

Background:

Since 2009, in the special committee of the Legislative Council at the Ministry of Justice, the revision of the Civil Code (Law of Obligations) has been discussed. And the Interim Draft of that revision was published on February 26, 2013.

Main Contents:

According to the pre-note of the Interim Draft, the provisions of Book 1 (*inter alia*, from Article 90 to Article 174-2) and Book 3 (*inter alia*, from Article 399 to Article 696) of the Civil Code have been mainly under revision. The provisions not mentioned in this Draft are planned to be kept as present.

Editorial Note:

The special committee of the Legislative Council took the procedure of public-comment on this Draft, and plans to propose the Temporary Draft by July 2014.

3. Family Law

Domestic-Relations Cases Procedures Act

Law No. 52, May 25, 2011 (Effective on January 1, 2013)

Background:

In recent years, in reaction to the growing importance of the enhancement of judicial functions consistent with society's multiple needs, a series of acts on civil procedures has been established or revised: from the Civil Execution Act, established in 1979 to the Domestic-Relations Adjudication Act and its regulation, revised in 2011 with a general law, the Non-Contentious Cases Procedures Act. With this revision, the name was a little changed to 'The Domestic-Relations Cases Procedures Act' in order to show that it was providing not only the adjudications (*shinpan* in Japanese), but also the conciliations (*chotei* in

Japanese). The Supreme Court maintains the idea that the guarantee of the right of access to courts in Article 32 in the Constitution is never applied to non-contentious cases, while some academics have argued that the guarantee of process should be required in those cases, too. Finally, this revision was carried out, focusing on the enhancement of the guarantee of process, especially in cases which were meant to be contentious (Appendix No.2), and on the welfare of children.

In the new act, easier inspections or copying of the case record (Article 47) were postulated as the center of the policy of guarantees of process to parties. And also, in order to ensure predictabilities of process to parties, preparations of records (Article 46), the right to file a petition for examination of evidences (Article 56, Paragraph 1) and notifications of examination of facts (Article 63), etc., were set out, and, as special provisions for the cases of Appendix No.2, the sending of copies of written petitions (Article 67, Paragraph 1), ensuring opportunities of hearings of statements on the hearing dates (Article 68, Paragraph 2), the right to attend at hearings (Article 69) and setting the date of the conclusion of proceedings (Article 71) and of adjudications (Article 72) were also set out.

This introduction will focus on the welfare of children, due to there being insufficient space to explain the new act totally.

Main Provisions: in the order explained in the editorial note

Article 151 (Capacity to Carry out Procedures)

Article 118 (an adult ward, by himself or herself, may undertake any procedures without his or her statutory representative) shall be applied *mutatis mutandis* to the specified person in both the specified adjudication cases and those for temporary restraining orders (except those treating any economic benefits) by the following items.

- (ii) a child in adjudication cases concerning custody of children

Article 42 (Participation of an Interested Party)

- (1) A person who is meant to be a party in the adjudication may participate in the process.
- (2) A person who is not meant to be a party in the adjudication and has some direct effect on it or is qualified to become a party in it may participate in the process with the permission of the family court.
- (3) When the family court finds it appropriate, it enables a person

described in (1) and (2) to participate, *ex officio*, in the process.

- (5) When a person described in (1) and (2) and intended to participate in the process is a minor, the family court shall dismiss the offer of participation in (1) or the petition for permission of participation in (2) if it finds that his or her interests are harmed by his or her participation, taking into account his or her age and rate of development and all other circumstances.

Article 18 (Statutory Representative of a Minor)

A person who exercises parental authority (snip) may, representing a minor, undertake any procedures (snip) even if he or she may undertake any procedures by himself or herself without his or her statutory representative pursuant to Article 118 (for adjudication cases) or 252, Paragraph 1 (for conciliation cases).

Article 23 (Appointment of a Procedural Representative by the Presiding Judge)

- (1) When a person with a limited ability to carry out procedures intends to undertake any procedures pursuant to Article 118 or 252, Paragraph 1, the presiding judge, if he or she finds it necessary, may appoint, with motion, a counsel as procedural representative.

Article 65 (Understanding, etc., of the Intent of Children in Adjudications)

In the proceedings for the adjudication about parent-child relationship, parental authority or a guardian of a minor, and for the other adjudications on which a minor (including a minor ward) has some effect, the family court shall try to understand the intent of the child by hearings of his or her statement, examinations by family court research law clerks and all other appropriate ways and take account of the intent according to his or her age and rate of development in the adjudications.

Editorial Note:

1. Capacity to Carry out Procedures (Article 151)

A new act created a notion of ‘capacity to carry out procedures’ as the capacity to undertake any procedures by himself or herself equivalent to that of a capacity to sue or be sued in normal civil litigations. This capacity is determined based on the capacity to act in the Civil Code (Article 17), and concerning minors, on the mental capacity, such as in adjudication

and conciliation cases concerning the custody of children. Despite that, it is said that whether a mental capacity exists or not should not be determined by a strict approach since a capacity to undertake any real procedures is to be complemented by procedural representatives.

2. Participation of an Interested Party (Article 42)

In the former act, the provision of participation in the process was set out, but the extent of the power of participants was not clear. By the new act, the provision is divided between the participation of a party (Article 41) and that of an interested party (Article 42, Paragraph 1). And the mandatory participation system is introduced, where the family court, regardless of whether an entitled person intends to participate in the process or not, enables the person to participate, *ex officio*, in the process (Article 42, Paragraph 3). For example, in some adjudications or conciliations on which a minor (including a minor ward) has some effect, such as the change of the person who exercises parental authority or the loss of parental authority, etc., this system enables a child with mental capacity to participate in the process as an interested party and to undertake the procedures effectively by himself or herself. And his or her intent can be easily reflected in the process by the help of representative counsels. In this regard, however, the family court shall dismiss his or her offer or petition of participation, if it finds that his or her interests are harmed in the light of protecting the minor's interests (Article 42, Paragraph 5).

3. Procedural Representative of Children (Article 18 and 23)

Even if a child is entitled to undertake the process by himself or herself, in fact, it is often difficult for the minor to do it. In order to resolve the problem, the new act enables his or her statutory representative to undertake, representing the child, the process and the presiding judge to appoint, with motion or *ex officio*, counsels as procedural representatives.

4. Respects for the Intent of Children (Article 65)

The new act is consistent with the UN Convention of the Rights of the Child (Article 12: the right to express his or her views freely) by providing for the effort to take account of the intent of children according to their age and rate of development. The intended child of the article is mature in some extent. For written articles to require the clear criteria, the line of 15 years old is drawn in each article, the same as its predecessor. However,

sometimes, the family court must hear the statements of children even below this age in the light of the interests of children.

4. Criminal Law and Procedure

The Act on the Partial Revision of the Act on the Prohibition of Unauthorized Computer Access, etc.

Law No. 12, March 31, 2012 (Effective on May 1, 2012).

Background:

In 1999, the Act on the Prohibition of Unauthorized Computer Access, etc. (Law No. 128 of 1999) was established. In this act, unauthorized computer access is prohibited, and once unauthorized computer access has been gained, this lawbreaking can be punished as a cybercrime, which had been limited previously to the acts that do actual harm, such as computer fraud and obstruction of business by destroying a computer, before this act was established. Furthermore, in order to strengthen measures against cybercrime, the obligation to endeavor to take these measures is imposed on the access administrator and the prefectural public safety commissions and national government are obligated to back up the access administrator and others in this act.

For the past dozen years or so after the establishment of this act, the domestic situation surrounding the advanced information and communications network society has changed. First, the Internet has become popular as an infrastructure to support the basis of Japanese society and economy. Second, since the effectuation of this act in 2000, both the numbers of cleared cases and persons for the crime of unauthorized computer access have been on the increase, and serious cybercrimes have frequently occurred. Third, there have been many cases of cybercrimes through use of phishing. Phishing scams are to get a holder of the right of access to type in his/her ID and password and to defraud this holder of his/her ID and password, typically, by masquerading as an actual access administrator, and launching a phishing website or sending a phishing e-mail to that holder. Fourth, the incidence