the spouse and any relative within the fourth degree of relationship. However, with a view to respecting the self-

determination of the principal, the application requires the consent of the principal, if the application is made by a person other than the principal (Arts. 14, para. 2).

(b) Curatorship

The new curatorship, that takes the place of the prior quasi-incompetency, is a system in which the Family Court may appoint a curator for a person whose capacity of judgement is considerably inadequate because of a mental disorder (Art. 11). When the person placed under the curatorship carries out some acts that are provided by the Civil Code or are ordered by the Family Court specifically, the person must obtain the consent of his or her curator (Art. 12). The new law also affords the curator the right to avoid, a right that he did not have in the prior law. In addition, the curator may be afforded in each case the power of representation regarding particular matters selected by the principal under this law. In this case, the application or consent by the person under curatorship is required to start the procedure of adjudication with a view to respecting the self-determination (Art. 876.4).

Otherwise, the new curatorship, in accordance with the policy that this system intends to protect a person with inadequate capacity, differs from the prior quasi-incompetency in the point that a person who is merely a spendthrift is excluded from the requirements to start proceedings.

(c) Guardianship

The new guardianship that takes the place of the prior incompetency is a system in which the Family Court may appoint a guardian for a person who is in a habitual condition of lacking the capacity of judgment because of a mental disorder (Art. 7). While a guardian has very wide powers of representation and avoidance, in the light of self-determination, a person placed under guardianship is allowed to perform acts relating to daily life, for example the purchase of daily necessities by himself, and such acts cannot be avoided by his or her guardian (Art. 9).

Thus, the Adult Guardianship Law establishes three types of protection for adults. All the types are not applied formally and evenly as in the previous system, but are able to be set up with flexible contents, and the extent of the protection among these types varies according to

the needs of each individual.

(2) The appointment of a statutory guardian

The new law abolishes the provision of the Civil Code that, when either spouse of a couple is adjudged incompetent or quasi-incompetent, the other spouse necessarily becomes a guardian or curator in law, and provides that the Family Court can appoint the most suitable person as guardian (Art. 843). Also, with regard to the number of guardians, it had been limited to only one person in the prior law, but the new law allows the Family Court to appoint several persons as guardians (Art. 843, para. 3). In addition, although whether or not a corporation could become a guardian is not clear under the prior law, the new law clearly expresses that it is possible (Art. 843, para. 4).

(3) The duty of taking into account physical care and of respecting the will

Considering the importance of self-determination and the significance of physical care, the new law places a general provision that, when a guardian or other exercises his or her functions, he or she must respect the will of the person adjudged and take into account his or her physical and mental condition and circumstances (Art. 858). Particularly, when a guardian or other disposes of real estate for the person adjudged to be living on it, the law requires an order of the Family Court consenting to this (Art. 859).

(4) Consolidation of the system of supervision

Although the prior law required only a supervisor of a guardian, the new law provides that, when the Family Court considers it necessary to do so, the court, on the application of certain persons or upon its own authority, may also appoint a supervisor for all types of agency, including the type of supplementary support and curatorship (Arts. 849.2, 876.3, 876.8).

## 2. Summary of the Voluntary Guardianship

The voluntary guardianship, which is newly established, describes the following system: when a person has concluded "a contract of voluntary guardianship" while he or she has a full capacity necessary to make a contract, the person can enjoy protection by a voluntary guardian if he or she loses the capacity, overseen by a supervisor for

the voluntary guardian whom the Family Court appoints. This system has been established primarily referring to the Enduring Powers of Attorney Act in England. A contract of voluntary guardianship is the contract of a mandate in which a person affords the power of representation to a voluntary guardian, wholly or in part, regarding his or her affairs under the condition that the person is losing the capacity by a mental disorder, and that is to take effect by the appointment of a supervisor by the Family Court. And so, the designation of a guardian and its limits of authority are provided voluntarily by a contract (the Act Regarding Voluntary Guardianship, art. 2). In order to make a guardianship contract, it is required with the special condition that the contract will be effective from the time when the appointment of a supervisor by the Family Court is committed and that the deed of the contract is made by a notary public (Art. 3).

After the conclusion of the contract, the contract is registered by a notary public. While the contract is registered, if the obligee becomes in a condition that his or her capacity of judgement is inadequate, the Family Court can appoint the supervisor of a voluntary guardian on the application of the obligee, the spouse and the mandatary of the contract, and the voluntary guardianship is commenced at the time (Art. 4).

This system is established for the purpose of complementing mutually the statutory guardianship in the light of the concept of respecting self-determination. In this view, the voluntary guardianship has priority over the statutory guardianship in principle (Art. 10).

### 3. The establishment of the system of adult guardianship registration

The system of adult guardianship registration is a new registration system governing both the statutory and voluntary guardianship. This new means of public notice takes the place of the public notice by the family registration under the prior law. The public notice by the family registration was, in practice, open to everyone who sought to look at it and there was a risk of violating personal privacy. Then, in the new registration system, the disclosure regarding the entry of registration is made by issuing a certification, and the person that is able to make an

application for issuing it is limited to persons entered on the registration and other persons having an interest to seek the certification.

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# 5. Criminal Law and Procedure

**Act for Wiretapping in Criminal Investigation**

Law No. 137, Aug. 18, 1999. Effective as of Aug. 15, 2000 (From the "Three Acts Against Organized Crime"— the two other pieces of legislation were ① The Act for the Punishment of Organized Crime, Control of Criminal Proceeds and Other Matters, (Law No. 136) and ② The Act for Partial Amendment to the Code of Criminal Procedure (Law No. 138)).

**Background:**

In recent years, the number of criminal activities performed inside and outside Japan by criminal organizations has increased dramatically. The importation and distribution of drugs or firearms, organized battles between violent groups, violent crimes committed by cult groups, smuggling crimes led by foreign crime organizations have all given rise to a movement to enact statutes against organized crime. Since the increase in the number of organized crimes has not only been caused by Japanese Violent Groups called "*Bōryoku-dan*" or the local cult groups (which sometimes have branches abroad), but also by other criminal organizations, including foreign organizations such as the notorious "Snakeheads" from China, the need for such legislation has become a concern in the international community as well.

The aim of the legislation was to detect and prosecute organized crimes as thoroughly as possible, to punish core persons in criminal organizations, to deprive such organizations of any criminal proceeds, and to send them the message that "crime does not pay". In order to