

the political situation following the recent failure, it is unlikely that the charter pertaining to the rights of taxpayers will be established in the near future.

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## 2. Introduction to a New Legislation — the Law on Family Affairs Procedures

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### 1 Introduction

On May 19, 2011, the Law on Family Affairs Procedures was enacted. It was promulgated on May 25, 2011, and it will come into force on January 1, 2013. In addition, the Non-contentious Cases Procedures Act, and a law related to preparation of related laws pursuant to the Non-contentious Cases Procedures Act and the Law on Family Affairs Procedures being put into effect were also enacted on the same day. As a result, major laws related to non-contentious procedures will be completely revised. Because both the Non-contentious Cases Procedures Act and the Law on Family Affairs Procedures are being enacted under the same principle, both laws have many provisions with the same purpose. This paper will introduce the Law on Family Affairs Procedures. (The account hereinafter used “Questions and Answers: The Law on Family Affairs Procedures,” edited by Osamu Kaneko, and “Overviews of the Non-contentious Cases Procedures Act and the Law on Family Affairs Procedures” edited by Osamu Kaneko from MINJI GEPPŌ, Vol. 66.6, as references.)

### 2 Background to formulation of the new law

The predecessor to the Law on Family Affairs Procedures is the Domestic Relations Trial Act, which was enacted in 1947. Because only a few provisions regulated non-contentious procedures, such as domestic trials and domestic mediation, important parts of procedures, such as jurisdiction and trial principles, were left to domestic trial regulations. The

law was insufficiently prepared as a procedure law. Between then and now, there have also been remarkable changes in the social situation and people's awareness of laws concerning families. As a reflection of that, there has also been a rapid increase in the number of cases related to family courts, and there have been intense conflicts in the content of cases and between parties; therefore, many cases have been difficult to resolve. The new Law on Family Affairs Procedures is intended to respond to those demands, and it was enacted as a completed procedures law.

### 3 Essential points of revisions under the new law

#### (1) Improvement of the system to ensure procedural security

Against the background of the need for courts to make protective considerations and under the principle of authoritative detection, procedures for family courts in relation to domestic cases were weak in terms of the procedural autonomy of the parties. The new law completely reconsiders this point. In other words, the main point of the revisions was to establish procedural security, which is a collective term for securing opportunities for parties' involvement in procedures and securing various rights for the procedures in which the parties are involved. Specifically, this was expressed by clarification of the following: (1) expansion and clarification of a system for participation by the parties and interested parties (Article 41, Article 42), (2) establishment of procedures related to inspection and copying of records (Article 47), and (3) various systems to prevent surprises: (a) notice of investigation of facts (Article 63, Article 70), (b) sending a copy of a written motion to the other party (Article 67, Article 88), (c) hearing statements (Article 68, Article 78, paragraph 3; Article 89, paragraph 1; etc.), securing opportunities for parties to be present (Article 69), a final date of the trial that stipulates a deadline for submitting arguments and evidence (Article 71) and a date for the judgment (Article 72).

#### (2) Creation of a system to making procedures more accessible

The procedures related to domestic cases have produced good results in terms of the rate of use by citizens. The enactment of this new law established several systems with the aim of making procedures that are more accessible, in addition to those results. (1) It became possible to use telephone conferences and television conference systems in mediation and

trial procedures. In particular, it is expected that this will make it easier for parties who live at remote areas to appear and meet the deadlines, and this will lead to speedy trials (Article 54; Article 258, paragraph 1). However, in cases such as divorce and dissolution of adoption, when it is necessary to confirm the intentions of the parties, it is not appropriate to use this for reaching agreement in mediation; therefore, the use of this system is restricted (Article 267, paragraph 3; Article 277, paragraph 2). (2) A system of mediation in high courts was established in order to expand the methods for reaching agreement in mediation (Article 274, paragraph 3). Expansion was also made to the scope of what is subject to acceptance of written mediation condition proposals, which had previously only been used for cases related to division of inheritance (Article 270). In addition, things such as a system for assistance with procedures (Article 32) and a system for interpreters (Article 55; Article 258, paragraph 1) will contribute to making procedures easy to use.

#### 4 Types of domestic trials

Conventionally, domestic trials were classified into type A (a type in which the possibility of the parties handling the case is denied, and therefore the case is not compatible with mediation) and type B (a type in which there is a possibility of the parties handling the case, and therefore the case is compatible with mediation), and these have been continued for the most part in the form of Attachment 1 and Attachment 2 under the new law. However, cases that were considered B-type trial items have been moved to Attachment 1.

#### 5 Consideration for children

Consideration for children is essential in family affairs procedures. It is also necessary to make positive laws to secure the right of children to express their opinions as provided under Article 12 on the Convention on the Rights of the Child. Therefore, several provisions were made in the new law based on this perspective.

- (1) It allows children to take procedural actions if they have the mental capacity, even if they are restricted in their ability to act, and it reflects children's intentions in procedures (Article 151.2, Article 168).
- (2) When a child will be directly affected by the result of a domestic case, if the child has the mental capacity and can take procedural actions, the child can obtain permission from the family court to participate in

procedures as an interested participating party, and when the court recognizes that it is appropriate, the court can use its authority to have a child participate as an interested party (Article 42, Article 258).

- (3) In order to supplement a child's ability to conduct procedural actions, it is possible for a legal representative to conduct procedural actions on behalf of an underage child even if such child is able to personally initiate procedural actions (Article 18). It is also possible for a court to select, by a motion or the court's authority, an attorney to serve as a child's procedural representative (Article 23).
- (4) It is required to have a method of reflecting intentions that respond to children's ages and degree of development, such as hearing a child's statement in the case of an underage child who will be affected by the result of a trial or the family court mediator investigating to ascertain a child's intention (Article 65; Article 258, paragraph 1).
- (5) The scope of statements that must be heard by children of age 15 or older was expanded (Article 169, items 1-4; Article 178, paragraph 1, item 1).

It should be noted that provisions were not made concerning "children's representatives," which were the subject of debate when the law was enacted. As a result, an unsolved issue remains of securing the interests of children who do not have mental capacity.

## 6. Conclusion

As discussed here, enactment of the new Law on Family Affairs Procedures established how procedure laws should relate to domestic non-contentious cases. However, even now, courts have considerable leeway in their discretion in domestic non-contentious cases, which is to be naturally expected in response to the demand for flexibility of procedures. From now on, it will be necessary to keep an eye on the use of the new law to see how it will be used, whether it will be truly accessible for people, and whether it will be successful in securing in the procedural autonomy.

(on 11 December 2012)