

tices and allows them to act on these bases. The Act has meaning as an important footing for the future, particularly by defining child abuse and declaring its prohibition, providing a legal framework regarding child protection, such as reporting and investigating by entering a residence, and by clearly prescribing the duties of the government and local authorities.

The Act further provides that some measures for the prevention of child abuse are to be monitored for about three years from the date when this Act came into force and that necessary amendments are to be made based upon the results (Sch. 2). Therefore, we need to carry on vital discussions regarding questions that remain in this legislation such as its legal consistency and assurance of due process, for future reform.

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5. Civil Procedure

New Code of Civil Procedure

Law No. 109, June 26, 1996 (Effective on January 1, 1998).

Background:

The New Code of Civil procedure was a total reform of the Code after the 1926 Amendment concerning the procedure for judgement.

The purpose of the reenactment is to make the procedure easy to access and understand for ordinary citizen, and to set up regulations fit for demands of the modern society.

The main points of the New Codes are as follows.

1. Revision of the Old Code

The New Code consists of 8 chapters, 400 sections and 27 schedules. New Rules of Civil Procedure, become effective on the same day,

consists of 240 sections and 8 schedules. The number of the sections of the Code are decreased comparing with the Old Code, composed of 7 chapters and 470 sections, while the number of the sections of the New Rule are greatly increased comparing with the Old Rules of 69 sections. The arrangement and altered assignment of sections to the Code and the Rules produced the difference in numbers and more important status of the Court Rules. Although the Old Code, originally enacted in 1890, was written in classic literary style (*kanbun* style: *kanji* and *katakana*), the New Code is written in modern style (*kanji* and *hiragana*), which is closer to colloquial language and easy for ordinary citizen to understand.

2. Arrangement Proceedings of point at Issue and Evidence

The New Code intends to clarify issue and evidence by the following three procedures.

(1) Preliminary Oral Argument (Arts. 164–167)

During oral argument, the court may let the parties to make argument for arrangement and evidences first. As a kind of oral argument, this means for arrangement can be taken in the course of examining evidence or interlocutory determination.

(2) Hearing for Arrangement (Arts. 168–174)

The court may set a hearing for arrangement when both parties may be present.

(3) Preparatory Proceedings by Document (Arts. 175–178)

If a party resides in the remote place or otherwise, the party is permitted to file a brief for arrangement instead of appearing the court.

3. Improved Procedure to Collect Evidence

The proceedings for collecting evidence is improved in response to the necessity to provide means to obtain evidence under control of the other party or third parties. However, they are not so strong as “discovery” in the United States. The New Code provided obligation to produce documentary evidence to the court (Art. 220) and procedure to specify document (Art. 222). The court may order the holder of the document to produce it, and if it might fall under document with duty of secrecy or others, the court shall take “in camera” consider-

ation to determine whether the document may exempt from presentation (Art. 223). If a party does not comply an order of presentation or willfully destroyed the document, the court may assume the truth of the assertion of the other party relating to a statement of the document (Art. 224)

4. **Summary Procedure for Small Claim (Arts. 368–381)**

The New Code established summary procedure for claims not more than 30 thousand yen (Art. 368). The summary court should consider the claim and give a judgement at one time (One Day Trial Rule, Art. 370). A party may raise an objection to the judgement (Art. 378), but may not appeal to the judgement on the objection (Art. 380, para. 1). A person may raise a small claims action at the same summary court up to 10 times within a year (Art. 360, para. 1).

5. **Limited Appeals to the Supreme Court**

The New Code limited reason for *jōkoku* appeal as right to the Supreme Court only to constitutional, jurisdictional or other fatal errors (Art. 312). It introduced discretionary *jōkoku* appeal for inconsistency with precedents or important construction of a statute (Art. 318). *Kōkoku* appeal to the Supreme Court had been exceptional under the Old Code, but the New Code admitted *kōkoku* appeal from a High Court decision or order, with leave of the Supreme Court (Art. 337).

Civil Rehabilitation Law, Law No. 225, Dec. 22, 1999 (Effective on April 1, 2000), which provides procedure mainly for rehabilitation of a bankrupt corporation, will be discussed in the next issue.

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