

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

Civil Affairs Bureau, Ministry of Justice

Review Process Timeline

Sept. 2016	Legislative Council asked to consult by Minister of Justice	June, 2018	Compilation of additional draft proposal (Hague Convention Implementation Act)
Nov. 2016	Beginning of investigation and deliberations in Legislative Council committee meetings	Oct. 4, 2018	Finalization/recommendation of outline
Sept. 2017	Compilation of interim draft proposal	Feb. 19, 2019	Cabinet decision/submission to Diet
		May 10, 2019	Enactment (Promulgation on May 17, 2019)

Section 1

Improving the Effectiveness of the System for Discovery of Obligor Assets [Amendment of the Civil Execution Act]

Background

- For a petition for compulsory execution to be filed, the assets of the obligor that would be subject to compulsory execution need to be identified.
- In 2003, *asset discovery procedures* were established as procedures that allow the obligee to acquire information about the assets of an obligor through the obligor's own statements.
 - ⇒ However, with only around 1,000 cases a year, *asset discovery procedures* are not being used very frequently. It has been pointed out that the system for discovery of obligor's assets needs to be made more effective.

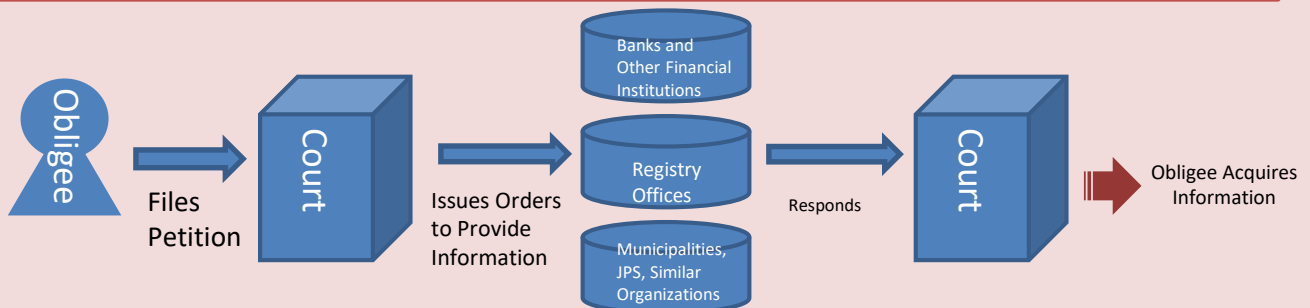
Issues with the Existing System/Direction of the Revisions

Section 1-1

Establishment of New Procedures for Acquiring Information from Third Parties Other Than the Obligor

[Overview of the New System]

- ★ Information about (1) claims to money in deposits and savings, and about (2) listed shares, JGBs, and similar assets will be acquired from financial institutions. (banks, credit unions, workers' credit unions, credit cooperatives, agricultural cooperatives, securities firms, and others) [New Civil Execution Act, Art. 207]
 - ★ Information about (3) land and buildings will be acquired from registry offices. [New Civil Execution Act, Art. 205]
 - ★ Information about (4) claims to a salary (place of employment) will be acquired from municipalities, Japan Pension Service, and similar organizations. [New Civil Execution Act, Art. 206]
- * Only an obligee who has a **claim to child support or similar maintenance** or a **claim to damages for wrongful death or trespass to the person** can file a petition initiating procedures to acquire information about an obligor's claim to a salary.

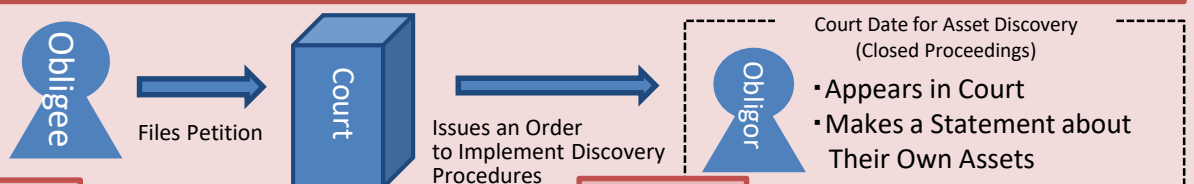


Section 1-2

Revision of Existing Asset Discovery Procedures

[Overview of the Revisions]

- ★ Existing asset discovery procedures will be made easier to use and more effective.



Revision (1)

Under the existing system, only an obligee with a final and binding judgment or its equivalent has the right to petition for discovery.

↓

The scope of persons with the right to file a petition has been expanded, meaning that those who have obtained a **judgment to which a declaration of provisional execution has been attached**; those to whom money (such as **child support**) is to be paid as established in a **notarial instrument**; and other such persons will also be able to use these procedures. [New Civil Execution Act, Art. 197]

Revision (2)

Under the existing system, penal provisions addressing failure to appear and false statements by the obligor are weak (these are punishable by a civil fine of no more than 300,000 yen).

↓

Things such as failure to appear will be subject to **criminal sanction** (imprisonment for no more than six months or a criminal fine of no more than 500,000 yen), making discovery procedures more effective. [New Civil Execution Act, Art. 213]

Background

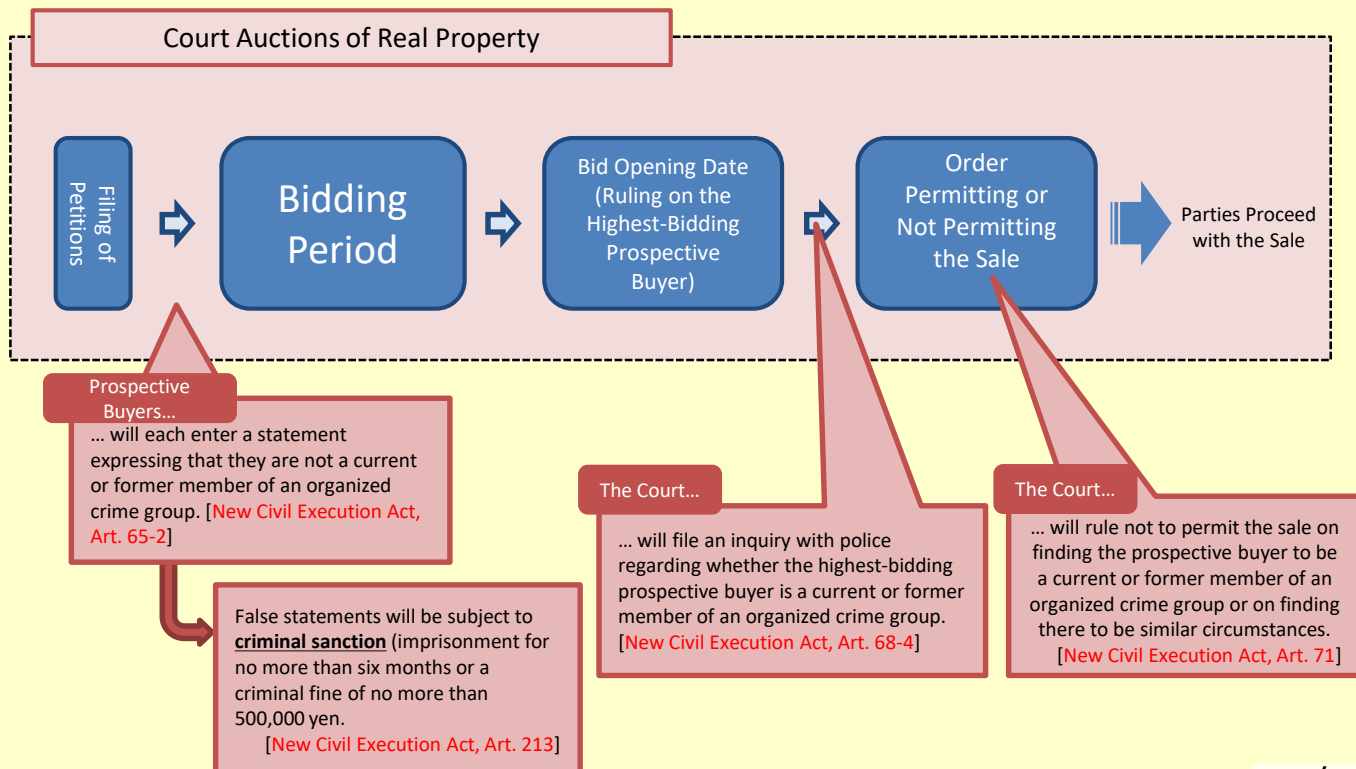
- The public and private sectors have been working to exclude organized crime groups from public projects and business activities, and continue to see progress in their efforts to exclude these groups from private-sector real property transactions.
- No provisions of the existing Civil Execution Act specifically restrict current and former members of organized crime groups from buying real property at auction.
 - ⇒ It has been discovered that approximately 200 of the properties used as offices by organized crime groups have a history of sale at auction (out of approximately 1700 such locations nationwide). [National Police Agency investigation]
- The strategy for Making Japan the Safest Country in the World was established (through a December 2013 Cabinet Decision).
 - ⇒ “We must look into measures that will prevent organized crime groups from participating in real property auctions and public sales.”
- The courts handle approximately 23,000 real property auctions every year (this figure is from 2016).

Issues with the Existing System/Direction of the Revisions

[Overview of the New System]

- ★ At the decision of the court, **current members of organized crime groups, former members of organized crime groups, and corporations with officers that are current or former members of organized crime groups will be restricted from becoming buyers at auction.**
 - * *former member of an organized crime group*: a person who has ceased to be a member of an organized crime group within the last five years
- ★ Persons who are not current or former members of organized crime groups will **also be restricted from offering to buy real property at the direction of a current or former member of an organized crime group.**
 - For example, even if the buyer is not personally a member of an organized crime group, a purchase will also be restricted if a member of an organized crime group has allowed or led the buyer to buy the piece of real property by providing them with the funds for the purchase or in other ways.

Court Auctions of Real Property



Background

- Compulsory Execution of Orders to Handover Children in Japan: As existing law relating to civil execution includes no express provisions on this matter, the provisions relating to movable property are being applied by analogy.
 - ⇒ The rules for this need to be made clarified from perspectives such as according consideration to the interests of the child while ensuring the effectiveness of court judgments.
- Compulsory Execution of Orders to Return Children to Foreign Countries: The rules for this need to be revised from the same perspectives as above.
 - * The Hague Convention prescribes that the most expeditious procedure among those that are available is to be used.
- There are about 100 cases a year involving compulsory execution of orders to hand over children in Japan (and one or two cases a year involving execution by substitute of return of children to foreign countries).

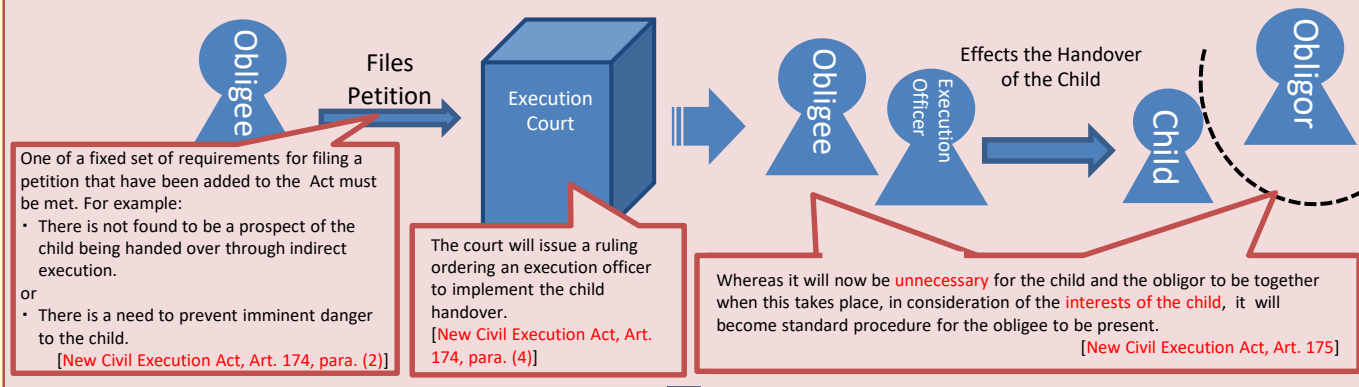
Issues with the Existing System/Direction of the Revisions

Section 3-1

Achieving Clarity in the Rules for Compulsory Execution of Orders to Handover Children in Japan [Amendment of the Civil Execution Act]

[Overview of the New System]

- ★ The execution court, as the execution agency, will order the court execution officers to implement child handovers.
- ★ An execution officer will travel to the site for execution, take the child out of the obligor's custody, and hand the child over to the obligee.

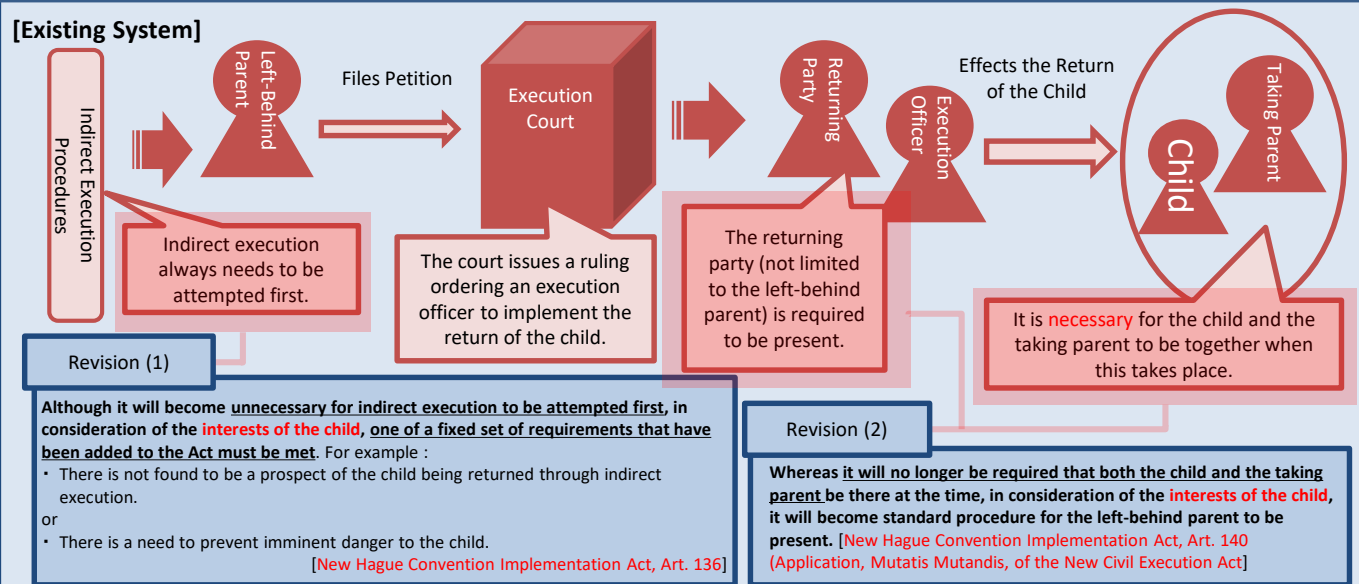


Similar Provisions Have Been Adopted in the Hague Convention Implementation Act

Section 3-2

Revising the Rules for Compulsory Execution of Orders to Return Children to Foreign Countries [Amendment of the Hague Convention Implementation Act]

[Existing System]



* **indirect execution**: a means of execution in which the execution court attempts to compel performance by the obligor through psychological coercion, by ordering the obligor to pay money.

Section 4-1

Revision of Rules Involving Claims Whose Seizure Is Prohibited

[Background]

- In order to prevent obligors from falling into financial hardship due to the seizure of their claims, there is a system in the existing Act that allows obligors to file for the revocation of orders of seizure (that is, **a system to change the scope of claims whose seizure is prohibited**).
- However, the system is **not currently being used** very frequently, for reasons including that: (1) obligors are not sufficiently aware of its existence; and (2) the obligees who have effected the seizures tend to end up collecting on the claims during the time that the obligors are preparing their petitions.

[Overview of Revisions]

- ★ Court clerks **will tell** obligors that there is a system to change the scope of claims whose seizure is prohibited. [New Civil Execution Act, Art. 145, para. (4)]
- ★ **The period for obligors to prepare their petitions** to change the scope of claims whose seizure is prohibited **will be extended from one week to four weeks** (during which time claims cannot be collected upon), in situations in which the thing subject to seizure is something such as wages. [New Civil Execution Act, Art. 155, para. (2)]

Section 4-2

Revision of Rules Involving the End of an Execution Against Claims

[Overview of Revisions]

- ★ **A mechanism** has been introduced to allow for a ruling by the execution court **to put an end to cases** involving an execution against a claim in the event that the obligee has shown a lack of diligence in leaving the case unresolved over a lengthy period (two years or more) without filing a collection notice or taking other such action. [New Civil Execution Act, Art. 155, para. (5) to (8)]

Section 5

Effective Date [for All of Sections 1 to 4]

- ★ The relevant provisions come into force on April 01, 2020, as specified by Cabinet Order (within a period of one year from the day of promulgation (May 17, 2019)). [Article 1 of the Supplementary Provisions]
- ★ The procedures referred to in **Section 1-1** that concern the acquisition of information on the real property of the obligor become applicable on the date specified by Cabinet Order, within a period of two years from the day of promulgation (May 17, 2019). [Article 5 of the Supplementary Provisions]

民事執行法及び国際的な子の奪取の民事上の側面に関する条約の実施に関する法律の一部を改正する法律の概要

法務省民事局

検討の経過

H28. 9	法務大臣から法制審議会へ諮問	H30. 6	追加試案(ハーグ条約実施法)の取りまとめ
H28. 11~	法制審部会での調査審議開始	H30. 10. 4	要綱の取りまとめ・答申
H29. 9	中間試案の取りまとめ	H31. 2. 19	閣議決定・国会提出
		R1. 5. 10	成立 (R1. 5. 17公布)

第1 債務者財産の開示制度の実効性の向上【民事執行法の改正】

背景

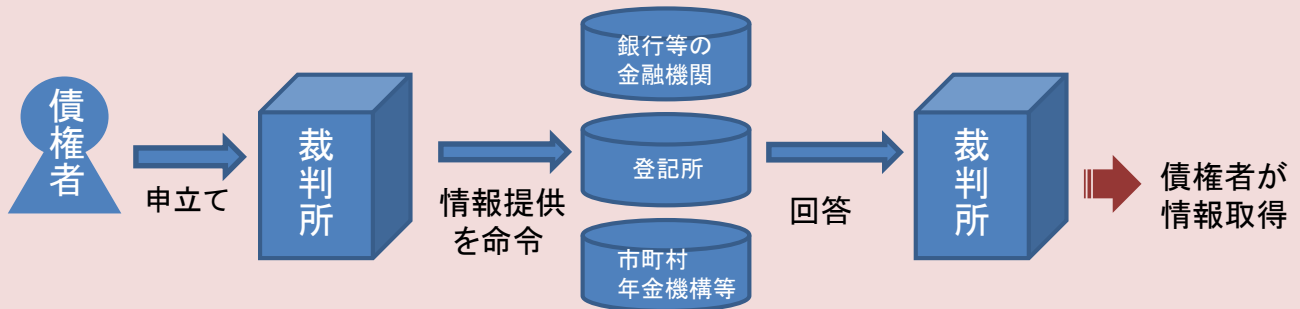
- 強制執行の申立てには、執行の対象となる債務者の財産を特定することが必要
- 平成15年に、債務者の財産に関する情報を債務者自身の陳述により取得する手続として、「財産開示手続」を創設
 - ⇒ しかし、「財産開示手続」の利用実績は年間1000件前後と低調
 - ⇒ 債務者財産の開示制度の実効性を向上させる必要があるとの指摘

現行制度の課題と見直しの方向

第1-1 債務者以外の第三者からの情報取得手続を新設

【新制度の概要】

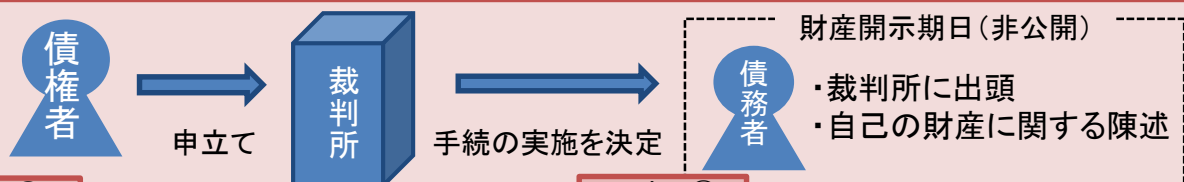
- ★金融機関から、①預貯金債権や②上場株式、国債等に関する情報を取得 新旧p21
(銀行、信金、労金、信組、農協、証券会社等) 【新民執法207条】
 - ★登記所から、③土地・建物に関する情報を取得 新旧p18
【新民執法205条】
 - ★市町村、日本年金機構等から、④給与債権(勤務先)に関する情報を取得 新旧p20
【新民執法206条】
- ※ 給与債権に関する情報取得手続は、養育費等の債権や生命・身体への侵害による損害賠償請求権を有する債権者のみが申立て可能



第1-2 現行の財産開示手続の見直し

【見直しの概要】

- ★現行の財産開示手続をより利用しやすく実効的なものにする



見直し①

現行制度では、手続の申立権者が、確定判決等を有する債権者に限定

申立権者の範囲を拡大して、仮執行宣言付判決を得た者や、公正証書により金銭(例えば養育費など)の支払を取り決めた者等も利用可能にする
【新民執法197条】 新旧p16

見直し②

現行制度では、債務者の不出頭や虚偽陳述に対する罰則(30万円以下の過料)が弱い

不出頭等には刑事罰(6か月以下の懲役又は50万円以下の罰金)による制裁を科して、手続の実効性を向上させる【新民執法213条】 新旧p25

背景

- 公共事業や企業活動等からの暴力団排除の取組が官民を挙げて行われており、民間の不動産取引でも暴力団排除の取組が進展
- 現行の民事執行法において暴力団員等の買受け自体を制限する規定なし
⇒約200の暴力団事務所の物件が不動産競売の経歴を有していることが判明(全国の暴力団事務所は約1700箇所)【警察庁調べ】
- 「世界一安全な日本」創造戦略(H25.12閣議決定)
⇒「不動産競売・公売への暴力団の参加防止等の方策について検討する」
- 不動産競売事件は年約2万3000件(平成28年)

現行制度の課題と見直しの方向

【新制度の概要】

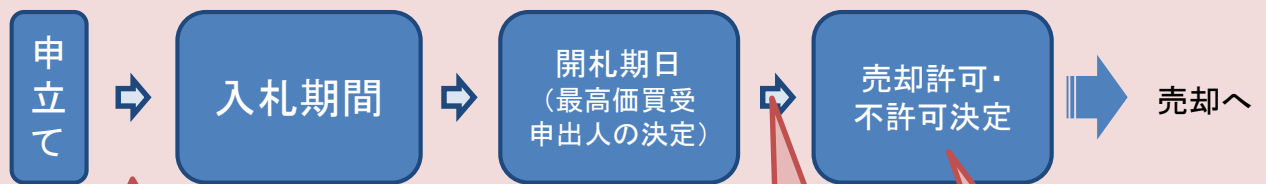
★裁判所の判断により**暴力団員、元暴力団員、法人で役員の中に暴力団員等がいるもの等が買受人となることを制限**

(※)「元暴力団員」：暴力団員でなくなってから5年を経過しない者

★暴力団員等でない者が、**暴力団員等の指示に基づき買受けの申出をすることも制限**

→ 例えば、買受人自身は暴力団員ではなかったとしても、暴力団員が買受人に資金を渡すなどして買受けをさせていた場合も、買受けを制限

裁判所における不動産競売の手続



買受申出人

暴力団員等に該当しないこと等を陳述
【新民執法65条の2】

新旧p1

虚偽の陳述には刑事罰(6か月以下の懲役又は50万円以下の罰金)による制裁

新旧p25

【新民執法213条】

裁判所

最高価買受申出人が暴力団員等に該当するかどうかを警察へ照会

【新民執法68条の4】

新旧p2

裁判所

暴力団員等に該当すること等が認められれば売却不許可決定

【新民執法71条】

新旧p3

第3

国内の子の引渡しの強制執行に関する規律の明確化 国際的な子の返還の強制執行に関する規律の見直し

背景

- 国内の子の引渡しの強制執行: 現行法において明文なく、動産に関する規定を類推適用
⇒ 裁判の実効性を確保しつつ、子の利益に配慮する等の観点から、規律を明確化する必要あり
- 国際的な子の返還の強制執行: 国内と同様の観点から規律を整備する必要あり
※ ハーグ条約上、利用可能な手続のうち最も迅速な手続を用いるとの規定あり
- 国内の子の引渡しの強制執行は年間100件程度(国際的な子の返還の代替執行は年間1, 2件程度)

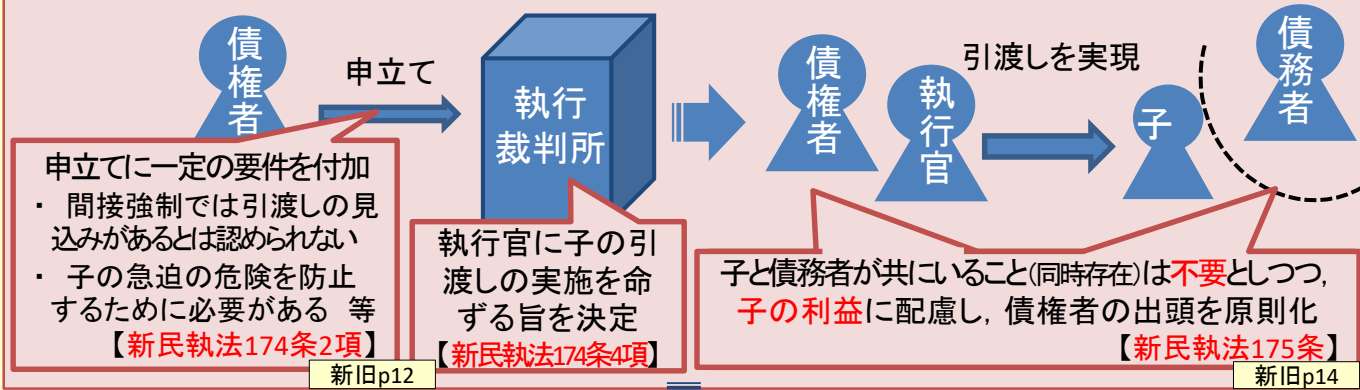
現行制度の課題と見直しの方向

第3-1

国内の子の引渡しの強制執行に関する規律の明確化 【民事執行法の改正】

【新制度の概要】

- ★執行裁判所が執行機関となり、執行官に子の引渡しの実施を命ずる旨を決定
- ★執行官が執行場所に赴き、債務者による子の監護を解いて債権者に引渡し

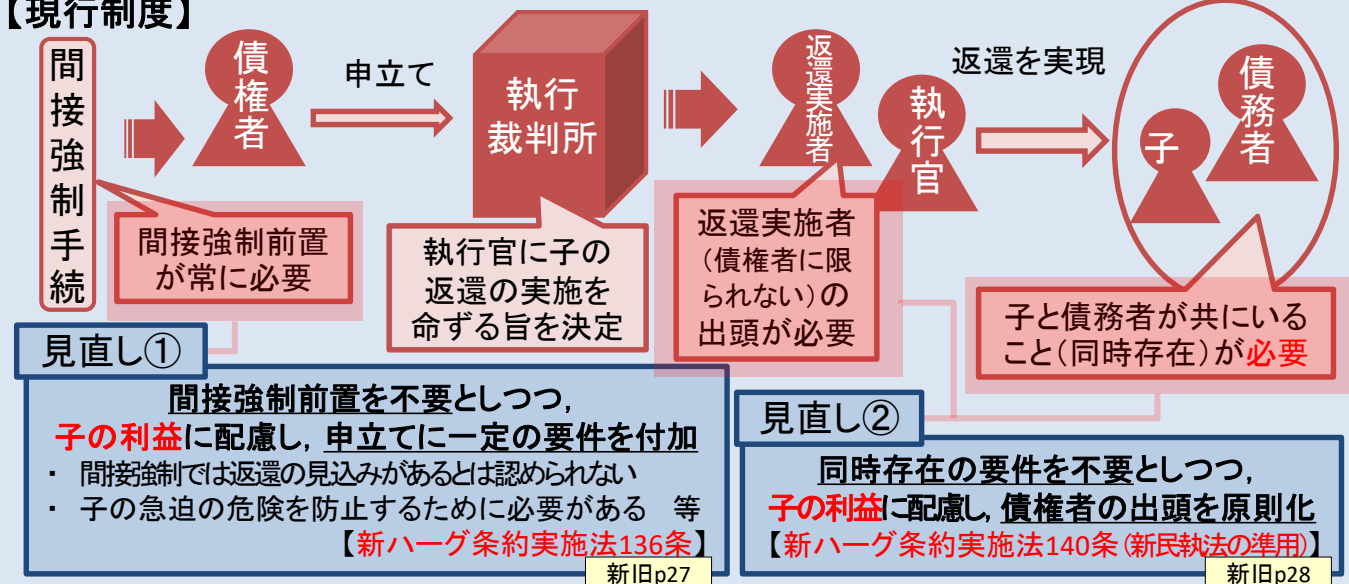


ハーグ条約実施法にも 同様の規律を採用

第3-2

国際的な子の返還の強制執行に関する規律の見直し 【ハーグ条約実施法の改正】

【現行制度】



(※)間接強制: 執行裁判所が、債務者に対して金銭の支払を命ずることによって、心理的な強制を与え、債務者に履行を強いる強制執行の方法

第4

民事執行法のその他の見直し 【民事執行法の改正】

第4-1 差押禁止債権をめぐる規律の見直し

【背景】

- 債権の差押えにより債務者の生活が困窮することを防止するため、現行法には、債務者が、差押命令の取消しを求める制度（**差押禁止債権の範囲変更の制度**）がある。
- しかし、現状では、①債務者がこの制度の存在を十分に認識していない、②債務者が申立ての準備をしている間に差押債権者によって差押債権が取り立てられてしまう、などの理由により、この制度があまり活用されていない。

【見直しの概要】

- ★ 差押禁止債権の範囲変更の制度の存在を、裁判所書記官が債務者に対して**教示** 新旧p4
【**新民執法145条4項**】
- ★ 給与等が差し押さえられた場面において、債務者が差押禁止債権の範囲変更の申立てのための準備期間を1週間から4週間に伸長（この準備期間中は取立てができない） 新旧p5
【**新民執法155条2項**】

第4-2 債権執行事件の終了をめぐる規律の見直し

【見直しの概要】

- ★ 債権執行事件において、債権者が取立ての届出等をせずに長期間（2年以上）にわたって漫然と事件を放置し続けている場面において、執行裁判所の決定により事件を終了させるための仕組みを導入【**新民執法155条5項～8項**】 新旧p5

第5 施行日 【第1～第4全体】

- ★ 公布の日（令和元年5月17日）から1年を超えない範囲内において政令で定める日（令和2年4月1日）から施行【**附則1条**】 法律p28

- ★ **第1-1**のうち、登記所から債務者の不動産に関する情報を取得する手続は、公布の日（令和元年5月17日）から2年を超えない範囲内で政令で定める日から運用開始 法律p31
【**附則5条**】