

# Civil Code (Part IV and Part V (Tentative translation))

(Act No. 89 of April 27, 1896)

## Part IV Relatives

### Chapter I General Provisions

#### (Range of Relatives)

Article 725 The following persons shall be relatives

- (i) a relative by blood within the sixth degree
- (ii) A spouse; and
- (iii) a relative by affinity within the third degree.

#### (Determining Degree of kinship)

Article 726 (1) The degree of kinship between two relatives shall be determined by counting the number of generations between them.

(2) The degree of kinship between collateral relatives shall be determined by counting the number of generations between a person or his/her spouse up to a common ancestor and back down to the other person.

#### (Relationship through Adoption)

Article 727 From the time of adoption, the relationship between an adopted child and an adoptive parent (and his/her relative by blood) shall be deemed to be the same as that between relatives by blood.

#### (End of Relationship by Affinity by Divorce etc.)

Article 728 (1) The relationship between relatives by affinity shall come to an end by divorce.

(2) The same shall apply in the case where a spouse has died and the surviving spouse indicates an intention to end the relationship between relatives by affinity.

#### (End of Adoptive Relation by Dissolution)

Article 729 The relationship of an adopted child, his/her spouse, any of his/her lineal descendants and their spouses with an adoptive parent and his/her spouse shall come to an end by dissolution of adoptive relation.

#### (Mutual Help between Relatives)

Article 730 Lineal relatives by blood and relatives who live together shall help

one another.

## **Chapter II Marriage**

### **Section 1 Formation of Marriage**

#### **Subsection 1 Requirements for Marriage**

(Marriageable Age)

Article 731 A man who has attained 18 years of age, and a woman who has attained 16 years of age may enter into marriage.

(Prohibition of Bigamy)

Article 732 A person who has a spouse shall not enter into another marriage.

(Period of Prohibition of Remarriage)

Article 733 (1) A woman may not remarry unless six months have passed since the day of dissolution or rescission of her previous marriage.

(2) In the case where a woman had conceived a child before the cancellation or dissolution of her previous marriage, the provision of the preceding paragraph shall not apply.

(Prohibition of Marriage between Close Relatives)

Article 734 (1) Neither lineal relatives by blood nor collateral relatives by blood within the third degree of kinship may marry; provided that this shall not apply between an adopted child and his/her collateral relatives by blood through adoption.

(2) The preceding paragraph shall also apply after the termination of a family relationship pursuant to the provision of Article 817-9.

(Prohibition of Marriage between Lineal Relatives by Affinity)

Article 735 Lineal relatives by affinity may not marry. This shall also apply after the termination of a relationship by affinity pursuant to the provisions of Article 728 or Article 817-9.

(Prohibition of Marriage between Adoptive Parent and Child etc.)

Article 736 Even after the termination of a family relationship pursuant to the provision of Article 729, an adopted child or spouse of adopted child, or a lineal descendant or spouse of a lineal descendant, may not marry an adoptive parent or his/her lineal ascendant.

(Parental Consent for Marriage of Minor)

Article 737 (1) A minor shall obtain the consent of both parents to marry.

(2) If one parent does not consent, the consent of the other parent is sufficient. This shall also apply if one parent is unknown, has died, or is unable to indicate his/her intent.

(Marriage of Adult Ward)

Article 738 An adult ward does not require the consent of his/her guardian of adult to marry.

(Notification of Marriage)

Article 739 (1) Marriage shall take effect upon notification pursuant to the Family Registration Act (Act No. 224 of 1947).

(2) The notification in the preceding paragraph shall be given by document with the signatures of both parties and not less than two adult witnesses, or given orally by these persons.

(Acceptance of Notification of Marriage)

Article 740 Notification of marriage may not be accepted unless it has been found not to violate the provisions of Articles 731 to 737 inclusive, the provision of paragraph (2) of the preceding Article, or the provisions of any other laws and regulations.

(Marriage between Japanese Nationals in Foreign Country)

Article 741 Two Japanese nationals in a foreign country who intend to marry may give notification to the Japanese ambassador a minister of legation or consul stationed in that country. In this case, the provisions of the preceding two Articles shall apply mutatis mutandis.

## **Subsection 2 Void and Annulled Marriages**

(Grounds on Which Marriage is Void)

Article 742 Marriage shall be void only in the following cases:

(i) if one of the parties has no intention to marry due to mistaken identity or other cause; or

(ii) if the parties do not lodge notification of marriage; provided however, that the effect of marriage shall not be prevented merely because notification was not given in the form prescribed in paragraph (2) of Article 739.

(Rescission of Marriage)

Article 743 Marriage may not be annulled, unless pursuant to the provisions of Articles 744 to 747 inclusive.

(Rescission of Unlawful Marriage)

Article 744 (1) Either of the parties, their relatives, or a public prosecutor may make a claim to the family court to rescind a marriage if it violates the provisions of Articles 731 to 736 inclusive; provided, however, that a public prosecutor may not claim this after the death of one of the parties.

(2) A spouse or previous spouse of a party to a marriage that violates the provisions of Article 732 or Article 733 may claim for rescission of marriage.

(rescission of Marriage in Violation of Marriageable Age)

Article 745 (1) When a person of non-marriageable age reaches marriageable age, a claim for rescission of a marriage that violates the provisions of Article 731 may not be made.

(2) A person of non-marriageable age may claim rescission of marriage within a further three months after he/she has reached marriageable age; provided that this shall not apply if he/she has ratified the marriage after reaching marriageable age.

(Rescission of Marriage Formed within the Period of Prohibition of Remarriage)

Article 746 A claim for rescission may not be made for a marriage that violates the provisions of Article 733 if six months have passed from the day on which the previous marriage was cancelled or rescinded, or if a woman has conceived a child after remarriage.

(Rescission of Marriage by Fraud or Duress)

Article 747 (1) A person who has married due to fraud or duress may make a claim for rescission of marriage to the family court.

(2) The claim for rescission of marriage pursuant to the preceding paragraph lapses upon the passage of three months after the party has discovered the fraud or escaped the duress, or upon ratification.

(Effect of Rescission of Marriage)

Article 748 (1) Rescission of marriage shall not have retroactive effect.

(2) A party who did not know of the cause of rescission at the time of marriage must return property obtained by the marriage to the extent of the gain he/she actually receives.

(3) A party who was aware of the cause of rescission at the time of marriage must return all of the gain obtained by the marriage. In this case, the party is liable to compensate an adverse party without knowledge for damages.

(Application Mutatis Mutandis of Divorce Provisions)

Article 749 The provisions of paragraph (1) of Article 728, Articles 766 to 769 inclusive, the proviso to paragraph (1) of Article 790, and paragraphs (2),(3),(5) and (6) of Article 819 shall apply mutatis mutandis to the rescission of marriage.

## **Section 2 Effect of Marriage**

(Surname of Husband and Wife)

Article 750 A husband and wife shall adopt the surname of the husband or wife in accordance with that which is decided at the time of marriage.

(Surviving Spouse Reverting to Previous Surname etc.)

Article 751 (1) If a husband or wife dies, the surviving spouse may revert to using the surname he/she used before marriage.

(2) The provisions of Article 769 shall apply mutatis mutandis to the preceding paragraph and to the case referred to in paragraph (2) of Article 728.

(Duty to Live Together, Cooperate, and Provide Mutual Assistance)

Article 752 A husband and wife shall live together and provide mutual cooperation and assistance.

(Constructive Adult by Marriage)

Article 753 If a minor enters into marriage, he/she shall be deemed to have attained majority.

(Right to Rescind Contract between Husband and Wife)

Article 754 Either husband or wife may at any time during marriage rescind a contract between husband and wife; provided, however, that this may not harm the rights of a third party.

## **Section 3 Marital Property**

### **Subsection 1 General Provisions**

(Marital Property of Husband and Wife)

Article 755 The property rights and duties of a husband and wife shall be prescribed by the following subsections, unless they entered into a contract setting forth otherwise, regarding their property before giving notification of the marriage.

(Requirements of Perfection of Contract on Property of Husband and Wife)

Article 756 If a husband and wife have entered into a contract that departs from

the statutory property system, the contract may not be asserted against the successor in title of the husband or wife, or a third party unless registered prior to notification of marriage.

#### Article 757 Deleted

(Limitations on Altering Property Rights of Husband and Wife etc.)

Article 758 (1) The property rights of a husband and wife may not be altered after notification of marriage.

(2) In the case where one party to a marriage administers property and that property is imperiled by misadministration, the other party may make a claim to the family court for his own administration over that property.

(3) A claim may be made for division of property held in co-ownership together with the claim referred to in the preceding paragraph.

(Requirements of Perfection of Change of the Administrator of Property or Division of Property in Co-ownership)

Article 759 If an administrator of property has been changed, or property held in co-ownership has been divided pursuant to the provisions of the preceding Article or as a result of the contract referred to in Article 755, this may not be asserted against the successor in title of the husband or wife, or a third party unless it is registered.

### **Subsection 2 Statutory Marital Property System**

(Sharing of Living Expenses)

Article 760 A husband and wife shall share the expenses that arise from the marriage taking into account their property, income, and all other circumstances.

(Joint and Several Liability for Debts incurred for Household Necessities)

Article 761 If one party to a marriage engages in a juristic act with a third party regarding everyday household matters, the other party shall be jointly and severally liable for debts that arise from that act; provided that this shall not apply if prior notice is given to the third party to the effect that the other party will not assume such liability.

(Ownership of Property between Husband and Wife)

Article 762 (1) Property owned by one party before marriage and property obtained in the name of that party during marriage shall be separate property (property owned singularly by one party to a marriage).

(2) Property that does not clearly belong to either husband or wife shall be presumed to be held in co-ownership.

## **Section 4 Divorce**

### **Subsection 1 Divorce by Agreement**

(Divorce by Agreement)

Article 763 A husband and wife may divorce by agreement.

(Application Mutatis Mutandis of Marriage Provisions)

Article 764 The provisions of Articles 738, 739, and 747 shall apply mutatis mutandis to divorce by agreement.

(Acceptance of Notification of Divorce)

Article 765 (1) Notification of divorce may not be accepted unless the divorce has been found not to violate the provision of paragraph (2) of Article 739 applied mutatis mutandis to the preceding Article, paragraph (1) of Article 819, or the provisions of any other laws and regulations.

(2) If notification of divorce has been accepted despite the violation of the provisions of the preceding paragraph, the effect of the divorce shall not be prevented because of this violation.

(Determination of Matters regarding Custody of Child after Divorce etc.)

Article 766 (1) If parents divorce by agreement, the matters of who will have custody over a child, visitation and other contacts between the father or mother and the child, sharing of expenses required for custody of the child and any other necessary matters regarding custody over the child shall be determined by that agreement. In this case, the child's interests shall be considered with the highest priority.

(2) If the agreement set forth in the preceding paragraph has not been made, or cannot be made, the matters set forth in the preceding paragraph shall be determined by the family court.

(3) The family court may change the agreement or determination under the provisions of the preceding two paragraphs and order any other proper disposition regarding custody over the child, if it finds this necessary.

(4) The rights and duties of parents beyond the scope of custody may not be altered by the provisions of the preceding three paragraphs.

(Reversion to Previous Surname by Divorce)

Article 767 (1) The surname of a husband or wife who has taken a new name by marriage shall revert to the surname used before marriage by divorce by

agreement.

- (2) A husband or wife whose surname has reverted to the surname before marriage pursuant to the provision of the preceding paragraph may use the surname he/she used at the time of divorce by notification pursuant to the Family Registration Act within three months of the time of divorce.

(Distribution of Property)

Article 768 (1) One party to a divorce by agreement may claim a distribution of property from the other party.

- (2) If the parties do not, or cannot, settle on agreement with regard to the distribution of property pursuant to the provision of the preceding paragraph, either party may make a claim to the family court for a disposition in lieu of agreement; provided that this claim for distribution of property shall be extinguished at the expiration of two years from the day of divorce.
- (3) In the case referred to in the preceding paragraph, the family court shall determine whether to make a distribution, and the amount and method of that distribution, taking into account the amount of property obtained through the cooperation of both parties and all other circumstances.

(Assumption of Rights upon Reversion to Previous Surname by Divorce)

Article 769 (1) If a husband or wife who has taken a new surname by marriage divorces by agreement after inheriting the rights contained in paragraph (1) of Article 897, the matter of who will be the successor of those rights shall be determined by agreement of the parties and any other interested persons.

- (2) If the agreement of the preceding paragraph is not, or cannot be, made, the family court shall determine who will be the successor of the rights in that paragraph.

## **Subsection 2 Judicial Divorce**

(Judicial Divorce)

Article 770 (1) Only in the cases stated in the following items may either husband or wife file a suit for divorce:

- (i) if a spouse has committed an act of unchastity;
- (ii) if abandoned by a spouse in bad faith;
- (iii) if it is not clear whether a spouse is dead or alive for not less than three years;
- (iv) if a spouse is suffering from severe mental illness and there is no prospect of recovery; or
- (v) if there is any other grave cause making it difficult to continue the marriage.



(2) A court may dismiss a suit for divorce if it finds continuing the marriage reasonable taking into account all circumstances, even in the case where there is a cause listed in items (i) to (iv) inclusive of the preceding paragraph.

(Application Mutatis Mutandis of Divorce by Agreement Provisions)

Article 771 The provisions of Articles 766 to 769 inclusive shall apply mutatis mutandis to the case of judicial divorce.

### **Chapter III Parent and Child**

#### **Section 1 Natural Children**

(Presumption of Child in Wedlock)

Article 772 (1) A child conceived by a wife during marriage shall be presumed to be a child of her husband.

(2) A child born after 200 days from the formation of marriage or within 300 days of the day of the dissolution or rescission of marriage shall be presumed to have been conceived during marriage.

(Determination of Paternity by Court)

Article 773 In the case where a woman gives birth in violation of the provisions of paragraph (1) of Article 733, if the paternity of the child cannot be determined pursuant to the provisions of the preceding Article, the court shall determine paternity of the child.

(Rebutting Presumption of Legitimacy)

Article 774 Under the circumstances described in Article 772, a husband may rebut the presumption of the child in wedlock.

(Action to Rebut Presumption of Legitimacy)

Article 775 The father's right to rebut the presumption of child in wedlock under Article 774 shall be exercised by an action of denial of child in wedlock against the child or a mother who has parental authority. If there is no mother who has parental authority, the family court shall appoint a special representative.

(Recognition of Legitimacy)

Article 776 If a husband recognizes that a child is his child in wedlock after the birth of the child, he shall lose his right to rebut the presumption of legitimacy.

(Limitation upon Action of Rebutting Presumption)

Article 777 A husband shall bring an action to rebut the presumption of the child in wedlock within one year of knowing of the child's birth.

Article 778 If the husband is an adult ward, the period of Article 777 shall begin from the time the husband knew of the child's birth after the rescission of an order for commencement of guardianship.

(Affiliation)

Article 779 A father or a mother may affiliate his/her child out of wedlock.

(Competency for Affiliation)

Article 780 A father or a mother does not require the consent of a legal representative for affiliation, even if he/she is a minor or an adult ward.

(Method of Affiliation)

Article 781 (1) Affiliation shall be made through notification pursuant to the provisions of the Family Registration Act.

(2) Affiliation may also be made by will.

(Affiliation of Adult Child)

Article 782 A father or mother may not affiliate his/her adult child without that adult child's consent.

(Affiliation of Unborn Child or Child who has Died)

Article 783 (1) A father may also affiliate his unborn child. In this case, the mother's consent shall be obtained.

(2) If a child has died, a father or mother may still give affiliation, limited to the case where that child had a lineal descendant. In this case, if that lineal descendant is an adult, his/her consent shall be obtained.

(Effect of Affiliation)

Article 784 Affiliation has retroactive effect from the time of birth; provided that this shall not prejudice a right already acquired by a third party.

(Prohibition of Rescission of Affiliation)

Article 785 A father or a mother who has given affiliation may not rescind that affiliation.

(Assertion of Opposing Facts against Affiliation)

Article 786 A child or any other interested person may assert opposing facts against an affiliation.

(Action for Affiliation)

Article 787 A child, his/her lineal descendant, or the legal representative of either, may bring an action for affiliation; provided that this shall not apply if three years have passed since the day of the death of the parent.

(Determination of Matters with Regard to Custody of Child after Affiliation etc.)

Article 788 In the case where a father gives affiliation, the provisions of Article 766 shall apply *mutatis mutandis*.

(Legitimation)

Article 789 (1) By the marriage of his/her mother and father, a child affiliated by his/her father shall acquire the status of a child in wedlock.

(2) A child affiliated by his/her parents while they are married shall acquire the status of a child in wedlock from the time of that affiliation.

(3) The provisions of the preceding two paragraphs shall apply *mutatis mutandis* in the case where a child has already died.

(Child's Surname)

Article 790 (1) A child in wedlock shall take the surname of his/her parents; provided that if the parents divorce before the child is born, the child shall take the surname of his/her parents at the time of divorce.

(2) A child out of wedlock shall take the surname of his/her mother.

(Change of Child's Surname)

Article 791 (1) In the case where a child's surname differs from that of his/her father or mother, he/she may take the name of his/her father or mother by notification pursuant to the provisions of the Family Registration Act after having obtained the family court's permission.

(2) In the case where a child's surname differs from that of his/her parents due to his/her father or mother taking a new surname, he/she may take the name of his/her parents, if they are married, without obtaining the permission referred to in the preceding paragraph by notification pursuant to the provisions of the Family Registration Act.

(3) If a child has not attained 15 years of age, his/her legal representative may perform the acts referred to in the preceding two paragraphs on his/her behalf.

(4) A minor who has taken a new surname pursuant to the provisions of the preceding three paragraphs may revert to using his/her previous surname within one year of attaining majority by notification pursuant to the provisions of the Family Registration Act.

## **Section 2 Adoption**

### **Subsection 1 Requirements for Adoption**

#### **(Age of Adoptive Parent)**

Article 792 A person who has attained the age of majority may adopt another as his/her child.

#### **(Prohibition of Adopting Ascendant or Person of Greater Age)**

Article 793 Neither an ascendant nor a person of greater age may be adopted.

#### **(Adoption of Ward by Guardian)**

Article 794 Where a guardian adopts a ward (here and below, referring to a minor ward and an adult ward), he/she shall obtain the permission of the family court. The same shall apply in the case where the guardianship has ceased but the account of administration of the property has not been settled.

#### **(Adoption of Minor by Married Person)**

Article 795 A married person shall adopt a minor only jointly with the spouse; provided, however, that this shall not apply in cases where he/she adopts a child in wedlock of his/her spouse or his/her spouse is incapable of indicating her/his intention.

#### **(Adoption by Married Person)**

Article 796 A married person shall only adopt or be adopted by another with the consent of his/her spouse,; provided, however, that this shall not apply in the case he/she adopts or is adopted with his/her spouse jointly, or his/her spouse is incapable of indicating her/his intention.

#### **(Adoption of Person under 15 years of age)**

Article 797 (1) If a person to be adopted has not attained 15 years of age, his/her legal representative may give his/her consent to the adoption of that person on behalf of that person.

(2) Where a person to be adopted is cared for by one of his/her parents and that parent does not have parental authority in relation to the person but cares for the person in accordance with Article 766, a legal representative shall obtain the consent of that parent before giving the consent referred to in the preceding paragraph. The same shall apply in the case where one of said person's parents has parental authority in relation to the person which is suspended.

#### **(Adoption of Minor)**

Article 798 Where a person to be adopted is a minor, the permission of the

family court shall be obtained; provided that this shall not apply in the cases where the person to be adopted is a lineal descendant of either the adoptive parent or the adoptive parent's spouse.

(Application Mutatis Mutandis of Marriage Provisions)

Article 799 The provisions of Article 738 and Article 739 shall apply mutatis mutandis to adoption.

(Acceptance of Notification of Adoption)

Article 800 No notification of adoption shall be accepted until it has been found that the adoption does not violate any of the provisions of Articles 792 to 799 inclusive or the provisions of any other laws and regulations.

(Formalities for Adoption between Japanese Nationals in Foreign Country)

Article 801 If a Japanese national in a foreign country intends to adopt, or to be adopted by , another Japanese national in that country, notification of adoption may be made to the Japanese ambassador, minister or consul acting in that country. In this case, the provisions of Article 739 applied mutatis mutandis to Article 799 and the provision of the preceding Article shall apply mutatis mutandis.

## **Subsection 2 Nullity and Rescission of Adoption**

(Nullity of Adoption)

Article 802 Adoption shall be void only on the following grounds:

- (i) if there is no agreement to the adoption between the parties, as a result of mistaken identity or otherwise; or
- (ii) if the parties do not give notification of adoption; provided that the effect of adoption shall not be prevented merely because notification was not in the formality prescribed in paragraph (2) of Article 739 applied mutatis mutandis to Article 799.

(Rescission of Adoption)

Article 803 Adoption shall only be annulled pursuant to the provisions of Articles 804 to 808 inclusive.

(Rescission of Adoption Where Adoptive Parent Is Minor)

Article 804 An adoptive parent or his/her legal representative may petition the family court for rescission of an adoption that violates the provision of Article 792; provided that this shall not apply in the cases where six months have passed from the time the adoptive parent attains the age of majority or he/she

has ratified the adoption.

(Rescission of Adoption Where Adoptive Parent is Ascendant or of Greater Age)

Article 805 Either of the parties to an adoption or any relative of them may apply to the family court for rescission of an adoption that violates the provision of Article 793.

(Rescission of Adoption between Guardian and Ward not Assented to by the Family Court)

Article 806 (1) An adopted child or any natural relative of the child may apply to the family court for rescission of an adoption that violates the provisions of Article 794; provided, however, that this shall not apply after the account of administration has been settled if the adopted child ratifies the adoption or if six months have passed since settlement.

(2) No ratification in the proviso to the preceding paragraph shall take effect, unless the adopted child ratified the adoption after he/she had attained the age of majority or had recovered legal capacity to act.

(3) Where the account has been settled but the adopted child has not attained the age of majority or has not recovered legal capacity to act, the period referred to in the proviso to paragraph (1) shall be calculated from the time the adopted child attains the age of majority or recovers legal capacity to act.

(Rescission of Adoption Without Spousal Consent etc.)

Article 806-2 (1) A person who does not give his/her consent to an adoption may apply to the family court for rescission of an adoption that violates the provisions of Article 796; provided that this shall not apply in the cases where six months have passed from the time the person had knowledge of the adoption or he/she ratified the adoption.

(2) A person who gave the consent referred to in Article 796 by fraud or duress may apply to the family court for rescission of the adoption; provided that this shall not apply in cases where six months have passed from the time the person had knowledge of fraud or escaped from duress, or the person ratified the adoption.

(Rescission of Adoption made without Consent of Person Who Cares for Child etc.)

Article 806-3 (1) A person who does not give his/her consent to the adoption may apply to the family court for rescission of an adoption that violates the provision of paragraph (2) of Article 797; provided that this shall not apply if the person has ratified the adoption, or if, after the adopted child has reached 15 years of age, six months have passed or the child has ratified the adoption.

(2) The provisions of paragraph (2) of the preceding Article shall apply mutatis mutandis to the consent referred to in paragraph (2) of Article 797 made due to fraud or duress.

(Rescission of Adoption of Minor not Assented to by Family Court)

Article 807 An adopted child, any natural relative of the child, or a person who gave his/her consent to the adoption on the adopted child's behalf may apply to the family court for rescission of an adoption that violates the provisions of Article 798; provided, however, that this shall not apply if, after the adopted child attains majority, six months have passed or he/she has ratified the adoption.

(Application Mutatis Mutandis of Provisions regarding rescission of Marriage etc.)

Article 808 (1) The provisions of Article 747 and Article 748 shall apply mutatis mutandis to adoption. In this case, 'three months' in paragraph (2) of Article 747 shall be read as 'six months'.

(2) The provisions of Article 769 and Article 816 shall apply mutatis mutandis to the rescission of adoption.

### **Subsection 3 Effect of Adoption**

(Acquisition of Status of Child in wedlock)

Article 809 An adopted child acquires the status of a child in wedlock of his/her adoptive parent(s) from the time of adoption.

(Surname of Adopted Child)

Article 810 An adopted child shall take the surname of his/her adoptive parent(s); provided that this shall not apply to an adopted child who has changed his/her surname by marriage and continues to use the surname determined at the time of marriage.

### **Subsection 4 Dissolution of Adoptive Relations**

(Dissolution of Adoptive Relations by Agreement etc.)

Article 811 (1) Parties to an adoption may agree to dissolve the adoptive relationship.

(2) If an adopted child is under 15 years of age, an adoptive parent and a person to be a legal representative of the child after the dissolution of adoptive relation may agree to dissolve the adoptive relation.

(3) If, in the case referred to in the preceding paragraph, the parents of the

adopted child divorce, they may agree that one of them should have parental authority with respect to the child after the dissolution of adoptive relation.

- (4) If the parents of the adopted child do not, or cannot, make the agreement referred to in the preceding paragraph, the family court may, at the request of a father, a mother, or an adoptive parent referred to in that paragraph, make a ruling in lieu of the agreement.
- (5) If there is no person to be a legal representative of the adopted child for the purposes of paragraph (2), the family court may, at the request of any relative of the adopted child or any other interested party, appoint a person to be a guardian of a minor for the adopted child after the dissolution of adoptive relation.
- (6) If one of the parties to an adoption has died and the surviving party intends to dissolve the adoptive relation, he/she may do so with the permission of the family court.

(Dissolution of Adoptive relation Between Married Couple and Minor)

Article 811-2 Where adoptive parents who are married to each other intend to dissolve the adoptive relation with a minor, they shall do so jointly; provided, however, that this shall not apply if one of them is incapable of indicating his/her intention.

(Application Mutatis Mutandis of Marriage Provisions)

Article 812 The provisions of Article 738, Article 739, and Article 747 shall apply mutatis mutandis to dissolution of adoptive relation. In this case, 'three months' in paragraph (2) of Article 747 shall be read as 'six months'.

(Acceptance of Notification of Dissolution of Adoptive Relation)

Article 813 (1) No notification of dissolution of adoptive relation shall be accepted until it has been found not to violate any of the provisions of paragraph (2) of Article 739 applied mutatis mutandis to the preceding Article, Article 811 and Article 811-2, or the provisions of any other laws and regulations.

- (2) Where the notification of dissolution of adoptive relation has been accepted in violation of the provisions of the preceding paragraph, the dissolution is not prevented from taking effect due to the violation.

(Judicial Dissolution of Adoptive Relation)

Article 814 (1) Either of the parties to an adoption may, in the following cases only, bring an action for dissolution of adoptive relation:

- (i) if he/she has been abandoned in bad faith by the other party;
- (ii) if it is not clear whether the other party is dead or alive for not less than



three years; or

(iii) if there is any other material ground making it difficult to continue the adoptive relation.

(2) The provision of paragraph (2) of Article 770 shall apply mutatis mutandis to the cases listed in item (i) and item (ii) of the preceding paragraph.

(Party to Action for Dissolution of Adoptive Relation When Adopted Child below 15 years of age)

Article 815 If an adopted child has not attained 15 years of age, a person who may make an agreement with the adoptive parent(s) to dissolve the adoptive relation pursuant to the provisions of Article 811 may bring or be subject to an action for dissolution of adoptive relation.

(Resumption of Surname by Dissolution of Adoptive Relation)

Article 816 (1) An adopted child shall resume using the surname he/she used before the adoption by dissolution of adoptive relation; provided that this shall not apply where a married person adopted another as his/her child with his/her spouse jointly and the adopted child dissolved the adoptive relation with only one of adoptive parents.

(2) If a person resumes using the name h/she used before the adoption pursuant to the provision of the preceding paragraph after seven years have passed since the time of adoption, he/she may take the surname used at the time of dissolution of adoptive relation by giving notification, pursuant to the provisions of the Family Registration Act, within three months of the day of dissolution.

(Assumption of Rights upon Resumption of Surname by Dissolution of Adoptive Relations)

Article 817 The provisions of Article 769 shall apply mutatis mutandis to dissolution of adoptive relations.

### **Subsection 5 Special Adoption**

(Making of Special Adoption)

Article 817-2 (1) The family court may, at the request of a person to be an adoptive parent, make a ruling establishing an adoption which extinguishes the legal relationship between a child and his/her natural relatives (referred to in this subsection as 'special adoption').

(2) The permission referred to in Article 794 and Article 798 is not required for the application referred to in the provision of the preceding paragraph.

(Joint Adoption by Married Couple)

Article 817-3 (1) A person to be an adoptive parent shall be a married person.  
(2) If one spouse does not become an adoptive parent, the other spouse may not be an adoptive parent; provided, however, that this shall not apply if that spouse intends to adopt a child in wedlock of the other spouse (excluding an adopted child who is not the subject of a special adoption ruling).

(Age of Person to be Adoptive Parent)

Article 817-4 A person who has not attained 25 years of age may not be an adoptive parent; provided that this shall not apply if one spouse of a married couple to be adoptive parents has attained 20 years of age but has not attained 25 years of age.

(Age of Person to be Adopted Child)

Article 817-5 No person who has attained 6 years of age at the time of the application referred to in the provisions of Article 817-2 shall be adopted; provided that this shall not apply if he/she has not attained 8 years of age and has been continually cared for by a person to be an adoptive parent since before the child attained 6 years of age.

(Parental Consent)

Article 817-6 A ruling of special adoption shall only be made if both parents of a person to be adopted gives his/her consent to the special adoption; provided that this shall not apply in cases where the parents are incapable of indicating their intention or the parents have abused the child, abandoned the child without reasonable cause, or there is any other cause of grave harm to the interests of the person to become the adopted child.

(Necessity Especially for the Interests of the Child)

Article 817-7 A ruling of special adoption shall only be made if both parents of a person to be adopted are incapable or unfit to care for the child or there are any other special circumstances, and it is found that the special adoption is especially necessary for the interests of the child.

(Circumstances of Care)

Article 817-8 (1) In making a ruling of special adoption, the circumstances of not less than six months of the care given by the person(s) to become adoptive parent(s) over the person to become the adopted child shall be considered.  
(2) The period in the preceding paragraph shall be calculated from the time of the application referred to in the provisions of Article 817-2; provided that this shall not apply if the circumstances of care are evident prior to the application.

(Extinguishment of Legal Relationship with Natural Relatives)

Article 817-9 The legal relationship between an adopted child and his/her natural parents and relative by bloods shall be extinguished by a ruling of special adoption; provided that this shall not apply to the legal relationship with the other party referred to in the provision of the proviso to paragraph (2) of Article 817-3 and his/her relative by bloods.

(Dissolution of Special Adoption)

Article 817-10 (1) The family court may, at the request of the adopted child, his/her natural parents or a public prosecutor, make a ruling dissolving the adoptive relation, if both of the following items are satisfied and the family court finds it especially necessary for the interests of the adopted child:  
(i) the adoptive parents have abused, or abandoned in bad faith, the adopted child or there is any other ground of extreme harm to the interests of the adopted child;  
(ii) the natural parent(s) are capable of providing reasonable care for the child.  
(2) Dissolution of special adoption shall only be made pursuant to the provision of the preceding paragraph.

(Restoration of Legal Relationship with Natural Relatives by Dissolution of Adoptive Relation)

Article 817-11 The same legal relationship that was extinguished by the special adoption shall arise between an adopted child and his/her natural parents and their relatives by blood from the time of dissolution of adoptive relation.

## **Chapter IV Parental Authority**

### **Section 1 General Provisions**

(Person Who Has Parental Authority)

Article 818 (1) A child who has not attained the age of majority shall be subject to the parental authority of his/her parents.  
(2) If a child is an adopted child, he/she shall be subject to the parental authority of his/her adoptive parents.  
(3) Parental authority shall be exercised jointly by married parents; provided that if either parent is incapable of exercising parental authority, the other parent shall do so.

(Person Who Has Parental Authority in the Case of Divorce or Recognition)

Article 819 (1) If parents divorce by agreement, they may agree upon which parent shall have parental authority in relation to a child.

- (2) In the case of judicial divorce, the court shall determine which parent shall have parental authority.
- (3) In the case where parents divorce before the birth of a child, the mother shall exercise parental rights and duties; provided that the parties may agree that the father shall have parental authority after the child is born.
- (4) A father shall only exercise parental authority with regard to a child of his that he has affiliated if both parents agree that he shall have parental authority.
- (5) When the parents do not, or cannot, make the agreements referred to in paragraph (1), paragraph (3), and the preceding paragraph, the family court may, at the request of the father or the mother, make a ruling in lieu of agreement.
- (6) The family court may, at the request of any relative of the child, rule that the other parent shall have parental authority in relation to the child if it finds it necessary for the interests of the child.

## **Section 2 Effect of Parental Authority**

(Right and Duty of Care and Education)

Article 820 A person who exercises parental authority holds the right, and bears the duty, to care for and educate the child for the child's interests.

(Determination of Residence)

Article 821 Residence of a child shall be determined by a person who exercises parental authority.

(Discipline)

Article 822 A person who exercises parental authority may discipline the child to the extent necessary for the care and education under the provisions of Article 820.

(Permission for Occupation)

Article 823 (1) A child may not have an occupation without the permission of a person who exercises parental authority.

(2) A person who exercises parental authority may revoke or limit the permission referred to in the preceding paragraph in the case referred to in paragraph (2) of Article 6.

(Administration and Representation over Property)

Article 824 A person who exercises parental authority shall administer the property of the child and represent the child in any legal juristic act in respect

of the child's property; provided, however, that if an obligation requiring an act of the child is to be created, the consent of the child shall be obtained.

(Effect of Acts Done by One Parent in the Name of Both Parents)

Article 825 Where parents exercise parental authority jointly and one parent, in the name of both parents, performs a juristic act on behalf of a child, or give his/her consent for the child to perform a juristic act, the effect of that act shall not be prevented, even if it is contrary to the intention of the other parent; provided, however, that this shall not apply if the other party has knowledge.

(Conflict of Interest)

Article 826 (1) If an act involves a conflict of interest between a father or mother who exercises parental authority and a child, a person who exercises parental authority shall apply to the family court to have a special representative for the child appointed.

(2) In the case where a person exercises parental authority for more than one child, if there is an act which involves a conflict of interest between one child and the other child or children, a person who exercises parental authority shall apply to have a special representative for that child appointed.

(Duty of Care in Administration of Property)

Article 827 A person who exercises parental authority shall exercise the right of administration of property with the same care he/she would exercise for him/herself.

(Accounts of Administration of Property)

Article 828 When a child attains the age of majority, a person who exercised parental authority shall account for the administration of property without delay; provided, however, that the expenses incurred in the care of the child and the administration of property shall be deemed to have been set-off against the profits from the child's property.

Article 829 If a third party who has granted property to a child gratuitously indicates a contrary intention, the provision of the proviso to the preceding Article shall not apply to that property.

(Administration of Property Given to Child by Third Party Gratuitously)

Article 830 (1) If a third party who grants property to a child gratuitously indicates an intention not to allow a father or mother who exercises parental authority to administer that property, that property shall not be subject to the administration of the father or mother.

- (2) If neither parent has the right to administer the property referred to in the preceding paragraph and the third party does not appoint an administrator for that property, the family court may, at the request of a child, any relative of the child or a public prosecutor, appoint an administrator.
- (3) Even if a third party has appointed an administrator for the property, the preceding paragraph shall apply if the right of that administrator is extinguished or the replacement of that administrator is required, and the third party does not appoint another administrator.
- (4) The provisions of Articles 27 to 29 inclusive shall apply mutatis mutandis to the cases referred to in the preceding two paragraphs.

(Application Mutatis Mutandis of Mandate Provisions)

Article 831 The provisions of Article 654 and Article 655 shall apply mutatis mutandis to the case where a person who exercises parental authority administers the property of a child and the case referred to in the preceding Article.

(Extinctive Prescription of Obligations between Parent and Child That Arise from Administration of Property)

- Article 832 (1) Obligations that arise from the administration of property between a person who exercised parental authority and the child shall be extinguished by prescription if not exercised within five years from the time the right of administration of property is extinguished.
- (2) If the right of administration of property is extinguished while the child has not yet attained the age of majority and the child has no legal representative, the period in the preceding paragraph shall be calculated from the time the child attains the age of majority or a new legal representative takes office.

(Exercise of Parental Authority on Behalf of Child)

Article 833 A person who exercises parental authority with regard to a child shall exercise parental authority in lieu of that child regarding that child's child.

### **Section 3 Loss of Parental Authority**

(Ruling of Loss of Parental Authority)

Article 834 If a father or mother has abused his/her child or abandoned the child in bad faith, or a child's interests are extremely harmed due to considerable difficulty or inappropriateness in the exercise of parental authority by his/her father or mother, the family court may, at the request of the child, any relative of the child, a guardian of a minor, a supervisor of a guardian of a minor, or a

public prosecutor, make a ruling of loss of parental authority with regard to the father or mother; provided, however, that this shall not apply if the cause thereof is expected to cease to exist within two years.

(Ruling of Suspension of Parental Authority)

Article 834-2 (1) If a child's interests are harmed due to difficulty or inappropriateness in the exercise of parental authority by his/her father or mother, the family court may, at the request of the child, any relative of the child, a guardian of a minor, a supervisor of a guardian of a minor, or a public prosecutor, make a ruling of suspension of parental authority with regard to the father or mother.

(2) If the family court makes a ruling of suspension of parental authority, it shall determine the period of suspension of parental authority within a period not exceeding two years, taking into account the period expected to be required for the cause thereof to cease to exist, the physical and mental conditions, and the living circumstances of the child, and all other circumstances.

(Ruling of Loss of Right of Administration of Property)

Article 835 If a child's interests are harmed due to difficulty or inappropriateness in the exercise of the right of administration of property by his/her father or mother, the family court may, at the request of the child, any relative of the child, a guardian of a minor, a supervisor of a guardian of a minor, or a public prosecutor, make a ruling of loss of the right of administration of property with regard to the father..

(Rescission of Ruling of Loss of Parental Authority, Suspension of Parental Authority or Loss of Right of Administration of Property)

Article 836 If the causes in the main clause of Article 834, paragraph (1) of Article 834-2, or the preceding Article have ceased to exist, the family court may, at the request of the person concerned or any relative of his/hers, rescind a ruling of loss of parental authority, suspension of parental authority, or loss of the right of administration of property.

(Surrender and Resumption of Parental Authority or Right of Management Administration of Property)

Article 837 (1) If there is an unavoidable reason, a father or mother who exercises parental authority may, with the permission of the family court, surrender parental authority or the right of administration of property.

(2) If the reason in the preceding paragraph has ceased to exist, a father or mother may, with the permission of the family court, resume parental authority or the right of administration of property.

## **Chapter V Guardianship**

### **Section 1 Commencement of Guardianship**

Article 838 Guardianship shall commence in the following cases:

- (i) if there is no person with parental authority over a minor or if a person with parental authority is unable to exercise the right of administration of property.
- (ii) if there has been an order for commencement of guardianship.

### **Section 2 Organs of Guardianship**

#### **Subsection 1 Guardian**

(Designation of Guardian of Minor)

- Article 839 (1) A person who last exercises parental authority over a minor may designate a guardian of a minor by will; provided that this shall not apply to a person who has no right of administration of property.
- (2) If one of the parents who have parental authority has no right of administration of property, the other parent may designate a guardian of a minor pursuant to the provision of the preceding paragraph.

(Appointment of Guardian of Minor)

- Article 840 (1) If there is no person to become a guardian of a minor pursuant to the provisions of the preceding Article, the family court may appoint a guardian of a minor at the request of a minor ward or his/her relative, or other interested person. This shall also apply in a case where any vacancy in the position of a guardian of a minor occurs.
- (2) Even if there is a guardian of a minor, the family court may appoint a further guardian, when it finds this necessary, at the request of the persons prescribed in the preceding paragraph, or a guardian of a minor, or ex officio.
- (3) In the appointment of a guardian of a minor, the family court shall consider the age, the physical and mental condition, and the living and property circumstances of the minor ward, the occupation and personal history of the person to become the guardian, the existence of any vested interest between them (if the person to become the guardian of a minor is a juridical person, its type and content of business and the existence of any vested interest between the minor ward and the juridical person or its representative), the opinion of the minor ward, and all other circumstances.

(Application for Appointment of Guardian of Minor by Parents)

Article 841 If a father or mother surrenders parental authority or the right of



administration of property, or if the necessity to appoint a guardian of a minor arises as a result of a ruling of loss of parental authority, suspension of parental authority or loss of the right of administration of property, the father or mother shall, without delay, apply to the family court for the appointment of a guardian of a minor.

(Number of Guardians of Minor)

Article 842 Deleted

(Appointment of Guardian of Adult)

Article 843 (1) The family court shall appoint ex officio a guardian of an adult if it orders commencement of guardianship.

(2) If the office of a guardian of an adult is vacant, the family court shall appoint a guardian of an adult at the request of an adult ward or his/her relative, or other interested person, or ex officio.

(3) Even if a guardian of an adult has been appointed, the family court may appoint a further guardian, when it finds this necessary, at the request of the persons prescribed in the preceding paragraph, or a guardian of an adult, or ex officio.

(4) In the appointment of a guardian of an adult, the family court shall consider the physical and mental condition and the living and property circumstances of the adult ward, the occupation and personal history of the person to become the guardian, the existence of any vested interest between them (if the person to become a guardian of an adult is a juridical person, its type and content of business and the existence of any vested interest between the adult ward and the juridical person or its representative), the opinion of the adult ward, and all other circumstances.

(Surrender of Guardianship)

Article 844 A guardian of an adult may, where any justifiable reason exists, surrender his/her office upon the permission of the family court.

(Application for Appointment of New Guardian upon the Surrender of Guardianship)

Article 845 If the necessity to appoint a new guardian arises through a guardian's surrender of office, the guardian shall, without delay, petition the family court to appoint a new guardian.

(Replacement of Guardian)

Article 846 If there is an unlawful act, grave misconduct, or other cause not befitting the office of guardianship on the part of a guardian, the family court

may replace the guardian at the request of a supervisor of a guardian, a ward or his/her relative, or a public prosecutor, or ex officio.

(Causes of Disqualification of Guardian)

Article 847 Any person who falls under any of the following items may not become a guardian:

- (i) a minor;
- (ii) a legal representative, curator, or assistant who has been replaced by the family court;
- (iii) a bankrupt;
- (iv) a person who has brought or is bringing an action against the ward, or a spouse or lineal blood relative by blood of such person; or
- (v) a person whose whereabouts are unknown.

**Subsection 2 Supervisor of a Guardian**

(Designation of Supervisor of Guardian of Minor)

Article 848 A person who may designate a guardian of a minor may designate a supervisor of a guardian of a minor by will.

(Appointment of Supervisor of Guardian)

Article 849 The family court may appoint a supervisor of a guardian, when it finds this necessary, at the request of a ward or his/her relative, or a guardian, or ex officio.

(Causes of Disqualification of Supervisor of a Guardian)

Article 850 A spouse, lineal relative by blood, or sibling of a guardian may not become a supervisor of a guardian.

(Duties of Supervisor of Guardian)

Article 851 The duties of a supervisor of a guardian are as follows:

- (i) to supervise the affairs of a guardian;
- (ii) to apply to the family court without delay to appoint a guardian in the case where any vacancy in the position of a guardian occurs;
- (iii) to take necessary measures in the case of an emergency; and
- (iv) to represent the ward in conduct where there is a conflict of interest between the ward and the guardian or his/her representative.

(Application Mutatis Mutandis of Mandate and Guardian Provisions)

Article 852 The provisions of Article 644, Article 654, Article 655, Article 844, Article 846, Article 847, paragraph (2) of Article 861, and Article 862 shall

apply mutatis mutandis to a supervisor of a guardian, the provisions of paragraph (3) of Article 840 and Article 857-2 shall apply mutatis mutandis to a supervisor of a guardian of a minor, and the provisions of paragraph (4) of Article 843, Article 859-2 and Article 859-3 shall apply mutatis mutandis to a supervisor of a guardian of an adult.

### **Section 3 Affairs of Guardian**

(Investigation of Property and Preparation of Inventory)

Article 853 (1) A guardian shall, without delay, undertake an investigation of the ward's property, and finalize the investigation and prepare an inventory of property within one month; provided that this period may be extended with the approval of the family court.

(2) An investigation of property and the preparation of an inventory of property shall not be valid unless conducted in the presence of a supervisor of the guardian, if one exists.

(Authority Prior to Completion of Inventory of Property)

Article 854 Until a guardian has completed the inventory of property, he/she shall not be entitled to exercise his/her authority unless there is an urgent need; provided that this may not be asserted against a third party in good faith.

(Guardian's Duty to Report Claims or Obligations in Relation to Ward)

Article 855 (1) In the case where a guardian has any claim or bears any obligation in relation to a ward, he/she shall report this to the supervisor, if one exists, before undertaking an investigation of property.

(2) If a guardian knows of a claim against a ward and does not report it, this claim is lost.

(Application Mutatis Mutandis to the Case Ward Acquires Property under Universal Title)

Article 856 The provisions of the preceding three Articles shall apply mutatis mutandis to the case where a ward acquires property under universal title after a guardian has assumed office.

(Rights and Duties regarding Personal Supervision of Minor Ward)

Article 857 A guardian of a minor shall have, with respect to the matters prescribed in the Articles 820 to 823 inclusive, the same rights and duties as a person who exercises parental authority; provided that in order to change the plan of education or the residence determined by a person who exercises parental authority, to give permission to carry on business, or to revoke or

limit that permission, he/she shall obtain the consent of a supervisor of a guardian of a minor, if one exists.

(Exercise of Authority where Multiple Guardians of a Minor Exist)

Article 857-2 (1) If there are multiple guardians of a minor, they shall exercise their authority jointly.

(2) If there are multiple guardians of a minor, the family court may determine ex officio that some of the guardians should only exercise their authority regarding property.

(3) If there are multiple guardians of a minor, the family court may determine ex officio that each guardian should exercise his/her authority individually or that the multiple guardians should exercise their authority according to a division of labor, with regard to the authority regarding property.

(4) The family court may rescind ex officio a determination made pursuant to the provisions of the preceding two paragraphs.

(5) If there are multiple guardians of a minor, it is sufficient that a manifestation of intention by a third party be made to one guardian.

(Respect for Intention and Personal Consideration of Adult Ward)

Article 858 A guardian of an adult, in undertaking affairs related to the life, medical treatment and nursing, and administration of property of an adult ward, shall respect the intention of the adult ward, and consider his/her mental and physical condition and living circumstances.

(Administration and Representation over Property)

Article 859 (1) A guardian shall administer the property of a ward and represent a ward in juristic acts concerning his/her property.

(2) The provision of the proviso to Article 824 shall apply mutatis mutandis to the case referred to in the preceding paragraph.

(Exercise of Authority where Multiple Guardians of Adult)

Article 859-2 (1) If there are multiple guardians of an adult, the family court may determine ex officio that the guardians should exercise authority jointly or according to a division of labor.

(2) The family court may rescind ex officio a determination made pursuant to the provisions of the preceding paragraph.

(3) If there are multiple guardians of an adult, it is sufficient that a manifestation of intention by a third party be made to one guardian.

(Permission regarding Disposition of Real Estate Used for Adult Ward's Residence)

Article 859-3 A guardian of an adult shall obtain the permission of the family court for sale, rent, cancellation of lease, or establishment of a mortgage, or any other disposition equivalent to these, on the ward's behalf with regard to a building or site used for the adult ward's residence.

(Acts in Conflict of Interest)

Article 860 The provisions of Article 826 shall apply mutatis mutandis to a guardian; provided that this shall not apply in the case where there is a supervisor of a guardian.

(Expenditure Estimation and Expenses of Affairs of Guardianship)

Article 861 (1) Upon assumption of office, a guardian shall estimate the amount of money that will be required in annual expenditure for the living, education, medical treatment and nursing, and administration of property of the ward.

(2) A guardian shall pay the expenses necessary to undertake the affairs of guardianship out of the property of the ward.

(Remuneration to Guardian)

Article 862 The family court may grant reasonable remuneration to a guardian out of the property of the ward, considering the financial capacity of the guardian and the ward and other circumstances.

(Supervision of Affairs of Guardianship)

Article 863 (1) A supervisor of a guardian or the family court may, at any time, demand that a guardian submit a report on the affairs of guardianship or an inventory of property, and may investigate the affairs of guardianship or the situation of the property of the ward.

(2) The family court may order any necessary disposition concerning the administration of the property of a ward, or other affairs of guardianship, at the request of a supervisor of a guardian, the ward or his/her relative, or other interested person, or ex officio.

(Acts Requiring the Consent of a Supervisor of Guardian)

Article 864 For a guardian, on behalf of a ward, to undertake business or the acts listed in each item of paragraph (1) of Article 13, or to give consent for a minor ward to undertake the same, he/she shall obtain the consent of a supervisor of a guardian, if one exists; provided that this shall not apply to the receipt of principal listed in item (i) of paragraph (1) of Article 13.

Article 865 (1) A ward or a guardian may rescind acts conducted or consented to by a guardian in violation of the provisions of the preceding Article. In this

case, the provisions of Article 20 shall apply mutatis mutandis.

(2) The provision of the preceding paragraph shall not preclude the application of the provisions of Articles 121 to 126 inclusive.

(Ward's Rescission of Reception of Property etc.)

Article 866 (1) If a guardian has received the property of a ward or the right of a third party against the ward, the ward may rescind that reception. In this case, the provisions of Article 20 shall apply mutatis mutandis.

(2) The provision of the preceding paragraph shall not preclude the application of the provisions of Articles 121 to 126 inclusive.

(Exercise of Parental Authority on Behalf of Minor Ward)

Article 867 (1) A guardian of a minor shall exercise parental authority in lieu of a minor ward with respect to that minor ward's child.

(2) The provisions of Articles 853 to 857 inclusive and Articles 861 to 866 inclusive shall apply mutatis mutandis to the case referred to in the preceding paragraph.

(Guardian of Minor with Rights and Duties regarding Property Only)

Article 868 In the case where a person who has parental authority does not have the right of administration of property, a guardian of a minor shall have authority regarding property and that authority only.

(Application Mutatis Mutandis of Mandate and Parental Authority Provisions)

Article 869 The provisions of Article 644 and Article 830 shall apply mutatis mutandis to guardianship.

#### **Section 4 Termination of Guardianship**

(Account of Guardianship)

Article 870 When the office of a guardian comes to an end, he/she or his/her successor shall render an account of his/her administration within two months; provided that this period may be extended with the approval of the family court.

Article 871 An account of guardianship shall be conducted in the presence of a supervisor of a guardian, if one exists.

(Rescission of Contract etc. between a Minor Ward and Guardian of Minor etc.)

Article 872 (1) A person who, as an ex-minor ward, made a contract with a guardian, or the heir of the guardian, after attaining majority but before

settlement of the account of guardianship may rescind such contract. The same shall apply to unilateral juristic acts that person makes toward a guardian of a minor or his/her successor.

- (2) The provisions of Article 20 and Articles 121 to 126 inclusive shall apply mutatis mutandis to the case referred to in the preceding paragraph.

(Payment of Interest etc. upon Money Refunded)

Article 873 (1) Money to be refunded by a guardian to a ward and money to be refunded by a ward to a guardian shall bear interest from the time the account of guardianship is settled.

- (2) If a guardian has expended a ward's money for his/her own benefit, such money shall bear interest from the time of the expenditure. In this case, further damages are incurred by the ward, the guardian shall be liable for such damages.

(Application Mutatis Mutandis of Mandate Provisions)

Article 874 The provisions of Article 654 and Article 655 shall apply mutatis mutandis to guardianship.

(Extinctive Prescription of Claim That Arises from Guardianship)

Article 875 (1) The provisions of Article 832 shall apply mutatis mutandis to the extinctive prescription of a claim that arises from guardianship between a guardian or a supervisor of a guardian and a ward.

- (2) In the case where a juristic act is rescinded pursuant to the provisions of Article 872, the period of the extinctive prescription prescribed in the preceding paragraph commences from the time of that rescission.

## **Chapter VI Curatorship and Assistance**

### **Section 1 Curatorship**

(Commencement of Curatorship)

Article 876 Curatorship shall commence by order of commencement of curatorship.

(Appointment etc. of Curator or Temporary Curator)

Article 876-2 (1) If the family court orders commencement of curatorship, it will appoint a curator ex officio.

- (2) The provisions of paragraphs 2 to 4 of Article 843 and from Article 844 to 847 inclusive shall apply mutatis mutandis to a curator.

- (3) For acts where there is a conflict of interest between the curator or his/her representative and a person under curatorship, the curator shall apply to the

family court for the appointment of a temporary curator; provided that this shall not apply in the case where there is a supervisor of a curator.

(Supervisor of Curator)

- Article 876-3 (1) The family court may appoint a supervisor of a curator, if it finds this necessary, at the request of a person under curatorship or his/her relative, or a curator, or ex officio.
- (2) The provisions of Article 644, Article 654, Article 655, paragraph (4) of Article 843, Article 844, Article 846, Article 847, Article 850, Article 851, Article 859-2, Article 859-3, paragraph (2) of Article 861, and Article 862 shall apply mutatis mutandis to a supervisor of a curator. In this case, the term 'represent the ward regarding' in item (iv) of Article 851 shall be deemed to be replaced with 'represent a person under curatorship regarding, or give consent for a person under curatorship to undertake the same'.

(Order Granting Power of Representation to Curator)

- Article 876-4 (1) At the request of a person prescribed by the main clause of Article 11 or a curator, or a supervisor of a curator, the family court may make an order that grants power of representation to the curator, concerning specified juristic acts for the person under curatorship.
- (2) An order referred to in the preceding paragraph made at the request of any person other than the person under curatorship shall require the consent of the person under curatorship.
- (3) The family court may rescind an order referred to in paragraph (1), in whole or in part, at the request of a person prescribed by that paragraph.

(Affairs of Curatorship and Termination of Office of Curator)

- Article 876-5 (1) A curator, in undertaking the affairs of curatorship, shall respect the intention of the person under curatorship, and consider his/her mental and physical condition and living circumstances.
- (2) The provisions of Article 644, Article 859-2, Article 859-3, paragraph (2) of Article 861, Article 862, and Article 863 shall apply mutatis mutandis to the affairs of curatorship, and the provision of the proviso to Article 824 shall apply mutatis mutandis to the case where a curator represents a person under curatorship based upon an order granting the power of representation referred to in paragraph (1) of the preceding Article.
- (3) The provisions of Article 654, Article 655, Article 870, Article 871 and Article 873 shall apply mutatis mutandis to the case of termination of office of a curator, and the provisions of Article 832 shall apply mutatis mutandis to claims that arise from curatorship between a curator, or a supervisor of a curator, and a person under curatorship.



## Section 2 Assistance

(Commencement of Assistance)

Article 876-6 Assistance shall commence by order of commencement of assistance.

(Appointment etc. of Assistant or Temporary Assistant)

Article 876-7 (1) If the family court orders commencement of assistance, it will appoint an assistant ex officio.

(2) The provisions of paragraphs (2) to (4) of Article 843 and from Article 844 to 847 inclusive shall apply mutatis mutandis to an assistant.

(3) For acts where there is a conflict of interest between the assistant or his/her representative and a person under assistance, the assistant shall apply to the family court for the appointment of a temporary assistant; provided that this shall not apply in the case where there is a supervisor of an assistant.

(Supervisor of Assistant)

Article 876-8 (1) The family court may appoint a supervisor of an assistant, if it finds this necessary, at the request of a person under assistance, his/her relative, or an assistant, or ex officio.

(2) The provisions of Article 644, Article 654, Article 655, paragraph (4) of Article 843, Article 844, Article 846, Article 847, Article 850, Article 851, Article 859-2, Article 859-3, paragraph (2) of Article 861, and Article 862 shall apply mutatis mutandis to a supervisor of an assistant. In this case, the term 'represent the ward regarding' in item (iv) of Article 851 shall be deemed to be replaced with 'represent a person under assistance regarding, or give consent for a person under assistance to undertake the same.

(Order Granting Power of Representation to Assistant)

Article 876-9 (1) At the request of a person prescribed by the main clause of paragraph (1) of Article 15, an assistant, or a supervisor of an assistant, the family court may make an order that grants power of representation to the assistant, concerning specified juristic acts for the person under assistance.

(2) The provisions of paragraph (2) and paragraph (3) of Article 876-4 shall apply mutatis mutandis to the order referred to in the preceding paragraph.

(Affairs of Assistance and Termination of Office of Assistant)

Article 876-10 (1) The provisions of Article 644, Article 859-2, Article 859-3, paragraph (2) of Article 861, Article 862, Article 863, and paragraph (1) of Article 876-5, shall apply mutatis mutandis to the affairs of assistance, and the

provision of the proviso to Article 824 shall apply mutatis mutandis to the case where an assistant represents a person under assistance based upon an order granting the power of representation referred to in paragraph (1) of the preceding Article.

- (2) The provisions of Article 654, Article 655, Article 870, Article 871 and Article 873 shall apply mutatis mutandis to the case of termination of office of an assistant, and the provisions of Article 832 shall apply mutatis mutandis to claims that arise from assistance between an assistant, or a supervisor of an assistant, and a person under assistance

## **Chapter VII Support**

(Supporter under Duty)

Article 877 (1) Lineal relative by blood and siblings have a duty to support each other.

- (2) If special circumstances exist, the family court may also impose a duty of support between relatives within the third degree, in addition to the case prescribed in the preceding paragraph.
- (3) If an alteration in circumstances arises after an order pursuant to the provision of the preceding paragraph, the family court may revoke that order.

(Order of Support)

Article 878 In the case where there exist several persons under a duty to give support, and agreement has not, or cannot be, reached between the parties with respect to the order in which they are to give support, the family court shall determine the order. In the case where there exist several persons entitled to support and the financial capacity of the person under a duty to give support is insufficient to support them all, the same shall apply.

(Extent and Form of Support)

Article 879 If agreement has not, or cannot be, reached between the parties with respect to the extent and form of support, the family court shall determine such matters, considering the needs of the person entitled to support, the financial capacity of the person under a duty to give support, and any other related circumstances.

(Alteration or Revocation of Agreement or Order with Regard to Support)

Article 880 If an alteration in circumstances arises after an agreement or an order regarding the order of persons under a duty to support, persons entitled to support, or the extent or form of support, the family court may alter or revoke the agreement or the order.

(Prohibition of Disposition of Claim for Support)

Article 881 The right to support may not be subject to disposition.

## **Part V Inheritance**

### **Chapter I General Provisions**

(Cause of Commencement of Inheritance)

Article 882 Inheritance shall commence upon the death of the decedent.

(Place of Commencement of Inheritance)

Article 883 Inheritance shall commence at the place of domicile of the decedent.

(Right to Claim for Recovery of Inheritance)

Article 884 If the right to claim for recovery of inheritance is not exercised within five years of the time an heir or his/her legal representative becomes aware of the fact that the inheritance right has been infringed, that right shall be extinguished by prescription. The right shall also be extinguished if twenty years have passed from the time of commencement of inheritance.

(Expenses relating to Inherited Property)

Article 885 (1) Expenses relating to inherited property shall be paid out of that property; provided that this shall not apply to expenses resulting from the negligence of an heir.

(2) The expenses of the preceding paragraph are not required to be paid out of property obtained by a claimant to statutory reserved portion through abatement of a gift.

### **Chapter II Heir**

(Unborn Child's Legal Capacity to Hold Rights Relating to Inheritance)

Article 886 (1) In regard to inheritance, an unborn child shall be deemed to have already been born.

(2) The provision of the preceding paragraph shall not apply if the child is stillborn.

(Right to Inheritance of Child and Heir per Stirpes, etc.)

Article 887 (1) The child of a decedent shall be an heir.

(2) If a decedent's child has died before the commencement of inheritance, or has lost the right to inheritance by application of the provisions of Article 891 or disinheritance, the child of the decedent's child shall be an heir as an heir per

stirpes; provided that this shall not apply if the child is not a lineal descendant of the decedent.

- (3) The provision of the preceding paragraph shall apply mutatis mutandis to the case where an heir per stirpes has died before the commencement of inheritance, or has lost the right of inheritance as an heir per stirpes by application of the provisions of Article 891, or by disinheritance.

#### Article 888 Deleted

(Right of Inheritance of Lineal Ascendant and Sibling)

Article 889 (1) In the case where there is no person to become an heir pursuant to the provisions of Article 887, the following persons shall become heirs in accordance with the following order of rank:

- (i) lineal ascendants of the decedent; provided that between persons of differing degree of kinship, the person who is of closer relationship shall have higher priority of inheritance;
- (ii) siblings of the decedent.

- (2) The provisions of paragraph (2) of Article 887 shall apply mutatis mutandis to the case referred to in item (ii) of the preceding paragraph.

(Right of Inheritance of Spouse)

Article 890 The spouse of a decedent shall always be an heir. In this case, if there is a person to become an heir pursuant to the provisions of Article 887 or the preceding Article, the spouse shall be of the same rank as that person.

(Causes of Disqualification of Heir)

Article 891 The following persons may not become an heir:

- (i) a person who has received punishment for intentionally causing, or attempting to cause, the death of a decedent or a person of equal or prior rank in relation to inheritance;
- (ii) a person who is aware that the decedent was killed by someone but made no accusation or complaint about this; provided that this shall not apply if that person cannot discern right from wrong, or if the killer was that person's spouse or lineal relative;
- (iii) a person who prevented a decedent from making, revoking, rescinding, or changing a will relating to inheritance through fraud or duress;
- (iv) a person who forced a decedent to make, revoke, rescind, or change a will relating to inheritance through fraud or duress; or
- (v) a person who has forged, altered, destroyed, or concealed a decedent's will relating to inheritance.

(Disinheritance of Presumed Heir)

Article 892 A decedent may make an application to the family court for the disinheritance of a presumed heir (here and below, referring to a person who would otherwise become an heir upon the commencement of inheritance) who has a legally reserved portion if that person has abused or given grave insult to the decedent, or if there has been any other grave misconduct on the part of the presumed heir.

(Disinheritance of Presumed Heir by Will)

Article 893 If a decedent has indicated an intention by will to disinherit a presumed heir, the executor of that will shall apply to the family court for disinheritance of the presumed heir without delay after the will has taken effect. In this case, the disinheritance of that presumed heir shall have retroactive effect from the time of the decedent's death.

(Rescission of Disinheritance of Presumed Heir)

Article 894 (1) A decedent may at any time make an application to the family court to rescind the disinheritance of a presumed heir.  
(2) The provision of the preceding Article shall apply mutatis mutandis to the rescission of disinheritance of a presumed heir.

(Administration of Inherited Property before Ruling for Disinheritance of Presumed Heir Becomes Unappealable)

Article 895 (1) If inheritance has commenced before a ruling has become final and binding after an application for the disinheritance of a presumed heir, or the rescission of that disinheritance, the family court may order any necessary disposition with regard to the administration of inherited property at the request of a relative, an interested party, or a public prosecutor. The same shall apply in the case where a will was made for the disinheritance of a presumed heir.  
(2) The provisions of Articles 27 to 29 inclusive shall apply mutatis mutandis to the case where the family court has appointed an administrator of inherited property pursuant to the provisions of the preceding paragraph.

### **Chapter III Effect of Inheritance**

#### **Section 1 General Provisions**

(General Effect of Inheritance)

Article 896 From the time of commencement of inheritance, an heir shall succeed blanket rights and duties attached to the property of the decedent; provided that this shall not apply to rights or duties of the decedent that are

purely personal.

(Assumption of Rights Relating to Rituals)

Article 897 (1) Despite the provision of the preceding Article, rights to ownership of a genealogy, equipment used in rituals, and any grave, shall be succeeded by the person who custom dictates shall preside over rituals for ancestors; provided that if the decedent designates a person who shall preside over rituals for ancestors, this person shall succeed rights to ownership.

(2) If, in the case referred to in the main text of the preceding paragraph, the custom is not evident, the family court shall determine who shall succeed the rights in that paragraph.

(Effect of Joint Inheritance)

Article 898 If there are two or more heirs, the inherited property shall belong to those heirs in co-ownership.

Article 899 Each joint heir shall succeed the rights and duties of the decedent according to his/her share in inheritance.

## **Section 2 Share in Inheritance**

(Statutory Share in Inheritance)

Article 900 If there are two or more heirs of the same rank, their shares in inheritance shall be determined by the following items:

- (i) if a child and a spouse are heirs, the child's share in inheritance and the spouse's share in inheritance shall be one half each;
- (ii) if a spouse and lineal ascendant are heirs, the spouse's share in inheritance shall be two thirds, and the lineal ascendant's share in inheritance shall be one third;
- (iii) if a spouse and sibling(s) are heirs, the spouse's share in inheritance shall be three quarters, and the sibling's share in inheritance shall be one quarter;
- (iv) if there are two or more children, lineal ascendants, or siblings, the share in the inheritance of each shall be divided equally; provided that the share in inheritance of a sibling who shares only one parent with the decedent shall be one half of the share in inheritance of a sibling who shares both parents.

(Statutory Share in Inheritance of Heirs per Stirpes)

Article 901 (1) The share in inheritance of a lineal descendant who becomes an heir pursuant to the provisions of paragraph (2) or paragraph (3) of Article 887 shall be the same as the share that person's lineal ascendant would have received; provided that if there are two or more lineal descendants, their

shares in inheritance shall be determined in accordance with the provisions of the preceding Article.

- (2) The provision of the preceding paragraph shall apply mutatis mutandis to the case where a child of a sibling becomes an heir pursuant to the provision of paragraph (2) of Article 889.

(Designation of Share in Inheritance by Will)

Article 902 (1) Despite the provisions of the preceding two Articles, a decedent may by will determine the share in inheritance of joint heirs, or entrust a third party to determine the share; provided that a decedent or a third party may not violate provisions relating to legally reserved portion.

- (2) If a decedent determines, or has a third party determine, the share in inheritance of a single heir or several heirs amongst joint heirs, the share in inheritance of the other joint heir(s) shall be determined pursuant to the provisions of the preceding two Articles.

(Share in Inheritance of Heir who has Received Special Benefit)

Article 903 (1) If there is a person from amongst joint heirs who has previously received a testamentary gift, or has received a gift for marriage, adoption, or as capital for livelihood, the total inherited property shall be deemed the value calculated by adding the value of the gift to the value of the property belonging to the decedent at the time of commencement of inheritance and the share in inheritance of that person shall be the remaining amount after deducting the value of that testamentary gift or a gift from the share in inheritance calculated pursuant to the provisions of the preceding three Articles.

- (2) If the value of the testamentary gift or gift is equal to, or exceeds, the value of a donee or recipient's share in inheritance, he/she may not receive the share in inheritance.
- (3) If the decedent indicates an intention contrary to the provisions of the preceding two paragraphs, that intention shall only have effect to the extent that it does not violate the provisions relating to legally reserved portion.

Article 904 With regard to the value of the gift referred to in the provisions of the preceding Article, even if, through the conduct of the recipient there the property of the gift is lost, or if there is a fluctuation in its value, the determination of value shall be deemed as the value at the time of commencement of inheritance in its original state.

(Contributory Portion)

Article 904-2 (1) If there is a person from amongst joint heirs who has made a special contribution to the maintenance or increase of the decedent's property

through the provision of labor or in the form of property relating to the decedent's business, medical treatment or nursing of the decedent, or other means, the total inherited property shall be deemed the value calculated by deducting the contributory portion as determined by agreement by the joint heirs from the value of the property of the decedent at the time of commencement of inheritance, and that person's share in inheritance shall be the amount of the contribution added to the share in inheritance calculated pursuant to the provisions of Articles 900 to 902 inclusive.

- (2) If the agreement of the preceding paragraph is not, or cannot be, settled, the family court shall determine the amount of contributory portion at the request of the person who has contributed referred to in the provision of the preceding paragraph, considering the period of contribution, the means and extent of contribution, the amount of the inherited property, and all other circumstances.
- (3) The contributory portion may not exceed the amount calculated by deducting the value of a testamentary gift from the value of the property belonging to the decedent at the time of commencement of inheritance.
- (4) The application referred to in paragraph (2) may be made in the case where there has been an application pursuant to the provision of paragraph (2) of Article 907, or in the case where there has been an application pursuant to the provision of Article 910.

(Recovery Right of Share of Inheritance)

Article 905 (1) If one joint heir assigns his/her share of inheritance to a third party before a division of the inherited property, any other joint heir may obtain the share through the reimbursement of the value and expenses of that and recover the share in inheritance.

- (2) The right of the preceding paragraph shall be exercised within one month.

### **Section 3 Division of Inherited Property**

(Criteria of Division of Inherited Property)

Article 906 Upon the division of inherited property, the type and nature of goods or rights belonging to the inherited property, the age, occupation, mental and physical state, and financial circumstances of each heir, and all other matters, shall be considered.

(Agreement or Ruling for Division of Inherited Property etc.)

Article 907 (1) Joint heirs may at any time divide inherited property by agreement except in the case where this is prohibited by the decedent's will pursuant to the provision of the following Article.

- (2) If agreement is not, or cannot be, settled between joint heirs regarding



division of inherited property, each of the joint heirs may make an application to the family court for a division of the inherited property.

(3) In the case referred to in the preceding paragraph, if there is a special reason, the family court may prohibit the division of the inherited property, in whole or part, for a specified period.

(Designation of Form of Division of Inherited Property and Prohibition of Division)

Article 908 A decedent may by will determine the form of division of inherited property, or entrust this to a third party, or prohibit division for a period not exceeding five years from the time of commencement of inheritance.

(Effect of Division of Inherited property)

Article 909 Division of inherited property shall have retroactive effect from the time of the commencement of inheritance; provided that this shall not prejudice the rights of a third party.

(Claim of Payment for Value of Person Affiliated after Commencement of Inheritance)

Article 910 In the case where a person who becomes an heir through affiliation after the commencement of inheritance intends to apply for a division of the inherited property, if other heirs have already divided the inherited property or made another disposition, he/she shall only have a claim of payment for value.

(Mutual Liability to Guarantee Joint Heirs)

Article 911 Each joint heir shall, according to his/her share in inheritance, bear liability to guarantee any other joint heir, just as a seller.

(Liability to Guarantee Claim Arising from Division of Inherited Property)

Article 912 (1) Each joint heir shall guarantee, according to his/her share in inheritance, the solvency of any obligor of the inherited property at the time of division regarding claims arising from the division of inherited property.

(2) Each joint heir shall guarantee the solvency of any obligor of the inherited property at the time for performance regarding a claim that is either not yet due or has a condition precedent.

(Share of Liability to Guarantee Insolvent Joint Heir)

Article 913 If there is an insolvent joint heir who is liable to guarantee other joint heirs, the portion of the liability which the insolvent joint heir is to bear shall be apportioned amongst other joint heirs with a right to reimbursement,

and other solvent joint heirs shall contribute to the portion unable to be reimbursed according to the share in inheritance of each; provided that if there is negligence on the part of the person who seeks reimbursement, he/she may not make a claim against other another joint heir to contribute.

(Determination of Liability to Guarantee by Will)

Article 914 If a decedent has expressed a different intent by will, the provisions of the preceding three Articles shall not apply.

## **Chapter IV Acceptance and Renunciation of Inheritance**

### **Section 1 General Provisions**

(Period for Acceptance or Renunciation of Inheritance)

Article 915 (1) An heir shall give unconditional or qualified acceptance, or renunciation, regarding inheritance within three months of the time he/she has knowledge that there has been a commencement of inheritance for him/her; provided that this period may be extended by the family court at the request of an interested party or a public prosecutor.

(2) An heir may investigate inherited property before making an acceptance or renunciation of inheritance.

Article 916 If an heir dies without having made acceptance or renunciation of inheritance, the period of paragraph (1) of the preceding Article shall be calculated from the time that person's heir comes to know of the commencement of inheritance for himself/herself.

Article 917 If an heir is a minor or an adult ward, the period in paragraph (1) of Article 915 shall be calculated from the time that legal representative comes to know of the commencement of inheritance for the minor or adult ward.

(Administration of Inherited Property)

Article 918 (1) An heir shall administer inherited property with the same care he/she would exercise over his/her own property; provided that this shall not apply if he/she has accepted or renounced the inheritance.

(2) The family court may at any time order any necessary disposition for the preservation of inherited property at the request of an interested party or a public prosecutor.

(3) The provisions of Articles 27 to 29 inclusive shall apply mutatis mutandis to the case where the family court has appointed an administrator manager of inherited property pursuant to the provision of the preceding paragraph.

(Revocation and Rescission of Acceptance and Renunciation of Inheritance)  
Article 919 (1) Acceptance or renunciation of inheritance may not be revoked even within the period referred to in paragraph (1) of Article 915.

(2) The provision of the preceding paragraph shall not prevent the rescission of acceptance or renunciation of inheritance made pursuant to the provisions of Part 1 (General Provisions) and Part 4 (Relatives).

(3) The right of rescission in the preceding paragraph shall be extinguished by prescription if not exercised within six months of the time ratification becomes possible. The right of rescission in the preceding paragraph shall be extinguished if ten years have passed since the time of acceptance or renunciation of inheritance.

(4) A person who intends to rescind qualified acceptance or renunciation of inheritance pursuant to the provision of paragraph (2) shall provide a statement to that effect to the family court.

## **Section 2 Acceptance of Inheritance**

### **Subsection 1 Unconditional Acceptance**

(Effect of Unconditional Acceptance)

Article 920 If an heir makes unconditional acceptance, he/she shall inherit the rights and duties of the decedent without limitation.

(Statutory Unconditional Acceptance)

Article 921 An heir shall be deemed to have made unconditional acceptance in the following cases:

(i) if an heir has made a disposition of the inherited property in whole or in part; provided that this shall not apply to an act of preservation or a lease that does not exceed the period determined in Article 602;

(ii) if an heir has not made qualified acceptance or renunciation of inheritance within the period of paragraph (1) of Article 915;

(iii) if an heir, even after having made qualified acceptance or renunciation of inheritance, conceals inherited property in whole or part, uses that property for him/herself, or failed intentionally to enter it in the inventory of inherited property; provided that this shall not apply after the acceptance of a person who has become an heir due to the renunciation of inheritance of the original heir.

### **Subsection 2 Qualified Acceptance**

(Qualified Acceptance)

Article 922 An heir may accept inheritance reserving to perform the obligation

or testamentary gift of the decedent only within the extent of the property obtained by inheritance.

(Qualified Acceptance of Joint Heirs)

Article 923 If there are two or more heirs, qualified acceptance may only be made if all members of the joint heirs make qualified acceptance jointly.

(Form of Qualified Acceptance)

Article 924 If an heir intends to make qualified acceptance, he/she shall prepare an inventory of the inherited property and submit this to the family court with a statement to that effect within the period of paragraph (1) of Article 915.

(Rights and Duties upon Qualified Acceptance)

Article 925 If an heir makes qualified acceptance, the rights and duties that person has towards the decedent shall be deemed not to have been extinguished.

(Administration by Person who has Made Qualified Acceptance)

Article 926 (1) A person who has made qualified acceptance shall continue administration of inherited property with the same care he/she would exercise over his/her own property.

(2) Article 645, Article 646, paragraph (1) and paragraph (2) of Article 650, paragraph (2) and paragraph (3) of Article 918 shall apply mutatis mutandis to the case referred to in the preceding paragraph.

(Public Notification and Notice to Inheritance Obligees and Donees)

Article 927 (1) A person who makes qualified acceptance shall, within five days of making that qualified acceptance, make public notification to all inheritance obligees (here and below, an obligee with a claim towards the inherited property) and donees to the effect that qualified acceptance has been made and that filing of any claim should be made within a specified period. In this case, that period shall be not less than two months.

(2) In the public notification in the preceding paragraph, it shall be prescribed that inheritance obliges and donees who failed to file should be precluded from the payment; provided, however, that a successor who makes qualified acceptance may not preclude known inheritance obliges and donees.

(3) a successor who makes qualified acceptance shall demand each of known inheritance obliges and donees the filing.

(4) The public notice in paragraph (1) shall be made on the official gazette.

(Refusal of Performance before Expiration of Public Notification Period)

Article 928 A person who has made qualified acceptance may refuse to make performance to an inheritance obligee or donee before the expiration of the notification period of paragraph (1) of the preceding Article.

(Performance after Expiration of Public Notification Period)

Article 929 After the expiration of the period in paragraph (1) of Article 927, a person who has made qualified acceptance shall use the inherited property to make performance to inheritance obligees who have made the application of the same paragraph within the period prescribed, and any other known inheritance obligees, proportionally according to the amount of each claim; provided that this may not prejudice the rights of an obligee with priority rights.

(Performance of Obligation etc. Not Yet Due)

Article 930 (1) A person who has made qualified acceptance must make performance even of a claim which is not yet due in accordance with the provision of the preceding Article.  
(2) Conditional claims and claims of indefinite duration shall be performed in accordance with an evaluation by an appraiser appointed by the family court.

(Performance to Donees)

Article 931 A person who has made qualified acceptance may not make performance to a donee unless each of the inheritance obligees has been paid in accordance with the provisions of the preceding two Articles.

(Auction of Inherited Property for Performance of Obligation)

Article 932 If it is necessary to sell inherited property in order to perform in accordance with the provisions of the preceding three Articles, a person who has made qualified acceptance shall put that property to auction; provided that this auction may be averted by paying the entire or partial value of the inherited property in accordance with an evaluation by an appraiser appointed by the family court.

(Participation of Inheritance Obligees and Donees in Evaluation Proceedings)

Article 933 Inheritance obligees and donees may, by their own expense, participate in an auction or appraisal of inherited property. In this case, the provisions of paragraph (2) of Article 260 shall apply mutatis mutandis.

(Liability for Unfair Performance etc. of Person who has Made Qualified Acceptance)

Article 934 (1) If a person who has made qualified acceptance fails to make the

public notification or notice referred to in Article 927, or has made performance to an inheritance obligee or donee within the period of paragraph (1) of the same Article thereby precluding performance to any other inheritance obligee or donee, that person shall be liable to compensate for damages arising from this. If he/she has made performance that violates the provisions of Articles 929 to 931 inclusive, he/she shall be liable to compensate for damages arising from this.

- (2) The provision of the preceding paragraph shall not prevent a claim for damages against an inheritance obligee or donee who has accepted unfair performance with knowledge by another inheritance obligee or donee.
- (3) The provision of Article 724 shall apply mutatis mutandis to the cases referred to in the preceding two paragraphs.

(Inheritance Obligees or Donees who have not Made Application within Period of Public Notification)

Article 935 An inheritance obligee or donee who fails to make the application referred to in paragraph (1) of Article 927 within the period prescribed, and was unknown to the person who has made qualified acceptance, may only exercise his/her rights over the residual assets; provided that this shall not apply to persons who have a security over specific inherited property.

(Administration of Inherited Property where Two or more Heirs)

Article 936 (1) In the case where there are two or more heirs, the family court shall appoint an administrator of the inherited property from amongst the heirs.

- (2) The administrator of the inherited property of the preceding paragraph shall undertake all necessary acts to administer the inherited property and perform any obligation on behalf of the heirs.
- (3) The provisions of Article 926 to 935 inclusive shall apply mutatis mutandis to an administrator of the inherited property of paragraph (1). In this case, 'within five days of making that qualified acceptance' in paragraph (1) of Article 927 shall be read as 'within ten days of the appointment of an administrator of the inherited property'.

(Inheritance Obligees Where There is Cause for Statutory Unconditional Acceptance)

Article 937 If there is a cause listed in item (i) or item (iii) of Article 921 relating to one or several joint heirs who have made qualified acceptance, an inheritance obligee may exercise his/her rights over the portion of his/her claim not satisfied by the inherited property against those joint heirs according to the share in inheritance of each.

### **Section 3 Renunciation of Inheritance**

(Method of Renunciation of Inheritance)

Article 938 A person who intends to renounce inheritance shall make a statement to that effect to the family court.

(Effect of Renunciation of Inheritance)

Article 939 A person who has renounced inheritance shall be deemed as not originally having been an heir to the inheritance.

(Administration by Person who has Renounced Inheritance)

Article 940 (1) A person who has renounced inheritance shall continue the administration of inherited property with the same care he/she would exercise over his/her own property until the person who has become an heir by that renunciation has commenced administration of the inherited property.  
(2) Article 645, Article 646, paragraphs (1) and (2) of Article 650, paragraphs (2) and paragraph (3) of Article 918 shall apply mutatis mutandis to the case referred to in the preceding paragraph.

### **Chapter V Separation of Property**

(Separation of Property by Claim of Inheritance Obligees or Donees)

Article 941 (1) An inheritance obligee or a donee may make an application to the family court for a separation of inheritance property from the property of an heir within three months of the time of commencement of inheritance. The application may be filed even after that period has elapsed if the inherited property has not been mixed with the heir's own property.  
(2) If the family court has made a ruling for separation of property pursuant to the application of the preceding paragraph, the applicant shall give public notice within five days to the effect that an order for separation of property has been made and that applications for entry into distribution proceedings should be made within a specified period. In this case, that period shall be not less than two months.  
(3) The public notice of the provisions of the preceding paragraph shall be listed in the official gazette.

(Effect of Separation of Property)

Article 942 A person who has made an application for separation of property or a person who has applied for entry into distribution proceedings pursuant to the provisions of paragraph (2) of the preceding Article shall receive performance

with priority over the obligees of an heir regarding the inherited property.

(Administration of Inherited Property after Claim for Separation of Property)

Article 943 (1) If an application for separation of property is made, the family court may order any necessary disposition for the administration of the inherited property.

(2) The provisions of Articles 27 to 29 inclusive shall apply mutatis mutandis to the case where the family court appoints an administrator pursuant to the provision of the preceding paragraph.

(Administration by Heir after Application for Separation of Property)

Article 944 (1) Even after an heir has made unconditional acceptance, if there has been an application for separation of property, he/she shall administer the inherited property with the same care he/she would exercise over his/her own property; provided that this shall not apply if the family court has appointed an administrator of the inherited property.

(2) The provisions of Articles 645 to 647 inclusive and paragraphs (1) and (2) of Article 650 shall apply mutatis mutandis to the case referred to in the preceding paragraph.

(Requirement of Perfection, against Third Party regarding Real Estate in the Case of Separation of Property)

Article 945 A separation of property regarding real estate may not be asserted against a third party unless the separation is registered.

(Application Mutatis Mutandis of Provisions regarding Extension of Security Interest to the Proceeds of Collateral)

Article 946 The provisions of Article 304 shall apply mutatis mutandis to the case of separation of property.

(Performance to Inheritance Obligees and Donees)

Article 947 (1) Before the expiration of the period in paragraphs (1) and (2) of Article 941, an heir may refuse to make performance to an inheritance obligee or donee.

(2) If an application for separation of property has been made, an heir shall use the inherited property to make performance to any inheritance obligee or donee who has made an application for separation of property or entry into distribution proceedings proportionally according to the amount of each claim, after the expiration of the period of paragraph (2) of Article 941; provided however, that this may not prejudice the rights of an obligee with priority rights.



(3) The provisions of Articles 930 to 934 inclusive shall apply mutatis mutandis to the case referred to in the preceding paragraph.

(Performance from Heir's Own Property)

Article 948 A person who has made an application for separation of property or a person who has applied for entry into distribution proceedings may exercise his/her rights against an heir's own property only in the case where he/she was not able to receive performance in full from the inherited property. In this case, this person may receive performance with priority over the obligees of an heir.

(Prevention etc. of Application for Separation of Property)

Article 949 An heir may use his/her own property to make performance to an inheritance obligee or donee, or provide reasonable security, and thereby prevent an application for separation of property or have its effect extinguished; provided that this shall not apply if an obligee of the heir expresses an objection and can prove that he/she would receive damage from this.

(Separation of Property by Application of Obligee of Heir)

Article 950 (1) While an heir may make qualified acceptance, or while the inherited property has not been mixed with the heir's own property, an obligee of the heir may make an application to the family court for a separation of property.

(2) The provisions of Article 304, Article 925, Articles 927 to 934 inclusive, Articles 943 to 945 inclusive, and Article 948 shall apply mutatis mutandis to the case referred to in the preceding paragraph; provided, however, that the public notification and notice of Article 927 shall be made by an obligee who has made an application for separation of property.

## **Chapter VI Nonexistence of Heir**

(Formation of Juridical Person for Inherited Property)

Article 951 If it is not evident whether an heir exists, an estate that would be inherited shall be as a juridical person.

(Appointment of Administrator of Inherited Property)

Article 952 (1) In the case referred to in the preceding Article, the family court shall appoint an administrator of inherited property at the request of an interested party or a public prosecutor.

(2) If an administrator of inherited property has been appointed pursuant to the provisions of the preceding paragraph, the family court shall give public notice

of this without delay.

(Provisions Relating to Administrator of Absentee's Property to be Applied  
Mutatis Mutandis)

Article 953 The provisions of Articles 27 to 29 inclusive shall apply mutatis mutandis to the administrator of inherited property referred to in paragraph (1) of the preceding Article (in this Chapter, 'administrator of inherited property').

(Reporting by Administrator of Inherited Property)

Article 954 If there is an application by an inheritance obligee or donee, an administrator of inherited property shall report the status of the inherited property to the person who has made the application.

(Non-formation of Juridical Person for Inherited Property)

Article 955 If it has become evident that there is an heir, the juridical person of Article 951 shall be deemed not to have been formed; provided, however, that this shall not prevent the effect of acts done by an administrator of inherited property within the administrator's authority.

(Extinguishment of Authority of Representation of Administrator of Inherited  
Property)

Article 956 (1) The authority of representation of an administrator of inherited property shall be extinguished from the time that an heir accepts inheritance.  
(2) In the case referred to in the preceding paragraph, the administrator of inherited property shall make an account of profit and loss to the heir without delay.

(Performance to Inheritance Obligees and Donees)

Article 957 (1) If the existence of an heir has not become evident within two months of the public notice of paragraph (2) of Article 952, an administrator of inherited property shall, without delay, give public notice to all inheritance obligees and donees to the effect that a claim for performance should be made within a specified period. In this case, the period shall be not less than two months.  
(2) The provisions of paragraphs (2) to (4) inclusive of Article 927 and Articles 928 to 935 (excluding the proviso to Article 932) shall apply mutatis mutandis to the case referred to in the preceding paragraph.

(Public Notice of Search for Heir)

Article 958 If, after the expiration of the period in paragraph (1) of the preceding

Article, it is still not evident whether an heir exists, the family court shall, at the request of an administrator of inherited property or a public prosecutor, give public notice to the effect that if there is an heir, he/she should assert his/her right within a fixed period. In this case, the period shall be not less than six months.

(Case where No Person Claims a Right)

Article 958-2 If there is no person who asserts a right as an heir within the period of the preceding Article, an heir, or any obligee or donee unknown to the administrator of inherited property, may not exercise his/her right.

(Distribution of Inherited Property to Person with Special Connection)

Article 958-3 (1) In the case referred to in the preceding Article, the family court may, if it finds it reasonable, at the request of a person who shared a livelihood with the decedent, a person who contributed to the medical treatment and nursing of the decedent, or any other person who had a special connection with the decedent, grant such person the remaining amount of the inherited property after liquidation, in whole or in part.

(2) The application of the preceding paragraph must be made within three months of the expiration of the period in Article 958.

(Residual Assets to Belong to National Treasury)

Article 959 Inherited property that has not been disposed of pursuant to the provisions of the preceding Article shall belong to the National Treasury. In this case, the provisions of paragraph (2) of Article 956 shall apply mutatis mutandis.

## **Chapter VII Wills**

### **Section 1 General Provisions**

(Formalities for Will)

Article 960 No will shall take effect unless made in accordance with the formalities provided in this Code.

(Capacity to Make Will)

Article 961 Any person who has attained 15 years of age may make a will.

Article 962 The provisions of Article 5, Article 9, Article 13 and Article 17 shall not apply to a will.

Article 963 At the time of making a will, a testator shall have the capacity to do

so.

(Comprehensive and Specific Testamentary Gifts)

Article 964 A testator may make a disposition of his/her property, in whole or in part, comprehensive or specific title(s); provided that this may not violate provisions regarding legally reserved portion.

(Provisions Relating to Heirs to be Applied Mutatis Mutandis)

Article 965 The provisions of Article 886 and Article 891 shall apply mutatis mutandis to a testamentary donee.

(Limitations on Will of Person under Guardianship)

Article 966 (1) If a person under guardianship makes a will to the benefit of a guardian or the guardian's spouse or lineal relative before the completion of a profit and loss account for guardianship, that will shall be void.  
(2) The provision of the preceding paragraph shall not apply in the case where a lineal relative, spouse, or sibling of the ward is a guardian.

## **Part 2 Formalities of Wills**

### **Subsection 1 Ordinary Formality**

(Types of Will Made by Ordinary form)

Article 967 A will shall be made by holograph document, notarized document, or sealed and notarized document; provided that this shall not apply to the case where it is permissible to use a special method.

(Will by Holograph Document)

Article 968 (1) To make a will by holograph document the testator must write the entire text, the date, and his/her name in his/her own hand and affix his/her seal.  
(2) Unless, for an insertion, deletion or any other alteration to the handwritten certificate, the testator indicates the place of alteration, makes a specifically signed addition to the effect that it has been changed, and furthermore affixes his/her seal to the place that has been altered, it shall have no effect.

(Will by Notarized Document)

Article 969 A will by notarized document shall be made in compliance with the following items:

- (i) no fewer than two witnesses shall be in attendance;
- (ii) the testator shall give oral instruction of the tenor of the will to a notary public;

- (iii) a notary public shall take dictation from the testator and read this aloud, or allow inspection, to the testator and witnesses;
- (iv) the testator and witnesses shall each sign, and affix his/her seal to, the certificate after having approved its accuracy; provided, however, that in the case where a testator is unable to sign, a notary public may sign on his/her behalf, with supplementary registration giving the reason for that; and
- (v) a notary public shall give supplementary registration to the effect that the certificate has been made in compliance with the formalities listed in each of the preceding items, sign this, and affix his/her seal.

(Special Provisions for Will by Notarized Document)

- Article 969-2 (1) In the case where a will by notarized document is made by a person who cannot speak, the testator shall make a statement of the tenor of the will through an interpreter, or by his/her own hand, in lieu of the oral instruction of item (ii) of the preceding Article. In this case, in the application of the provision of item (iii) of the same Article, 'oral instruction' in that item shall become 'statement through an interpreter, or by his/her own hand'.
- (2) In the case where the testator or a witness of the preceding Article is deaf, a notary public may convey the written contents of the provision of item (iii) of the same Article to the testator or witness through an interpreter, in lieu of the reading aloud provided for in the same item.
- (3) If a notarized document has been made in compliance with the formalities provided for in the preceding paragraphs (1) and (2), a notary public shall give supplementary registration on the certificate to this effect.

(Will by Sealed and Notarized Document)

- Article 970 (1) A will by sealed and notarized document shall be made in compliance with the following formalities:
- (i) the testator shall sign, and affix his/her seal to, the certificate;
  - (ii) the testator shall seal the certificate and, using the same stamp as that used for the certificate, affix his/her seal;
  - (iii) the testator shall submit the sealed certificate before one notary public and not less than two witnesses, with a statement to the effect that it is his/her own will, giving the author's name and address;
  - (iv) after having entered the date of submission of the certificate and the statement of the testator upon the sealed document, a notary public shall, together with the testator and witnesses, sign it and affix his/her seal; and
- (2) The provision of paragraph (2) of Article 968 shall apply mutatis mutandis to the making of a will by sealed and notarized document.

(Effect of Will by Sealed and Notarized Document Failing to Satisfy

Formalities)

Article 971 Even a will by sealed and notarized document which fails to satisfy the formalities provided for in the preceding Article shall have effect as a will made by holograph document, if prepared in accordance with the formalities provided for in Article 968.

(Special Provisions for Will by Sealed and Notarized Document)

- Article 972 (1) In the case where a will by sealed and notarized document is made by a person who cannot speak, the testator shall make a statement to the effect that the certificate is one's own will, giving the author's name and address through an interpreter, or by his/her own hand upon the sealed document, in lieu of the statement of item (iii) of paragraph (1) of Article 970.
- (2) In the case referred to in the preceding paragraph, if a testator has given a statement through an interpreter, a notary public shall make an entry on the sealed document to that effect.
- (3) In the case referred to in paragraph (1), if the testator has written on the sealed document in his/her own hand, a notary public shall make an entry to that effect on the sealed document in lieu of the entry of statement in the provision of item (iv) of paragraph 1 of Article 970.

(Will of an Adult Ward)

- Article 973 (1) For an adult ward to make a will at a time that his/her decision-making capacity has recovered temporarily, not less than two doctors shall be in attendance.
- (2) A doctor in attendance of the making of a will shall make an entry on the will to the effect that the testator was not in a condition lacking decision-making capacity at the time of making the will, sign it, and affix his/her seal; provided that in the case of a will by sealed and notarized document, he/she shall make an entry to that effect on the sealed document, sign it, and affix his/her seal.

(Causes of Disqualification of Witness or Observer)

Article 974 The following persons may not be a witness or observer to a will:

- (i) a minor;
- (ii) a presumed heir, donee, or a spouse or lineal relative of either; or
- (iii) a spouse, relative within four degrees, secretary, or employee of a notary public.

(Prohibition of Joint Wills)

Article 975 A will may not be made by two or more persons on the same certificate.

## Subsection 2 Special Formalities of Wills

### (Will Made by Person Rapidly Approaching Death)

- Article 976 (1) If a person who is rapidly approaching death due to illness or another reason intends to make a will, he/she may do so in the attendance of not less than three witnesses by giving oral instruction of the tenor of the will to one of the witnesses. In this case, the person who received the oral instruction shall enter this, read it aloud, or allow inspection, to the testator and other witnesses, and after each witness has approved the accuracy of that entry, sign it, and affix his/her seal.
- (2) In the case where a person who cannot speak makes a will pursuant to the provisions of the preceding paragraph, the testator shall state of the tenor of that will through an interpreter before the witnesses, in lieu of the oral instruction of the same paragraph.
- (3) In the case where the testator, or a witness, referred to in the second sentence of paragraph (1) is deaf, the person who has received the statement or oral instruction of the tenor of the will shall convey to the testator or other witnesses the written contents referred to in the provision of that sentence through an interpreter in lieu of the reading aloud provided for in that sentence.
- (4) For a will made pursuant to the provisions of the preceding three paragraphs, effect shall not arise unless it has been confirmed by the family court at the request of one of the witnesses or an interested party within twenty days of the creation of the will.
- (5) The family court may not confirm a will referred to in the preceding paragraph unless it is convinced that the will captured the true intention of the testator.

### (Will Made by Person with Infectious Disease in Quarantine)

Article 977 A person who is isolated through an administrative disposition due to an infectious disease may make a will in the attendance of one police official and at least one witness.

### (Will Made by Person on Vessel)

Article 978 A person on a ship may make a will in the attendance of the ship's captain or a clerk, and at least two witnesses.

### (Will Made by Person on Ship Meeting Disaster)

Article 979 (1) In the case where a ship meets disaster, a person who is on that ship and rapidly approaching death may make a will orally in the attendance of at least two witnesses.

- (2) In the case where a person who cannot speak makes a will pursuant to the provision of the preceding paragraph, the testator shall do so through an interpreter.
- (3) The effect of a will made in compliance with the provisions of the preceding two paragraphs shall not arise unless a witness makes an entry of its tenor, signs this, affixes his/her seal, and furthermore, it gains confirmation by the family court at the request made without delay by one of the witnesses or an interested party.
- (4) The provision of paragraph (5) of Article 976 shall apply mutatis mutandis to the case described in the preceding paragraph.

(Signature and Seal of Relevant Parties to a Will)

Article 980 In the cases described in Article 977 and Article 978, a testator, author, observer, or witness shall sign and affix his/her seal to each will.

(Case Where Signature or Seal Is Impossible)

Article 981 In the cases described in Articles 977 to 979 inclusive, if there is a person who is unable to sign or affix his/her seal, an observer or witness shall make supplementary registration of the reason for that.

(Provisions Relating to Will by Ordinary Formalities to be Applied Mutatis Mutandis)

Article 982 The provisions of paragraph (2) of Article 968 and Articles 973 to 975 inclusive shall apply mutatis mutandis to a will made pursuant to the provisions of Articles 976 to 981.

(Effect of Will Made by Special Formalities)

Article 983 The effect of a will made pursuant to the provisions of Article 976 to 982 inclusive shall not arise if a testator survives for a period of six months from the time they recover the ability to make a will by ordinary formalities.

(Formalities for Japanese National in Foreign Country)

Article 984 For a Japanese national in a foreign country where a Japanese consulate is stationed to make a will by notarized document, or a sealed and notarized document, the duties of a notary public shall be undertaken by the consulate.

### **Section 3 Effect of Will**

(When Effect of Will Arises)

Article 985 (1) A will takes effect at the time of the testator's death.



(2) In the case where a will is subject to a condition precedent, if that condition is fulfilled after the death of the testator, the will shall take effect from the time that condition is fulfilled.

(Renunciation of Testamentary Gift)

Article 986 (1) A testamentary donee may renounce a testamentary gift at any time after the death of a testator.

(2) The renunciation of a testamentary gift shall have retroactive effect from the time of the testator's death.

(Notice to Testamentary Donees for Acceptance or Renunciation of a Testamentary Gift)

Article 987 A person with a duty of testamentary gift (in this Section, a person who bears a duty to perform a testamentary gift) or any other interested party may give notice to a testamentary donee to the effect that acceptance or renunciation of a testamentary gift should be made within a specified period, fixing a period that is reasonable. In this case, if a donee does not indicate his/her intention to a person with a duty of testamentary gift within that period, the testamentary gift shall be deemed to have been accepted.

(Acceptance or Renunciation of Testamentary Gift by Heir or Testamentary Donee)

Article 988 If a testamentary donee dies without having made acceptance or renunciation of a testamentary gift, the heir of that person may accept or renounce the testamentary gift within the extent of his/her share in inheritance; provided that if the testator has indicated a particular intent in his/her will, this intent shall be complied with.

(Revocation and Rescission of Acceptance and Renunciation of Testamentary Gift)

Article 989 (1) Acceptance or renunciation of a testamentary gift may not be revoked.

(2) The provisions of paragraphs (2) and (3) of Article 919 shall apply mutatis mutandis to acceptance and renunciation of a testamentary gift.

(Rights and Duties of Testamentary Donee by a Universal Succession)

Article 990 A testamentary donee by a universal succession shall have the same rights as an heir.

(Claim for Security by a Testamentary Donee)

Article 991 While a testamentary gift is not due, a testamentary donee may

make a claim for reasonable security from a person having an obligation with respect to testamentary gift. The same shall also apply for a testamentary gift with a condition precedent while the outcome of that condition is unknown.

(Collecting Fruits of Testamentary Gift)

Article 992 A testamentary donee may collect the fruits of a testamentary gift from the time that they are able to make a claim for the performance of that gift; provided that if the testator has indicated a particular intent in his/her will, that intent shall be complied with.

(Claim for Reimbursement of Expenses Incurred by Person with Duty of Testamentary Gift)

Article 993 (1) The provisions of Article 299 shall apply mutatis mutandis to the case where expenses have been incurred by a person with a duty of testamentary gift in respect of the object of the testamentary gift after the death of the testator.

(2) An application for reimbursement may be made for normal necessary expenses incurred in collecting the fruits of a testamentary gift, limited to an amount not exceeding the value of those fruits.

(Lapse of Testamentary Gift through Death of Donee)

Article 994 (1) The effect of a testamentary gift shall not arise if the testamentary donee dies before the death of the testator.

(2) The preceding paragraph shall also apply if, in the case of a testamentary gift with a condition precedent, the testamentary donee dies before the fulfillment of that condition; provided, however, that if the testator has indicated a particular intent in his/her will, that intent shall be complied with.

(Ownership of Property in Case of Invalidation or Lapse of Testamentary Gift)

Article 995 If the effect of a testamentary gift does not arise, or if its effect is lost by renunciation, that which should have been received by the testamentary donee shall belong to the heir(s); provided, however, that if the testator has indicated a particular intent in his/her will, that intent shall be complied with.

(Testamentary Gift of Rights Not Belonging to Inherited Property)

Article 996 A testamentary gift shall not take effect if the rights which are the object of that gift did not belong to the inherited property at the time of the testator's death; provided, however, that this shall not apply if it is found that those rights were made the object of a testamentary gift regardless of whether such rights belong to the inherited property.

Article 997 (1) If a testamentary gift, the object of which are rights that do not belong to the inherited property, has effect pursuant to the provision of the proviso to the preceding Article, the person with a duty of testamentary gift shall bear a duty to obtain those rights and transfer them to the testamentary donee.

(2) In the case referred to in the preceding paragraph, if the rights referred to in that paragraph cannot be obtained, or if obtaining them requires excessive expenses, a person with a duty of testamentary gift shall give compensation to the value of those rights; provided, however, that if the testator has indicated a particular intent in his/her will, that intent shall be complied with.

(Warranty Liability of Person Having Obligation for to Testamentary Gift for Unspecified Things)

Article 998 (1) In the case where a testamentary gift has as its object unspecified Things but a third party as a rightful claimant retakes them from a testamentary donee, a person having an obligation in relation to testamentary gift shall be liable under the same warranty with respect to those unspecified Things, just as a seller.

(2) In the case where a testamentary gift has as its object unspecified Things, if those goods are defective, a person having an obligation in relation to testamentary gift shall exchange them for Things that are not defective.

(Extension of Testamentary Gift over Right to Claim from Third Party)

Article 999 (1) If a testator has a right to claim compensation from a third party resulting from loss or alteration, or loss of possession, of the object of a testamentary gift, that right shall be presumed to have been an object of the testamentary gift.

(2) In the case of accession or mixture of the object of a testamentary gift with other Things, if a testator has become a sole owner or co-owner of a compound or mixture pursuant to the provisions of Articles 243 to 245 inclusive, that entire ownership, or share, shall be presumed to have been an object of the testamentary gift.

(Testamentary Gift of Property Subject to the Rights of Third party)

Article 1000 If Things or rights being the object of a testamentary gift were the object of the rights of a third party at the time of the testator's death, a testamentary donee may not demand a person having an obligation with respect to testamentary gift to extinguish the third party's rights; provided, however, that this shall not apply if the testator has indicated a contrary intent in his/her will.

(Extension of Testamentary Gift over Things Received for Satisfaction of Claim)

- Article 1001 (1) In the case where a claim is the object of a testamentary gift, if the testator has received performance for that claim and the received Things are already with the inherited property, those Things shall be presumed to have been an object of the testamentary gift.
- (2) In the case where money is the object of a claim which is the object of a testamentary gift, that money shall be presumed to have been an object of the testamentary gift even if there are insufficient funds equivalent to that claim in the inherited property.

(Testamentary Gift with Burden)

- Article 1002 (1) A person who has received a testamentary gift with burden shall bear a responsibility to perform the duties borne, limited to an amount not exceeding the object of the testamentary gift.
- (2) If a testamentary donee has renounced a testamentary gift with burden, the person who would have received gain from the discharge of burden may become a testamentary donee him/herself; provided that if the testator has indicated a particular intent in his/her will, that intent shall be complied with.

(Discharge of Testamentary Donee of Testamentary Gift with Burden)

- Article 1003 If the value of an object of a testamentary gift with burden is reduced due to the qualified acceptance of an heir, or a filing for recovery of legally reserved portion, a testamentary donee may avoid the duties borne from that testamentary gift, proportional to the reduction; provided, however, that if the testator has indicated a particular intent in his/her will, that intent shall be complied with.

## **Section 4 Execution of Will**

(Probate of Will)

- Article 1004 (1) A custodian of a will, after coming to know of the commencement of inheritance, shall without delay submit the will to the family court and apply for probate. In the case where there is no custodian of a will, the same shall apply after an heir discovers the will.
- (2) The provision of the preceding paragraph shall not apply to a will made by notarized document.
- (3) A will that has been sealed may not be opened unless in the family court in the attendance of an heir or his/her representative.

(Civil Fine)

Article 1005 A person who fails to submit a will pursuant to the provisions of the preceding Article, executes a will without passing through probate, or opens a sealed will in a place other than a family court shall be made subject to a civil fine of not more than 50,000 yen.

(Designation of Executor)

Article 1006 (1) A testator may, by will, designate one or several executors, or entrust that designation to a third party.

(2) A person who has been entrusted with the designation of an executor shall, without delay, make that designation and inform the heir(s) of the designation.

(3) If a person who has been entrusted with the designation of an executor intends to resign from that entrustment, he/she shall notify the heir(s) to that effect without delay.

(Commencement of Duties of Executor)

Article 1007 If an executor consents to taking office, he/she shall undertake his/her duties immediately.

(Notice of Taking Office to Executor)

Article 1008 An heir or other interested party may, having specified a reasonable period, make a demand to an executor to the effect that that he/she make a definite answer within that period as to whether he/she consents to taking office. In this case, if the executor does not make a definite answer to the heir within this period, he/she shall be deemed to have consented to taking office.

(Causes for Disqualification of Executor)

Article 1009 A minor or a bankrupt may not become an executor.

(Appointment of Executor)

Article 1010 If an executor does not exist, or the office becomes vacant, the family court may appoint an executor at the request of an interested party.

(Preparation of Inventory of Inherited Property)

Article 1011 (1) An executor shall, without delay, prepare an inventory of inherited property and deliver this to the heir(s).

(2) At the request of an heir, an executor shall prepare an inventory of inherited property in the heir's attendance, or have a notary public create the inventory.

(Rights and Duties of Executor)

Article 1012 (1) An executor shall have the rights and duties of administration of

inherited property and all other necessary acts for the execution of a will.  
(2) The provisions of Articles 644 to 647 inclusive and 650 shall apply mutatis mutandis to an executor.

(Prohibition of Interference with Execution of Will)

Article 1013 In the case where there is an executor, an heir may not make a disposition of inherited property or any other act that interferes with the execution of the will.

(Execution of Will concerning Specified Property)

Article 1014 In the case where a will concerns specified property in the inherited property, the provisions of Articles 1011 to 1013 inclusive shall only apply to that specified property.

(Status of Executor)

Article 1015 An executor shall be deemed the representative of the heir(s).

(Executor's Right to Appoint Subagent)

Article 1016 (1) An executor may not allow a third party to undertake the duties of an executor unless there are justifiable reasons; provided, however, that this shall not apply if the testator has indicated a contrary intent in his/her will.  
(2) In the case where an executor has allowed a third party to undertake the duties of an executor pursuant to the provision in the proviso to the preceding paragraph, the executor shall owe the responsibility referred to in Article 105 to the heir(s).

(Execution of Duties Where Two or More Executors)

Article 1017 (1) In the case where there are two or more executors, execution of their duties shall be decided by majority; provided, however, that this shall not apply if the testator has indicated a contrary intent in his/her will.  
(2) Despite the provision of the preceding paragraph, each executor may undertake an act of preservation.

(Remuneration of Executor)

Article 1018 (1) The family court may determine the remuneration of an executor according to the status of the inherited property and other circumstances; provided that this shall not apply in the case where a testator has specified remuneration in his/her will.  
(2) The provisions of paragraphs (2) and (3) of Article 648 shall apply mutatis mutandis to the case where an executor receives remuneration.

(Dismissal and Resignation of Executor)

Article 1019 (1) If an executor has failed to perform his/her duties, or if there is any other justifiable reason, an interested party may apply to the family court for the dismissal of that executor.

(2) An executor may resign from his or her duties with the permission of the family court if there is a justifiable reason.

(Mandate Provisions to be Applied Mutatis Mutandis)

Article 1020 The provisions of Article 654 and Article 655 shall apply mutatis mutandis to the case of termination of duties of an executor.

(Burden of Expenses Relating to Execution of Will)

Article 1021 Expenses relating to the execution of a will shall be borne by the inherited property; provided, however, that legally reserved portion may not be reduced by this.

## **Section 5 Revocation and Rescission of Will**

(Revocation of Will)

Article 1022 A testator may at any time revoke a will in whole or in part in compliance with the formalities for a will.

(Conflict between Previous and Later Will)

Article 1023 (1) If there is a conflict between a previous and later will, the later will shall be deemed as having revoked the previous will with respect to the part that is in conflict.

(2) The provision of the preceding paragraph shall apply mutatis mutandis to the case where a will conflicts with a disposition or other juristic act made while the testator was still alive.

(Destruction of Will or Things made the Object of Testamentary Gift)

Article 1024 If a testator intentionally destroys a will, this shall be deemed a revocation of the will with respect to the part that has been destroyed. The same shall apply if the testator has intentionally destroyed goods the object of a testamentary gift.

(Effect of Will That Has Been Revoked)

Article 1025 The effect of a will that has been revoked pursuant to the provisions of Articles 1022 to 1024 inclusive shall not be recovered even if the act of revocation is revoked, rescinded, or invalidated; provided, however, that this shall not apply in the case where the act was the result of fraud or duress.

(Prohibition of Waiver of Right to Revocation)

Article 1026 A testator may not waive the right to revoke a will.

(Rescission of Will concerning Testamentary Gift with Burden)

Article 1027 If a person who has received a testamentary gift with burden does not perform the duty imposed thereby, an heir may demand performance of that duty fixing a reasonable period to do so. In this case, if there is no performance within that period, an application may be made to the family court for rescission of the will concerning the testamentary gift with burden.

### **Chapter VIII Legally Reserved Portion**

(Entitlement and Amount of Legally Reserved Portion)

Article 1028 Heirs other than siblings shall receive, as legally reserved portion, an amount equivalent to the ratio prescribed in each of the following items in accordance with the divisions listed therein:

- (i) in the case where only lineal ascendants are heirs, one third of the decedent's property;
- (ii) in cases other than that referred to in the preceding item (i), one half of the decedent's property.

(Calculation of Legally Reserved Portion)

Article 1029 (1) Total legally reserved portion shall be calculated as the value of any gifts made by the decedent added to the value of the property held by the decedent at the time of commencement of inheritance minus the entire amount of obligations.

(2) The determination of the value of conditional rights or rights of an uncertain duration shall be made in accordance with an evaluation by an appraiser appointed by the family court.

Article 1030 Only a gift made within one year before the commencement of inheritance shall be included in the amount calculated pursuant to the provisions of the preceding Article. A gift made before one year prior to commencement shall be included in the amount calculated pursuant to the provisions of the preceding Article if it was made with the knowledge of both parties that it would cause harm to a claimant for legally reserved portion.

(Claim for Abatement of Gift or Testamentary Gift)

Article 1031 A claimant for legally reserved portion, or his/her heir, may claim for abatement of a testamentary gift, or gift referred to in the preceding Article,



to the extent necessary to preserve that legally reserved portion.

(Partial Abatement of Gifts and Testamentary Gifts of Conditional Rights etc.)

Article 1032 In the case where a gift or testamentary gift has as its object a right with conditions attached or a right of uncertain duration, if that gift or testamentary gift is to be partially abated, a claimant for legally reserved portion shall, in accordance with the amount determined by the provision of paragraph (2) of Article 1029, deliver the remainder to the beneficiary or donee immediately.

(Order of Abatement of Gifts and Testamentary Gifts)

Article 1033 A gift may not be abated until after the abatement of a testamentary gift.

(Proportion of Abatement of Testamentary Gift)

Article 1034 A testamentary gift shall be abated proportionally according to the value of the object of that testamentary gift; provided, however, that if the testator has indicated a particular intent in his/her will, that intent shall be complied with.

(Order of Abatement of Gifts)

Article 1035 A later gift shall be abated before an earlier gift.

(Return of Fruits of Gift by Beneficiary)

Article 1036 A beneficiary, in addition to the property to be returned, shall return the fruits of that property obtained after the day a claim for abatement was made.

(Burden of Loss Due to Insolvency of Beneficiary)

Article 1037 The burden of loss arising from the insolvency of a beneficiary subject to abatement shall lie with the claimant for legally reserved portion.

(Claim for Abatement of Gift with Burden)

Article 1038 A claim for abatement may be made regarding a gift with a burden for the amount of the object of that gift minus the amount of the burden.

(Act for Value with Inadequate Consideration)

Article 1039 An act for value with inadequate consideration shall be deemed a gift if both parties had knowledge that it would prejudice a claimant for legally reserved portion. In this case, if a claimant for legally reserved portion claims for abatement of the gift, he/she shall reimburse the consideration given for the

act.

(Object of Gift Assigned by Beneficiary etc.)

Article 1040 (1) If a beneficiary of gift subject to abatement has assigned the object of a gift to another person, he/she must compensate that amount to a claimant for legally reserved portion; provided, however, that if the person who received the object of the gift had knowledge at the time of assignment that this would prejudice a claimant for legally reserved portion, a claimant for legally reserved portion may claim for abatement of the object of the gift.

(2) The provision of the preceding paragraph shall apply *mutatis mutandis* to the case a beneficiary establishes rights with regard to the object of a gift.

(Compensation by Value to Claimant for Statutory Reserved Portion)

Article 1041 (1) A beneficiary or donee may avoid a duty to refund by compensating a claimant to statutory reserved portion the value of the object of the gift or testamentary gift, to the extent subject to abatement.

(2) The provision of the preceding paragraph shall apply *mutatis mutandis* to the case referred to in the proviso to paragraph (1) of the preceding Article.

(Limitation on Period for Claim for Abatement)

Article 1042 If a claimant for legally reserved portion, within one year from the time of knowing of commencement of inheritance and the existence of a gift or testamentary gift which may be abated, does not exercise the claim of abatement, it shall be extinguished by prescription. This shall also apply if ten years have passed since the time of commencement of inheritance.

(Renunciation of Legally Reserved Portion)

Article 1043 (1) Renunciation of legally reserved portion before the commencement of inheritance shall only have effect upon receiving permission from the family court.

(2) The renunciation of legally reserved portion by one joint heir shall have no effect upon the legally reserved portion of another joint heir.

(Provisions regarding Heirs per Stirpes and Share in Inheritance to be Applied *Mutatis Mutandis*)

Article 1044 The provisions of paragraph (2) and paragraph (3) of Article 887, Article 900, Article 901, Article 903, and Article 904 shall apply *mutatis mutandis* to legally reserved portion.