

2. Family Law

Partial Revision of the Civil Code

Law No. 34, June 14, 2019 (Effective on April 1, 2020)

Background:

In Japan, there are two different systems for the Adoption of Minors, called “Regular Adoption” and “Special Adoption.” Establishing a parent-child relationship born in wedlock by adoption is common to both, however, there are significant differences in the legal requirements, procedure, legal effect, family registration (*koseki*) entry and dissolution of adoptive relations. Concerning Special Adoption, it was introduced in 1987 to aim at providing parents and a home environment with a child whose natural parents are unable to take care of him/her. The number of cases of Special Adoption is on the increase during the past decade: in fiscal 2008 there were 309 cases and in fiscal 2018 there were 624 cases. However, it has been pointed out that the situation of the low utilization of the system requires review and reform in order to cope with child abuse.

The number of responses to consultations of child abuse is respectively increasing year by year in Japan. It reached in 2015 more than 100,000 cases in child guidance centers and 159,850 as of August 2018 (up 19.5 percent from the previous year). The Convention on the Rights of the Child, which Japan ratified in 1994, provides that a child temporarily or permanently deprived of his/her family environment shall be ensured alternative care in his/her best interests, such as foster care and adoption by the State [Art. 20 of the Convention]. Nevertheless, in Japan, measures for an Aid-requiring Child have peculiarly placed too much emphasis on entrustment to institutions: as of March 2019, 2,678 children in infant homes and 24,980 children in foster homes. In contrast, as for family-like environments, 5,556 children are with foster parents and 1,548 children in foster family homes. Moreover, only 321 children are with foster parents for the purpose of Special Adoption.

In regards to the situation of Aid-requiring Children, it has gradually

improved by virtue of the fact that the Child Welfare Act amended in 2016 clarified such principles as securing care in a family-like environment as a priority [Art. 3-2 of the Child Welfare Act]. As a social alternative care system, Special Adoption is also expected to be positively utilized. Therefore, the legal requirements and procedure were reviewed and revised for smooth implementation.

Main Provisions:

Legal relationships, such as custody, support and inheritance, between parents and a child are extinguished by making a Special Adoption. Due to the significant effort, making a Special Adoption requires a judgement of the Family Court which satisfies the following requirements: (1) a person to be an adopted parent shall be a married person [Art. 817-3 of the Civil Code] and has attained 25 years of age [main clause of Art. 817-4], (2) a child to be adopted is limited to less than 6 years of age [main clause of Art. 817-5], (3) his/her parents' consent to the adoption [main clause of Art. 817-6], (4) necessity especially for the interests of the child [Art. 817-7] and (5) the circumstances of not less than 6 months of the care by the persons to become adoptive parents [Art. 817-8]. Among those requirements, (2), (3) and (4) became a barrier to implement the law smoothly.

For instance, it assumes that there are foster parents and a child connected with strong ties because of child abuse by natural parents. In this situation, even if foster parents and a child are willing to make Special Adoption, the requirement (2) is not satisfied in the case of a child of 6 years and over. Even in the case of a child under 6 years of age, the requirement (3) is not satisfied unless his/her parents give consent. Consequently, foster parents quit the application. In addition, even if requirements (2) and (3) are satisfied, the procedure so far has come to nothing because of lacking the regulation about altering the natural parent's decision. Therefore, they have been allowed to revoke once giving consent before a judgement becomes final and binding.

As for the matter of the refusal or revoking of consent by the natural parents, namely regarding the requirement (3), a judge can decide that their consent is not required [the proviso of Art. 817-6]. However, it is difficult for parties to predict the result of the judgement due to discretion.

Furthermore, relating to the requirement (4), a judge shall weigh the protection of the child's interests compared with the natural and foster parents. However, the estimating system to extinguish or create a legal relationship between parents and child in the same procedure has given parties conflict and borne a heavy burden of proof on persons to be the adopted parents. That has led to abandonment of the application.

Considering the above, in this revision, the age of a child to be adopted was raised to less than 15 years of age [the first sentence of Art. 817-5, Para. 1 the Civil Code]. Besides, the procedure of extinguishing and creating legal relationships between parents and child was divided into two: judgement confirming the eligible child to be adopted in the first stage, and judgement of making Special Adoption in the second stage [Arts. 164 and 164-2 of the Domestic Relations Case Procedure Act]. Accordingly, a judge become able to estimate the propriety of care by the natural parents and their consent in the former procedure, and eligibility as adopted parents and compatibility between them and a child to be adopted in the latter procedure. In addition, concerning the former, new regulations are introduced to restrain revocation of consent by natural parents [Art. 164-2, Para. 5 of the Domestic Relations Case Procedure Act], and to admit a child consultation center's director to act as an applicant or intervenor [Arts. 33-6-2 and 33-6-3 of the Child Welfare Act].

Editorial Note:

This revision is significant because Special Adoption is clearly and positively integrated into the Child Welfare System which provides a family-like environment throughout actualizing co-working of the Civil Code and the Child Welfare Act. Referring to the previous problems, Special Adoption considerably has changed into the design to conform to a policy of promoting utilization in terms of the extension of a child to be adopted, early determination of a child to become an adoptee by a child consultation center's director, prevention of hindrance to progress from natural parents unable to care for their child, and reducing the burden of the persons to be adopted parents. However, in order to realize the principle of Special Adoption introduced for the protection and care of a child, there are still issues to be considered, such as care enhancement of support for childrearing by natural parents, ensuring adequateness of

mediation at the stage of their decision-making or confirmation of the intention of the child, and interpretation and implementation of whether the parents' consent is required or not according to the proviso of Art. 817-6 of the Civil Code.

3. Law of Civil Procedure and Bankruptcy

The Act Partially Amending the Civil Execution Act and the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction

Law No.2, May 10, 2019 (Effective on May 17, 2019)

1. Background:

On May 10, 2019, the Act Partially Amending the Civil Execution Act and the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (Act No.2 of 2019) were enacted and they have already come into effect on May 17, 2019. The legislative process of these laws is as follows.

In consideration of various reasons around the civil execution process, so as to improve the effectiveness of the system for the discovery of obligor assets, and prevent members of organized crime groups from buying real property at auction, and clear the rules relating compulsory execution of orders to hand over children etc., on September 12, 2016, the Minister of Justice reported in the Legislative Council and the Legislative Committee for Civil Execution was established.

As a result of the investigation and the deliberation by the Committee, "the summary plan of the amendment regarding the legal system of Civil Execution" was settled in the Conference by the Committee which took place on August 31, 2018, and "the outline of the amendment regarding the legal system of Civil Execution" which had the same content as the summary plan was adopted in the Legislative Council which took place on October 4, 2018. Afterwards the outline was reported to the Minister of Justice.

After that, the Ministry of Justice framed the outline, and on February