

# Non-Contentious Case Procedures Act

(Act No. 51 of May 25, 2011)

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**Part I General Provisions**

(Purpose)

Article 1 This Act provides for general rules concerning proceedings of non-contentious cases as well as for proceedings of non-contentious civil cases, public notification cases, and civil fine cases.

(Rules of the Supreme Court)

Article 2 Beyond what is provided for in this Act, the necessary particulars concerning proceedings of non-contentious cases are prescribed by Rules of the Supreme Court.

**Part II General Rules on Proceedings of Non-Contentious Cases**

**Chapter I General Provisions**

(Scope of Application of Part II)

Article 3 Proceedings of non-contentious cases are governed by the provisions of this Part in addition to the provisions of the following Part through Part V and of other laws and regulations.

(Responsibilities of Courts and Parties)

Article 4 Courts must endeavor to ensure that proceedings of non-contentious cases are carried out fairly and expeditiously, and parties must conduct proceedings of non-contentious cases in good faith.

**Chapter II Procedures Common to Non-Contentious Cases**

**Section 1 Jurisdiction**

(Courts with Jurisdiction to be Determined by Place of Domicile)

Article 5 (1) With regard to non-contentious cases for which jurisdiction is to be determined by the place of domicile of a person, if the person has no domicile in

Japan or the person's domicile is unknown, the case is subject to the jurisdiction of the court which has jurisdiction over the person's place of residence, and if the person has no residence in Japan or the person's residence is unknown, the case is subject to the jurisdiction of the court which has jurisdiction over the person's last place of domicile.

- (2) With regard to non-contentious cases for which jurisdiction is to be determined by the place of domicile of a corporation or any other incorporated association or foundation (excluding a foreign incorporated association or foundation), if the corporation, incorporated association or foundation has no domicile in Japan or its domicile is unknown, the case is subject to the jurisdiction of the court which has jurisdiction over the place of domicile of its representative or other main person in charge of its business.
- (3) With regard to non-contentious cases for which jurisdiction is to be determined by the place of domicile of a foreign incorporated association or foundation, the case is subject to the jurisdiction of the court which has jurisdiction over the location of the principal office or business office of the foreign incorporated association or foundation in Japan, and if it has no office or business office in Japan, the case is subject to the jurisdiction of the court which has jurisdiction over the place of domicile of its representative or other main person in charge of its business in Japan.

#### (Preferential Jurisdiction)

Article 6 If two or more courts have jurisdiction over a non-contentious case pursuant to other provisions of this Act or of other laws and regulations, the case is subject to the jurisdiction of the court that first received a petition or commenced proceedings by its own authority; provided, however, that if the court finds it to be necessary in avoiding a delay in proceedings of the non-contentious case, or finds it to be appropriate for any other reason, it may, upon petition or by its own authority, transfer the whole or part of the non-contentious case to another court with jurisdiction.

#### (Designation of a Court with Jurisdiction)

- Article 7 (1) If a court with jurisdiction is unable to exercise its jurisdiction de jure or de facto, the immediately higher court will determine a court with jurisdiction upon petition or by its own authority.
- (2) If a court with jurisdiction cannot be determined since the jurisdictional district of the courts is not clear, the immediately higher court common to the relevant courts will determine a court with jurisdiction upon petition or by its own authority.
  - (3) No appeal may be entered against a judicial decision to determine a court with jurisdiction pursuant to the preceding two paragraphs.

(4) An immediate appeal may be filed against a judicial decision to dismiss the petition set forth in paragraph (1) or paragraph (2).

(Special Provisions for Courts with Jurisdiction)

Article 8 If jurisdiction over a non-contentious case cannot be determined pursuant to other provisions of this Act or other laws and regulations, the non-contentious case is subject to the jurisdiction of the court which has jurisdiction over the location of the property involved in the matter for which a judicial decision is sought, or over the location specified by the Rules of the Supreme Court.

(Base Time for Determining Jurisdiction)

Article 9 The jurisdiction of a court is determined on the basis of the time when a petition for a non-contentious case was filed or when a court commenced proceedings of a non-contentious case by its own authority.

(Mutatis Mutandis Application of the Code of Civil Procedure Concerning Transfers)

Article 10 (1) The provisions of Article 16 (excluding the proviso to paragraph (2)) and Article 18, Article 21, and Article 22 of the Code of Civil Procedure (Act No. 109 of 1996) apply mutatis mutandis to the transfer, etc. of non-contentious cases.

(2) An immediate appeal against a judicial decision of transfer of a non-contentious case has the effect of a stay of execution.

## **Section 2 Disqualification of and Challenge to Court Officials**

(Disqualification of a Judge)

Article 11 (1) In the following cases, a judge will be disqualified from performing their duties; provided, however, that in the case set forth in item (vi), this does not preclude a judge from performing their duties as a commissioned judge based on a commission from another court:

- (i) when a judge or their spouse or person who was their spouse is a party to the case or any other person who is to be subject to a judicial decision (meaning a person who is to be subject to a judicial decision when a final order is made (excluding a final order to dismiss a petition); the same applies hereinafter), or is related to such party or person in relation to the case as a joint obligee, joint obligor or obligor for redemption;
- (ii) when a judge is or was a relative by blood within the fourth degree of kinship, or a relative through marriage within the third degree of kinship, or a cohabiting relative with a party to the case or any other person who is to

- subject to a judicial decision;
  - (iii) when a judge is a guardian, supervisor of guardian, curator, supervisor of curator, assistant, or supervisor of assistant of a party to the case or any other person who is to be subject to a judicial decision;
  - (iv) when a judge has served as a witness or expert witness, or is requested to attend a hearing in relation to the case;
  - (v) when a judge is or was an agent or assistant in court of a party to the case or any other person who is to be subject to a judicial decision in relation to the case; and
  - (vi) when a judge has participated in making an arbitral award in relation to the case or participated in making a judicial decision in the prior instance against which an appeal has been entered.
- (2) If any of the grounds for disqualification prescribed in the preceding paragraph exist, the court makes a judicial decision of disqualification upon petition or by its own authority.

(Challenging a Judge)

- Article 12 (1) If there are circumstances with regard to a judge that prejudice the impartiality of a judicial decision, a party may challenge the judge.
- (2) If a party has made statements on a case in the presence of a judge, the party may not challenge that judge; provided, however, that this does not apply when the party did not know of the existence of grounds for a challenge or when any grounds for a challenge occurred thereafter.

(Judicial Decision of Disqualification or Challenge, and Stay of Proceedings)

- Article 13 (1) A judicial decision of the disqualification of or a challenge to a judge who is a member of a panel or a single judge of a district court is made by the court to which the judge belongs, and a judicial decision of the disqualification of or a challenge to a judge of a summary court is made by the district court which has jurisdiction over the location of the summary court.
- (2) A judicial decision set forth in the preceding paragraph at a district court is made by a panel.
- (3) A judge may not participate in making a judicial decision on the disqualification of or a challenge to themselves.
- (4) When a petition for disqualification or challenge is filed, the proceedings of the non-contentious case must be stayed until a judicial decision on the petition becomes final and binding; provided, however, that this does not apply to urgent actions.
- (5) The provisions of paragraph (3) do not apply when making a judicial decision to dismiss a petition for a challenge on any of the following grounds:
- (i) when it is clear that the petition for a challenge is filed merely for the

- purpose of delaying the proceedings of the non-contentious case;
- (ii) when the challenge is in violation of paragraph (2) of the preceding Article;
- or
- (iii) when the challenge is in violation of a procedure specified by the Rules of the Supreme Court.
- (6) Notwithstanding the provisions of paragraph (1) and paragraph (2), the judicial decision set forth in the preceding paragraph may be made by an authorized judge, etc., (meaning an authorized judge, a commissioned judge, or a judge of a district court or a judge of a summary court handling a non-contentious case; the same applies in the proviso to paragraph (3) of the following Article) who has been challenged.
- (7) When the judicial decision set forth in paragraph (5) is made, the proceedings of a non-contentious case are not stayed, notwithstanding the provisions of the main clause of paragraph (4).
- (8) No appeal may be entered against a judicial decision finding that the disqualification or challenge is well-grounded.
- (9) An immediate appeal may be filed against a judicial decision to dismiss a petition for a disqualification or challenge.

(Disqualification of and Challenge to a Court Clerk)

- Article 14 (1) The provisions of Article 11, Article 12, and paragraph (3), paragraph (5), paragraph (8), and paragraph (9) of the preceding Article apply *mutatis mutandis* to the disqualification of and a challenge to a court clerk.
- (2) When a petition for the disqualification of or a challenge to a court clerk is filed, the court clerk may not participate in the non-contentious case pertaining to the petition until a judicial decision on the petition becomes final and binding; provided, however, that this does not apply if a judicial decision to dismiss a petition for a challenge is made on any of the grounds set forth in the items of paragraph (5) of the preceding Article as applied *mutatis mutandis* pursuant to the preceding paragraph.
- (3) A judicial decision of the disqualification of or a challenge to a court clerk is made by the court to which the court clerk belongs; provided, however, that the judicial decision set forth in the proviso to the preceding paragraph may be made by an authorized judge, etc., (authorized judge or commissioned judge may make such a decision only when a petition for a challenge is filed to a court clerk who is to attend the proceedings handled by the judge).

(Disqualification of and Challenge to a Technical Advisor)

- Article 15 The provisions of Article 11, Article 12, Article 13, paragraph (8) and paragraph (9), and paragraph (2) and paragraph (3) of the preceding Article apply *mutatis mutandis* to the disqualification of and a challenge to a technical

advisor in the proceedings of non-contentious cases. In this case, the phrase "the items of paragraph (5) of the preceding Article as applied mutatis mutandis pursuant to the preceding paragraph" in the proviso to paragraph (2) of that Article is deemed to be replaced with "items of Article 13, paragraph (5)."

### **Section 3 Capacity to Be a Party and Capacity to Perform Procedural Acts**

(Principles for the Capacity to Be a Party and Capacity to Perform Procedural Acts)

Article 16 (1) The provisions of Article 28, Article 29, Article 31, Article 33, and Article 34, paragraph (1) and paragraph (2) of the Code of Civil Procedure apply mutatis mutandis to the capacity to be a party, the capacity to perform procedural acts in proceedings of non-contentious cases (hereinafter referred to as the "capacity to perform procedural acts" in this paragraph and Article 74, paragraph (1)), the statutory representation of a person without the capacity to perform procedural acts, and the delegation of powers necessary for performing procedural acts.

(2) In order for a person under curatorship, a person under assistance (limited to a person who is required to obtain consent from their assistant to perform procedural acts; the same applies in the following paragraph) or a guardian or any other statutory agent to perform procedural acts for a petition for a non-contentious case or an appeal filed by a person other than themselves, the persons are not required to obtain consent or delegation of powers from the curator or supervisor of the curator, assistant or supervisor of the assistant, or supervisor of the guardian. The same applies when proceedings are commenced ex officio.

(3) In order for a person under curatorship, a person under assistance or a guardian or any other statutory agent to perform the following procedural acts, those persons must obtain special delegation of powers:

(i) withdrawal of a petition for a non-contentious case or entering into a settlement; or

(ii) withdrawal of an appeal against or objection to a final order, or withdrawal of the petition set forth in Article 77, paragraph (2).

(Special Agent)

Article 17 (1) When a minor or adult ward has no statutory agent or their statutory agent is unable to exercise the authority of representation, and when this is likely to delay the proceedings of the non-contentious case and thereby cause damage, the presiding judge may appoint a special agent upon the

petition of an interested party or by their own authority.

- (2) A judicial decision of the appointment of a special agent is made based on a prima facie showing.
- (3) The court may replace a special agent with another at any time.
- (4) In order to perform procedural acts, a special agent must have the same delegation of powers as a guardian.
- (5) An immediate appeal may be filed against a judicial decision to dismiss the petition set forth in paragraph (1).

(Notice of Extinction of Authority of Statutory Representation)

Article 18 The extinction of the authority of statutory representation does not become effective unless the principal or their agent gives notice to the court to that effect.

(Mutatis Mutandis Application to a Representative of Corporations)

Article 19 The provisions of this Act concerning statutory representation and the statutory agent apply mutatis mutandis to the representative of a corporation and the representative or administrator of an unincorporated association or foundation that has the capacity to be a party.

#### **Section 4 Intervention**

(Intervention as a Party)

- Article 20 (1) A person who is eligible to be a party may intervene as a party in the proceedings of a non-contentious case.
- (2) The application for intervention under the preceding paragraph (referred to as "intervention as a party" in the following paragraph) must be filed by means of a document stating the purpose of and reasons for intervention.
  - (3) An immediate appeal may be filed against a judicial decision to dismiss an application for intervention as a party.

(Intervention as an Interested Party)

- Article 21 (1) A person who is to be subject to a judicial decision may intervene in proceedings of a non-contentious case.
- (2) A person other than a person who is to be subject to a judicial decision, who will be directly affected by the outcome of a judicial decision or who is eligible to be a party, may intervene in proceedings of a non-contentious case with the permission of the court.
  - (3) The provisions of paragraph (2) of the preceding Article apply mutatis mutandis to an application for intervention under paragraph (1) and a petition for permission for intervention under the preceding paragraph.



- (4) An immediate appeal may be filed against a judicial decision to dismiss an application for intervention filed under paragraph (1).
- (5) A person who has intervened in proceedings of a non-contentious case pursuant to the provisions of paragraph (1) or (2) (hereinafter referred to as an "interested party intervenor") may perform the procedural acts that may be performed by a party (excluding the withdrawal of and amendment to a petition for a non-contentious case and an appeal against a judicial decision and the withdrawal of an objection to a disposition by a court clerk); provided, however, that with regard to the filing of an appeal against a judicial decision and an objection to a disposition by a court clerk, the interested party intervenor may perform the act only when they are able to do so pursuant to other provisions of this Act or other laws and regulations concerning the filing of an appeal or an objection.

### **Section 5 Counsels and Assistants in Court**

#### (Qualification of a Counsel)

- Article 22 (1) Except for an agent who may perform acts in court under laws and regulations, no person other than an attorney at law may serve as a counsel; provided, however, that in a court of first instance, a person who is not an attorney at law may be appointed as a counsel with the permission of the court.
- (2) The permission set forth in the proviso to the preceding paragraph may be rescinded at any time.

#### (Scope of Authority of Representation Vested in a Counsel)

- Article 23 (1) With regard to a case entrusted to a counsel, the counsel may perform procedural acts concerning intervention, compulsory execution, and provisional orders, and also receive performance.
- (2) A counsel must be specially entrusted in order to perform the following acts:
    - (i) withdrawal of a petition for a non-contentious case or entering into a settlement;
    - (ii) petition of an appeal against or objection to a final order or withdrawal of the petition set forth in Article 77, paragraph (2);
    - (iii) withdrawal of the appeal, objection, or petition set forth in the preceding item; and
    - (iv) appointment of an agent.
  - (3) No limitation may be imposed on the authority of representation vested in a counsel; provided, however, that this does not apply to a counsel who is not an attorney at law.
  - (4) The preceding three paragraphs do not preclude an agent who is authorized to perform acts in court under laws and regulations from exercising the authority.

(Provisions on Statutory Representation and Mutatis Mutandis Application of the Code of Civil Procedure)

Article 24 The provisions of Article 18 of this Act and Article 34 (excluding paragraph (3)), and Articles 56 through 58 (excluding paragraph (3) of the same Act) of the Code of Civil Procedure apply mutatis mutandis to a counsel and their authority of representation.

(Assistants in Court)

Article 25 The provisions of Article 60 of the Code of Civil Procedure apply mutatis mutandis to an assistant in court in proceedings of non-contentious cases.

## **Section 6 Procedural Costs**

### **Subsection 1 Bearing of Procedural Costs**

(Bearing of Procedural Costs)

Article 26 (1) Except as otherwise provided, each person bears the costs for proceedings of a non-contentious case (hereinafter referred to as "procedural costs").

(2) Depending on the circumstances, the court may impose the whole or part of the procedural costs, which are to be borne respectively by a party, an interested party intervenor, and any other persons concerned under other provisions of this Act (excluding the following paragraph) or other laws and regulations, on a person listed in the following sub-items who is other than the person that should bear the costs:

(i) a party or an interested party intervenor;

(ii) a person who is to be subject to a judicial decision other than the person set forth in the preceding item; or

(iii) a person equivalent to the person set forth in the preceding item, who is to benefit directly from the judicial decision concerned.

(3) Any procedural costs to be borne by the Minister of Justice or a public prosecutor under the preceding two paragraphs or other laws and regulations is borne by the national treasury.

(Temporary Payment of Procedural Costs)

Article 27 The costs which are required to be paid for the investigation of facts, examination of evidence, issuance of a summons, giving of notification, or any other proceedings of non-contentious cases may be temporarily paid by the national treasury on behalf of a person who is obliged to pay the costs.

(Mutatis Mutandis Application of the Code of Civil Procedure Concerning Procedural Costs)

Article 28 (1) The provisions of Articles 67 through 74 of the Code of Civil Procedure (excluding the parts concerning an immediate appeal made against a decision on an objection filed against a disposition by a court clerk) apply mutatis mutandis to the bearing of procedural costs. In this case, the phrase "an application for supporting intervention is withdrawn or an objection to supporting intervention is withdrawn" in Article 73, paragraph (1) of the Code is deemed to be replaced with "an application for intervention under Article 20, paragraph (1) or Article 21, paragraph (1) of the Non-Contentious Case Procedures Act (Act No. 51 of 2011) is withdrawn or a petition for permission to intervene under Article 21, paragraph (2) of the Act is withdrawn"; and the phrase "Articles 61 through 66 and Article 71, paragraph (7)" in Article 73, paragraph (2) of the Code is deemed to be replaced with "Article 71, paragraph (7) as applied mutatis mutandis pursuant to Article 28, paragraph (1) of the Non-Contentious Case Procedures Act."

(2) An immediate appeal under Article 69, paragraph (3) of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding paragraph and an immediate appeal against a judicial decision on an objection filed under Article 71, paragraph (4) (including as applied mutatis mutandis pursuant to the second sentence of Article 72 of the Code as applied mutatis mutandis pursuant to the preceding paragraph), Article 73, paragraph (2), and Article 74, paragraph (2) of the Code have the effect of a stay of execution.

### **Subsection 2 Procedural Aid**

Article 29 (1) For a person who lacks the financial resources to pay the costs necessary for preparing for and conducting proceedings of a non-contentious case or a person who will suffer substantial detriment to their standard of living by paying such costs, the court may, upon petition, make a judicial decision to grant procedural aid to the person; provided, however, that this does not apply when it is clear that the person who seeks aid has filed a petition for a non-contentious case or has performed other procedural acts for unjust purposes.

(2) The provisions of Article 82, paragraph (2), and Articles 83 through 86 of the Code of Civil Procedure (excluding Article 83, paragraph (1), item (iii) of the Code) apply mutatis mutandis to procedural aid. In this case, the term "main clause of Article 82, paragraph (1)" in Article 84 of the Code is deemed to be replaced with "main clause of Article 29, paragraph (1) of the Non-Contentious Case Procedures Act."

## Section 7 Proceedings of Non-Contentious Cases

### (Non-Disclosure of Proceedings)

Article 30 Proceedings of non-contentious cases are not open to the public; provided, however, that the court may permit attendance by a person whom it considers to be appropriate.

### (Preparation of Records)

Article 31 Court clerks must prepare a record regarding the date for proceedings of non-contentious cases; provided, however, that if the presiding judge finds that it is not necessary to prepare a record regarding a date other than the date for the examination of evidence, it is sufficient to clearly indicate the outline of the developments of the proceedings, in lieu of preparing the record.

### (Inspection of Records)

Article 32 (1) A party or a third party who has made a prima facie showing of their interest may, with the permission of the court, make a request to a court clerk for the inspection or copying of, or the issuance of an authenticated copy, transcript or extract of the record of a non-contentious case, or for the issuance of a certificate of particulars concerning a non-contentious case (referred to as the "inspection, etc. of a record" in Article 112).

(2) The provisions of the preceding paragraph do not apply to audiotapes or videotapes (including things on which certain particulars are recorded by any equivalent means) in a record of a non-contentious case. In this case, a party or a third party who has made a prima facie showing of their interest may, with permission of the court, make a request to a court clerk for the reproduction of these things.

(3) When a petition for permission under the provisions of the preceding two paragraphs is filed by a party, the court must grant permission, except when it is found that there is a risk of causing substantial damage to the party or a third party.

(4) When a petition for permission under the provisions of paragraph (1) or paragraph (2) is filed by a third party who has made a prima facie showing of their interest, the court may grant permission to the party when the court finds it to be appropriate to do so.

(5) Notwithstanding the provisions of paragraph (1), a party may make a request to a court clerk for the issuance of an authenticated copy, transcript, or extract of a written judicial decision, or a certificate of particulars concerning a non-contentious case, without the permission of the court. The same applies when a person subject to a judicial decision makes such a request after the relevant judicial decision has been made.

- (6) A request for the inspection, copying, or reproduction of a record of a non-contentious case may not be made if these acts are to interfere with the preservation of the record of the non-contentious case or with the performance of the court's duties.
- (7) An immediate appeal may be filed against a judicial decision to dismiss the petition set forth in paragraph (3).
- (8) If an immediate appeal under the preceding paragraph is found to have been filed for the purpose of unjustly delaying the proceedings of a non-contentious case, the court of prior instance must dismiss the immediate appeal.
- (9) An immediate appeal may be filed against a judicial decision made pursuant to the provisions of the preceding paragraph.

(Technical Advisor)

- Article 33 (1) When a court finds it necessary for ensuring that proceedings are carried out in a precise and smooth manner or for attempting to arrange a settlement, the court may, after hearing opinions from the parties, have a technical advisor participate in the proceedings of a non-contentious case so as to hear their opinions based on expert knowledge. In this case, the presiding judge must have a technical advisor give their opinion in writing or orally on a date for proceedings of a non-contentious case on which the parties can attend.
- (2) After hearing opinions from the parties, a court may revoke the judicial decision made under the preceding paragraph to have a technical advisor participate in the proceedings.
  - (3) When a court finds it necessary, the court may have a technical advisor attend proceedings of a non-contentious case on the date for of the proceedings. In this case, the presiding judge may permit the technical advisor to directly ask questions to the party, witness, expert witness or any other person who appears on this date for the proceedings of the non-contentious case.
  - (4) Where a technical advisor lives in a remote place or a court finds it to be appropriate for any other reasons, the court may, after hearing opinions from the parties, have the technical advisor state their opinion as set forth in paragraph (1) by a means that enables the court and both parties to communicate simultaneously with the technical advisor by audio transmission, as provided for in the Rules of the Supreme Court. In this case, the presiding judge may permit the technical advisor to directly ask questions to the party, witness, expert witness or any other person who has appeared on the date for proceedings of a non-contentious case.
  - (5) The provisions of Article 92-5 of the Code of Civil Procedure apply mutatis mutandis to the designation, appointment and dismissal, etc. of a technical advisor who is to participate in proceedings of a non-contentious case pursuant to the provisions of paragraph (1). In this case, the term "Article 92-2" in

paragraph (2) of the same Article is deemed to be replaced with "Article 33, paragraph (1) of the Non-Contentious Case Procedures Act."

- (6) Where an authorized judge or commissioned judge conducts the proceedings set forth in paragraph (1), the respective judge performs the duties of the court and the presiding judge under Article 92-5, paragraph (2) of the Code of Civil Procedure as applied mutatis mutandis pursuant to paragraphs (1) through (4) and the preceding paragraph; provided, however, that in conducting proceedings on a date for the examination of evidence, the court before which the non-contentious case is pending makes a judicial decision to have a technical adviser participate in the proceedings, revokes the judicial decision, and designates a technical advisor.

(Date and Period)

Article 34 (1) The date for proceedings of a non-contentious case is designated by the presiding judge by their own authority.

- (2) The date for proceedings of a non-contentious case may be designated on a Sunday or any other general holiday but only when this is unavoidable.
- (3) A change of the date for proceedings of a non-contentious case may be made only if there are obvious reasons to do so.
- (4) The provisions of Articles 94 through 97 of the Code of Civil Procedure apply mutatis mutandis to the date for proceedings of non-contentious cases.

(Consolidation of Proceedings)

Article 35 (1) The court may consolidate or separate proceedings of non-contentious cases.

- (2) The court may revoke a judicial decision made under the preceding paragraph.
- (3) When the court has ordered the consolidation of proceedings of non-contentious cases involving different parties, and if a party requests the examination of a witness who has already been examined before the consolidation of the proceedings but whom that party had no chance to examine, the court must have the witness examined.

(Taking Over of Proceedings by Persons Eligible to Continue Proceedings under Laws and Regulations)

Article 36 (1) When it becomes unable to continue proceedings in a non-contentious case due to death or loss of status of the party, or any other grounds, a person who is eligible to continue the proceedings under laws and regulations must take over the proceedings.

- (2) When a person who is eligible to continue proceedings under laws and regulations files a petition for taking over the proceedings under the preceding paragraph, and a judicial decision to dismiss the petition is made, the person

may file an immediate appeal against the judicial decision.

- (3) In the case referred to in paragraph (1), the court may, upon the petition of another party or by its own authority, have a person who is eligible to continue proceedings under laws and regulations take over the proceedings of the non-contentious case.

(Taking Over by Another Petitioner)

Article 37 (1) When it becomes unable to continue the proceedings due to death or loss of status of a petitioner for a non-contentious case, or any other grounds, and if there is no one who is eligible to continue the proceedings under laws and regulations, a person who is entitled to file the relevant petition for a non-contentious case may take over the proceedings.

- (2) A petition for taking over the proceedings under the preceding paragraph must be filed within one month from the day on which the grounds set forth in the paragraph have arisen.

(Service and Suspension of Proceedings)

Article 38 The provisions of Part I, Chapter V, Section 4 and Articles 130 through 132 of the Code of Civil Procedure (excluding Article 132, paragraph (1) of the Code) apply mutatis mutandis to the service and the suspension of proceedings of a non-contentious case. In this case, the phrase "claim that is the subject matter of the litigation or with respect to the means of defense" in Article 113 of the Code is deemed to be replaced with "matter for which a judicial decision is sought."

(Objection to a Disposition by Court Clerk)

Article 39 (1) With regard to filing of an objection to a disposition by a court clerk, the court to which the court clerk belongs makes a judicial decision.

- (2) An immediate appeal may be filed against the judicial decision set forth in the preceding paragraph.

(Participation of a Public Prosecutor)

Article 40 (1) A public prosecutor may state their opinion on a non-contentious case and attend the proceedings on the date for the proceedings.

- (2) A court is to give notice to a public prosecutor of the fact that a non-contentious case is now pending before the court and the date for the proceedings.

### **Section 8 Notice to a Public Prosecutor**

Article 41 When a court or any other government agency, a public prosecutor or

an official, becomes aware in the course of performing their duties that a case for which a judicial decision on a non-contentious case should be made upon the petition of a public prosecutor has occurred, the entity or person must give notice to a public prosecutor of the public prosecutor's office corresponding to the court which has jurisdiction over the case to that effect.

### **Section 9 Petition by Means of an Electronic Data Processing System**

Article 42 (1) The provisions of Article 132-10, paragraphs (1) through (5) of the Code of Civil Procedure (excluding the parts concerning a demand for payment) apply mutatis mutandis to a petition or any other statement (referred to as a "petition, etc." in the following paragraph) filed in proceedings of a non-contentious case.

(2) The inspection or copying of, or the issuance of an authenticated copy, transcript or extract of a record of a non-contentious case under other provisions of this Act or other laws or regulations, which pertains to a petition, etc. filed pursuant to the main clause of Article 132-10, paragraph (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding paragraph, is made by means of the document set forth in paragraph (5) of that Article. The same applies to serving or sending of documents pertaining to the petition, etc.

## **Chapter III Proceedings of Non-Contentious Cases at the Court of First Instance**

### **Section 1 Petition for a Non-Contentious Case**

(Method of Filing a Petition)

Article 43 (1) A petition for a non-contentious case must be filed by submitting a written petition (hereinafter referred to as a "written petition for a non-contentious case" in this Article and Article 57, paragraph (1)) to a court.

(2) A written petition for a non-contentious case must state the following particulars:

- (i) the party and the statutory agent; and
- (ii) the object of and reasons for the petition.

(3) When a petitioner seeks a judicial decision on two or more matters, and if the proceedings for non-contentious cases regarding these matters are of the same kind and are based on the same factual and legal cause, the petitioner may seek a judicial decision by filing a single petition.

(4) When a written petition for a non-contentious case is in violation of paragraph (2), the presiding judge must specify a reasonable period and order that the defect should be corrected within that period. The same applies when



the fees for filing a petition for a non-contentious case required pursuant to the provisions of the Act on the Costs of Civil Proceedings (Act No. 40 of 1971) are not paid.

- (5) In the case referred to in the preceding paragraph, if the petitioner fails to correct the defect, the presiding judge must dismiss the written petition for a non-contentious case by a direction.
- (6) An immediate appeal may be filed against the direction set forth in the preceding paragraph.

(Amendment to a Petition)

Article 44 (1) A petitioner may amend the object of or reasons for their petition as long as there is no change to the basis of the petition.

- (2) An amendment to the object of or reasons for a petition must be made in writing except when it is made on the date for proceedings of a non-contentious case.
- (3) If an amendment to the object of or reasons for a petition is unlawful, the court must make a judicial decision not to permit the amendment.
- (4) If an amendment to the object of or reasons for a petition is to substantially delay proceedings of a non-contentious case, the court may make a judicial decision not to permit the amendment.

## **Section 2 Date for Proceedings in Non-Contentious Cases**

(Presiding Judge's Control of Proceedings)

Article 45 (1) On the date for proceedings of a non-contentious case, the presiding judge directs the proceedings.

- (2) The presiding judge may permit a person to make a statement or prohibit a person who does not comply with their direction from making a statement.
- (3) When a party makes an objection to a direction issued by the presiding judge with regard to their control over proceedings on the date for proceedings of a non-contentious case, the court makes a judicial decision on the objection.

(Proceedings by an Authorized Judge)

Article 46 (1) A court may have an authorized judge conduct proceedings on the date for proceedings of non-contentious cases; provided, however, that with regard to the investigation of facts and examination of evidence, this is allowed only when an authorized judge is able to investigate facts or examine evidence pursuant to the provisions of Article 51, paragraph (3) or the provisions of Part II, Chapter IV, Sections 1 through 6 of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to Article 53, paragraph (1).

- (2) In the case referred to in the preceding paragraph, the authorized judge

performs the duties of the court and the presiding judge.

(Proceedings by Means of Communication through Audio Transmission)

Article 47 (1) If a party resides in a remote place or a court finds it to be appropriate for any other reasons, the court may, after hearing opinions from the parties, conduct proceedings on a date for the proceedings of a non-contentious case (excluding the examination of evidence) by means that enable the court and both parties to communicate simultaneously with one another by audio transmission, as specified by the Rules of the Supreme Court.

(2) A party who has participated in the proceedings set forth in the preceding paragraph without actually appearing on a date for the proceedings of a non-contentious case is deemed to have appeared on that date.

(Attendance of an Interpreter and Other Measures)

Article 48 The provisions of Article 154 of the Code of Civil Procedure apply mutatis mutandis to the attendance, etc. of an interpreter, etc. on a date for proceedings of a non-contentious cases, and the provisions of Article 155 of the Code apply mutatis mutandis to the measures for a party, interested party intervenor, agent or assistant in court who is unable to make the statements necessary to clarify the particulars relating to proceedings of a non-contentious case.

### **Section 3 Investigation of Facts and Examination of Evidence**

(Investigation of Facts and Examination of Evidence)

Article 49 (1) A court must investigate facts by its own authority and must conduct an examination of evidence it finds necessary, upon petition or by its own authority.

(2) A party is to cooperate in the investigation of facts and examination of evidence in order to achieve proper and prompt proceedings and judicial decision.

(Prima Facie Showing)

Article 50 A prima facie showing must be made by materials that can be examined immediately.

(Commission of Investigation of Facts)

Article 51 (1) A court may commission another district court or summary court to investigate facts.

(2) When a commissioned judge who performs their duties as commissioned under the preceding paragraph finds it to be appropriate for another district

court or summary court to investigate facts, the commissioned judge may further commission the court to do so.

- (3) A court may, when it finds it to be appropriate, have an authorized judge investigate facts.
- (4) When a commissioned judge or authorized judge investigates facts pursuant to the provisions of the preceding three paragraphs, the relevant judge performs the duties of the court and the presiding judge.

(Notice of the Investigation of Facts)

Article 52 When an investigation of facts is conducted by a court and the court finds that its results will cause a significant change to a party's engagement in conducting proceedings of a non-contentious case, the court must give notice to the party and interested party intervenor to that effect.

(Examination of Evidence)

Article 53 (1) The provisions of Part II, Chapter IV, Sections 1 through 6 of the Code of Civil Procedure (excluding Article 179, Article 182, Articles 187 through 189, Article 207, paragraph (2), Article 208, and Article 224 of the Code (including as applied mutatis mutandis pursuant to Article 229, paragraph (2) and Article 232, paragraph (1) of the Code) and Article 229, paragraph (4) of the Code) apply mutatis mutandis to the examination of evidence in proceedings of a non-contentious case.

- (2) An immediate appeal under the provisions of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding paragraph has the effect of a stay of execution.
- (3) If a party falls under any of the following items, the court punishes the party with a civil fine of up to 200,000 yen:
  - (i) when the party does not comply with a submission order issued under Article 223, paragraph (1) of the Code of Civil Procedure (including as applied mutatis mutandis pursuant to Article 231 of the Code) as applied mutatis mutandis pursuant to paragraph (1), or when the party, without legitimate grounds, does not comply with a presentation order issued under Article 223, paragraph (1) of the Code as applied mutatis mutandis pursuant to Article 232, paragraph (1) of the Code as applied mutatis mutandis pursuant to paragraph (1); or
  - (ii) when the party, for the purpose of obstructing the examination of documentary evidence, causes a document (including an object equivalent to a document as prescribed in Article 231 of the Code of Civil Procedure) to be lost or otherwise makes it unusable, despite the obligation to submit the document pursuant to the provisions of Article 220 of the Code (including as applied mutatis mutandis pursuant to Article 231 of the Code) as applied

- mutatis mutandis pursuant to paragraph (1), or when the party, for the purpose of obstructing inspection, causes the subject matters of the inspection to be lost or otherwise makes them unusable.
- (4) If a party falls under any of the following items, the court punishes the party with a civil fine of up to 100,000 yen:
- (i) when the party, without legitimate grounds, does not comply with a submission order issued under Article 223, paragraph (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to Article 229, paragraph (2) of the Code (including as applied mutatis mutandis pursuant to Article 231 of the Code) as applied mutatis mutandis pursuant to paragraph (1);
  - (ii) when the party causes a document or any other object, which carries a sample of handwriting or seal impression to be used for comparison, to be lost or otherwise makes it unusable, for the purpose of obstructing the use for comparison; or
  - (iii) when the party, without legitimate grounds, does not comply with a decision under Article 229, paragraph (3) of the Code of Civil Procedure (including as applied mutatis mutandis pursuant to Article 231 of the Code) as applied mutatis mutandis pursuant to paragraph (1), or when the party writes letters to be used for comparison relating to the decision in a style of handwriting that is different from their own style of handwriting.
- (5) When examining a party, a court may order the party to appear on a date for the proceedings of a non-contentious case.
- (6) The provisions of Articles 192 through 194 of the Code of Civil Procedure apply mutatis mutandis when a party who is ordered to appear pursuant to the provisions of the preceding paragraph does not appear without legitimate grounds, and the provisions of Article 209, paragraph (1) and paragraph (2) of the Code apply mutatis mutandis when a party who has appeared refuses to take an oath or give statements without legitimate grounds.
- (7) Beyond what is provided for in this Article, the provisions of Part V (excluding Article 119 and the part of provisions of Article 120 and Article 122 concerning a public prosecutor) apply mutatis mutandis to a judicial decision on civil fine concerning examination of evidence.

#### **Section 4 Judicial Decisions**

(Method of Judicial Decision)

Article 54 In proceedings of a non-contentious case, the court makes a judicial decision by an order.

(Final Orders)

Article 55 (1) When the timing is right for making a judicial decision in a non-

contentious case, the court will make a final order.

- (2) When the timing is right for making a judicial decision on a part of a non-contentious case, the court may make a final order for that part of the case. The same applies when the timing is right for making a judicial decision on one of the non-contentious cases for which a consolidation of proceedings has been ordered.

(Notification and Entering into Force of a Final Order)

- Article 56 (1) Notification of a final order must be given to a party and an interested party intervenor as well as any other person subject to a judicial decision by means that is found to be appropriate.
- (2) A final order (excluding an order to dismiss a petition) becomes effective by notifying the person subject to a judicial decision (if there are two or more persons subject to a judicial decision, one of these persons).
- (3) A final order to dismiss a petition becomes effective by notifying the petitioner.
- (4) A final order will not become final and binding prior to the expiration of the period for filing an immediate appeal.
- (5) The process of a final order becoming final and binding can be interrupted by an immediate appeal filed during the period set forth in the preceding paragraph.

(Form of Final Orders and Written Judgment)

- Article 57 (1) A final order must be made by preparing a written judgment; provided, however, that in making an order against which an immediate appeal may not be filed, it is sufficient to state the main text of judgment in the written petition or the record for a non-contentious case, in lieu of preparing a written judgment.
- (2) A written judgment of a final order must state the following particulars:
- (i) the main text of judgment;
  - (ii) the gist of the reasons;
  - (iii) the party and the statutory agent; and
  - (iv) the court.

(Ruling of Correction)

- Article 58 (1) If there is a miscalculation, clerical error, or any other similar clear error in a final order, the court may, upon petition or by its own authority, make a ruling of correction at any time.
- (2) A ruling of correction must be made by preparing a written judgment.
- (3) An immediate appeal may be filed against a ruling of correction only by a person who may file an immediate appeal on the assumption that the corrected

final order is the original order.

- (4) An immediate appeal may be filed against a judicial decision to dismiss the petition set forth in paragraph (1) as unlawful.
- (5) When a lawful immediate appeal is filed against a final order, the immediate appeal set forth in the preceding two paragraphs may not be filed.

(Revocation or Modification of a Final Order)

Article 59 (1) When a court makes a final order and subsequently finds the order to be unreasonable, the court may revoke or modify the order by its own authority, except for the following orders:

- (i) an order to dismiss a petition in cases where a judicial decision is to be made only when a petition is filed; and
  - (ii) an order against which an immediate appeal may be filed.
- (2) After five years have passed since the day on which a final order became final and binding, a court may not make the revocation or modification under the preceding paragraph; provided, however, that this does not apply when the court comes to find that the order is unjust due to a change in circumstances.
  - (3) When revoking or modifying its final order pursuant to the provisions of paragraph (1), the court must hear the statements of the parties to the order and any other persons subject to the judicial decision.
  - (4) An immediate appeal against a final order making the revocation or modification under paragraph (1) may only be filed by a person who is eligible to file an immediate appeal on the assumption that the revoked or modified order is the original order.

(Mutatis Mutandis Application of the Code of Civil Procedure Concerning Final Orders)

Article 60 The provisions of Article 247, Article 256, paragraph (1), and Article 258 (excluding the second sentence of paragraph (2)) of the Code of Civil Procedure apply mutatis mutandis to a final order. In this case, the term "after the judgment's rendition" in Article 256, paragraph (1) of the Code is deemed to be replaced with "after the day on which notification of the final order was first given to the person who is to receive the notification of the final order."

(Interlocutory Orders)

- Article 61 (1) When the timing is right for making a judicial decision regarding a dispute on a legal relationship which will be the basis for the final order or any other interlocutory dispute, the court may make an interlocutory order.
- (2) An interlocutory order must be made by preparing a written judgment.

(Judicial Decisions Other Than a Final Order)

Article 62 (1) Except as otherwise provided, the provisions of Articles 55 through 60 (excluding Article 57, paragraph (1) and Article 59, paragraph (3)) apply mutatis mutandis to a judicial decision concerning a non-contentious case other than a final order.

(2) A judicial decision concerning the direction of the proceedings of a non-contentious case may be revoked at any time.

(3) A judicial decision concerning a non-contentious case other than a final order may be made by an assistant judge independently.

### **Section 5 Termination of Non-Contentious Cases Other than by a Judicial Decision**

(Withdrawal of Petition for Non-Contentious Cases)

Article 63 (1) A petitioner for a non-contentious case may withdraw the whole or a part of the petition before a final order becomes final and binding. In this case, the petitioner must obtain the permission of the court in order to withdraw the petition after the final order is made.

(2) The provisions of Article 261, paragraph (3) and Article 262, paragraph (1) of the Code of Civil Procedure apply mutatis mutandis to the withdrawal of a petition pursuant to the provisions of the preceding paragraph. In this case, the phrase "date for oral argument, preparatory proceedings, or settlement (hereinafter referred to as the "date for oral argument, etc." in this Chapter)" in the proviso to Article 261, paragraph (3) of the Code is deemed to be replaced with "date for the proceedings of a non-contentious case."

(Deemed Withdrawal of Petitions for Non-Contentious Cases)

Article 64 When a petitioner for a non-contentious case fails to appear on a date for the proceedings of a non-contentious case on two consecutive occasions on which the petitioner was summoned by the court, or leaves without making any statements on the date for the proceedings of a non-contentious case on which the petitioner was summoned by the court, the court may deem that the petition has been withdrawn.

(Settlement)

Article 65 (1) The provisions of Article 89, Article 264, and Article 265 of the Code of Civil Procedure apply mutatis mutandis to a settlement in non-contentious cases. In this case, the term "oral argument, etc." in Article 264 and Article 265, paragraph (3) of the Code is deemed to be replaced with "proceedings of a non-contentious case."

(2) When a settlement is entered in a record, the entry has the same effect as a final order that has become final and binding.

## **Chapter IV Appeals**

### **Section 1 Appeals Against a Final Order**

#### **Subsection 1 Immediate Appeals**

(Judicial Decision Against Which an Immediate Appeal May Be Filed)

- Article 66 (1) A person whose rights or legally protected interest have been harmed by a final order may file an immediate appeal against the order.
- (2) An immediate appeal against a final order dismissing a petition may only be filed by the petitioner.
- (3) An immediate appeal may not be filed independently against a judicial decision on the bearing of procedural costs.

(Period for Filing an Immediate Appeal)

- Article 67 (1) An immediate appeal against a final order must be filed within an unextendable period of two weeks; provided, however, that this does not preclude the effect of an immediate appeal filed prior to that period.
- (2) If an immediate appeal is filed by a person who is to receive notification of a judicial decision, the period for filing an immediate appeal runs from the day on which the person received notification of a judicial decision.
- (3) If an immediate appeal is filed by a person other than a person who is to receive notification of a judicial decision, the period set forth in the preceding paragraph runs from the day on which the petitioner (in cases commenced by the court's own authority, a person subject to a judicial decision) received notification of a judicial decision (if there are two or more such days, the latest day).

(Method of Filing an Immediate Appeal)

- Article 68 (1) An immediate appeal must be filed by submitting a written petition for appeal to the court of prior instance.
- (2) A written petition for appeal must state the following particulars:
- (i) the party and the statutory agent; and
  - (ii) the indication of the order in prior instance, and the fact that an immediate appeal will be filed against the order.
- (3) If an immediate appeal is unlawful and it is obvious that the defect cannot be corrected, the court of prior instance must dismiss the appeal.
- (4) An immediate appeal may be filed against a final order made pursuant to the provisions of the preceding paragraph.
- (5) The immediate appeal set forth in the preceding paragraph must be filed within an unextendable period of one week; provided, however, that this does not preclude the effect of an immediate appeal filed prior to the period.



(6) The provisions of Article 43, paragraphs (4) through (6) apply mutatis mutandis when a written petition for appeal is in violation of paragraph (2) and when the fees for filing an immediate appeal required under the Act on the Costs of Civil Proceedings are not paid.

(Sending of a Copy of Written Petition for Appeal)

Article 69 (1) When an immediate appeal is filed against a final order, the court in charge of the appeal must send a copy of a written petition for appeal to the party and interested party intervenor in the prior instance (excluding the appellant); provided, however, that this does not apply when the immediate appeal is unlawful or the immediate appeal is clearly groundless.

(2) When the presiding judge has specified a reasonable period and ordered an appellant to prepay the costs for sending a copy of a written petition for appeal pursuant to the provisions of the preceding paragraph, but the costs have not been prepaid, the presiding judge must dismiss the written petition for appeal by a direction.

(3) An immediate appeal may be made against the direction set forth in the preceding paragraph.

(Hearing of Statements)

Article 70 The court in charge of an appeal may not revoke the final order in prior instance unless it hears statements from a party in the prior instance and any other person subject to a judicial decision (excluding the appellant).

(Corrections by the Court of Prior Instance)

Article 71 The court of prior instance must correct its final order when it finds grounds for an immediate appeal filed against the final order.

(Stay of Execution of a Judicial Decision of Prior Instance)

Article 72 (1) Except as otherwise provided, an immediate appeal filed against a final order does not have the effect of a stay of execution; provided, however, that the court in charge of an appeal or the court of prior instance may, upon petition, order a stay of execution of the judicial decision of prior instance or any other necessary disposition to be taken while requiring or not requiring the provision of security until a judicial decision on the immediate appeal is made.

(2) When security is to be provided pursuant to the provisions of the proviso to the preceding paragraph, if it is provided as a statutory deposit, the deposit must be made at the official depository located in the jurisdictional district of the district court which has jurisdiction over the location of the court that has ordered the provision of security.

(3) The provisions of Article 76, Article 77, Article 79, and Article 80 of the Code of Civil Procedure apply mutatis mutandis to the security set forth in the preceding paragraph.

(Mutatis Mutandis Application of Provisions Concerning Proceedings in First Instance and of the Code of Civil Procedure)

Article 73 (1) Except as otherwise provided, the provisions of the preceding Chapter (excluding the proviso to Article 57, paragraph (1) and Article 64) apply mutatis mutandis to an immediate appeal filed against a final order and proceedings in the instance of such an appeal. In this case, the term "immediate appeal" in Article 59, paragraph (1), item (ii) is deemed to be replaced with "immediate appeal may be filed on the assumption that it is a final order from the court of first instance."

(2) The provisions of Article 283, Article 284, Article 292, Article 298, paragraph (1), Article 299, paragraph (1), Article 302, Article 303, and Articles 305 through 309 of the Code of Civil Procedure apply mutatis mutandis to an immediate appeal against a final order and proceedings in the instance of such an appeal. In this case, the phrase "Article 261, paragraph (3), Article 262, paragraph (1), and Article 263" in Article 292, paragraph (2) of the Code is deemed to be replaced with "Article 63, paragraph (2) and Article 64 of the Non-Contentious Case Procedures Act," and the term "Article 189" in Article 303, paragraph (5) of the Code is deemed to be replaced with "Article 121 of the Non-Contentious Case Procedures Act."

(Re-appeal from Appeal against Ruling)

Article 74 (1) An immediate appeal may further be filed against a final order made by the court in charge of the appeal (limited to an order against which an immediate appeal may be filed on the assumption that it is an order made by the court of first instance) only on the following grounds; provided, however, that this does not apply to the grounds set forth in item (v) where ratification is made by the principal, the statutory agent, or the counsel who has acquired the capacity to perform procedural acts, the authority of statutory representation, or the powers necessary for performing procedural acts:

- (i) the final order contains a misconstruction of the Constitution or any other violation of the Constitution;
- (ii) the court rendering the final order was not constituted in accordance with law;
- (iii) a judge who is not permitted to participate in making the final order under laws participated in making the final order;
- (iv) the final order was made in violation of the provisions concerning exclusive jurisdiction;

- (v) the final order was made in the absence of the authority of statutory representation, authority of representation vested in counsel, or delegation of powers necessary for an agent to perform procedural acts;
  - (vi) the reason or its gist which is required to be stated under this Act or any other law or regulation is not attached to the final order, or there are discrepancies in the reason or its gist; or
  - (vii) the final order contains a violation of laws or regulations that clearly affects a judicial decision.
- (2) A court in charge of an appeal before which the immediate appeal set forth in the preceding paragraph (hereinafter referred to as a "re-appeal from appeal against ruling" in this Article and Article 77, paragraph (1)) is pending is to conduct an investigation on only the reasons for the re-appeal from appeal against ruling stated in a written petition for appeal or a statement of reasons for an appeal.
- (3) The provisions of Article 314, paragraph (2), Article 315, Article 316 (excluding paragraph (1), item (i)), Article 321, paragraph (1), Article 322, Article 324, Article 325, the first sentence of paragraph (1), the second sentence of paragraph (3), and paragraph (4), and Article 326 of the Code of Civil Procedure apply mutatis mutandis to re-appeal from a ruling and proceedings in the instance of such an appeal. In this case, the phrase "Article 288 and Article 289, paragraph (2) as applied mutatis mutandis pursuant to the preceding Article" in Article 314, paragraph (2) of the Code is deemed to be replaced with "Article 68, paragraph (6) of the Non-Contentious Case Procedures Act"; the phrase "may be filed against" in Article 316, paragraph (2) of the Code is deemed to be replaced with "may be filed, within an unextendable period of one week, against"; the phrase "the preceding two Articles" in Article 322 of the Code is deemed to be replaced with "Article 74, paragraph (2) of the Non-Contentious Case Procedures Act, and Article 321, paragraph (1) as applied mutatis mutandis pursuant to Article 74, paragraph (3) of the Act"; the phrase "Article 312, paragraph (1) or paragraph (2)" in the first sentence of Article 325, paragraph (1) of the Code is deemed to be replaced with "Article 74, paragraph (1) of the Non-Contentious Case Procedures Act"; the phrase "In this case" in the second sentence of Article 325, paragraph (3) of the Code is deemed to be replaced with "When a court that has accepted a case remanded or transferred thereto makes a judicial decision"; and the phrase "set forth in the preceding paragraph" in Article 325, paragraph (4) of the Code is deemed to be replaced with "at a court that has accepted a case remanded or transferred thereto."

### **Subsection 2 Special Appeal Against a Ruling to the Supreme Court**

(Judicial Decisions Against Which a Special Appeal Against a Ruling to the Supreme Court May Be Filed)

Article 75 (1) Regarding the final orders of a district court or summary court against which no appeal may be entered, and the final orders of a high court, an appeal may be specially filed to the Supreme Court on the grounds that the relevant order contains a misconstruction of the Constitution or any other violation of the Constitution.

(2) A court in charge of an appeal before which the appeal set forth in the preceding paragraph (hereinafter referred to as a "special appeal against a ruling to the Supreme Court" in this paragraph and the following Article) is pending conducts an investigation on only the reasons for a special appeal against a ruling to the Supreme Court stated in a written petition for appeal or a statement of reasons for an appeal.

(Mutatis Mutandis Application of Provisions Concerning Immediate Appeals and the Code of Civil Procedure)

Article 76 (1) The provisions of the preceding Subsection (excluding Article 66, Article 67, paragraph (1), Article 69, paragraph (3), Article 71, and Article 74) apply mutatis mutandis to a special appeal against a ruling to the Supreme Court and proceedings of that appeal.

(2) The provisions of Article 314, paragraph (2), Article 315, Article 316 (excluding paragraph (1), item (i)), Article 321, paragraph (1), Article 322, Article 325, the first sentence of paragraph (1), paragraph (2), the second sentence of paragraph (3), and paragraph (4), Article 326, and Article 336, paragraph (2) of the Code of Civil Procedure apply mutatis mutandis to a special appeal against a ruling to the Supreme Court and proceedings of that appeal. In this case, the phrase "Article 288 and Article 289, paragraph (2) as applied mutatis mutandis pursuant to the preceding Article" in Article 314, paragraph (2) of the Code is deemed to be replaced with "Article 68, paragraph (6) of the Non-Contentious Case Procedures Act as applied mutatis mutandis pursuant to Article 76, paragraph (1) of that Act"; the phrase "may be filed against" in Article 316, paragraph (2) of the Code is deemed to be replaced with "may be filed, within an unextendable period of one week, against"; the phrase "the preceding two Articles" in Article 322 of the Code is deemed to be replaced with "Article 75, paragraph (2) of the Non-Contentious Case Procedures Act, and Article 321, paragraph (1) as applied mutatis mutandis pursuant to Article 76, paragraph (2) of the Act"; the phrase "Article 312, paragraph (1) or paragraph (2)" in of Article 325, the first sentence of paragraph (1), and paragraph (2) of the Code is deemed to be replaced with "Article 75, paragraph (1) of the Non-Contentious Case Procedures Act"; the phrase "In this case" in of Article 325, the second sentence of paragraph (3) of the Code is deemed to be

replaced with "When a court that has accepted a case remanded or transferred thereto makes a judicial decision"; and the phrase "set forth in the preceding paragraph" in Article 325, paragraph (4) of said Code is deemed to be replaced with "at a court that has accepted a case remanded or transferred thereto."

### **Subsection 3 Appeals with Permission**

(Judicial Decisions Against Which an Appeal with Permission May Be Filed)

- Article 77 (1) An appeal may be specially filed against a final order made by a high court (excluding an order on a re-appeal from appeal against ruling and on the petition set forth in the following paragraph) to the Supreme Court only if that high court permits this pursuant to the following paragraph in addition to the case pursuant to the provisions of Article 75, paragraph (1); provided, however, that this applies only where an immediate appeal may be filed against the order on the assumption that it is an order made by a district court.
- (2) When the final order set forth in the preceding paragraph contains a determination that is inconsistent with precedents rendered by the Supreme Court (or precedents rendered by the former Supreme Court or those rendered by the high court which is the final appellate court or the court in charge of an appeal against a ruling, if there are no precedents rendered by the Supreme Court) or when the order is found to involve other material matters concerning the construction of laws and regulations, the high court set forth in that paragraph must, upon petition, permit an appeal against the order.
- (3) The petition set forth in the preceding paragraph may not use the grounds prescribed in Article 75, paragraph (1) as reasons for appeal.
- (4) When permission is granted pursuant to the provisions of paragraph (2), it is deemed that the appeal set forth in paragraph (1) (hereinafter referred to as an "appeal with permission" in this Article and paragraph (1) of the following Article) has been filed.
- (5) The court in charge of an appeal before which an appeal with permission is pending is to conduct an investigation only on the reasons for an appeal with permission stated in a written petition for permission under paragraph (2) or a statement of reasons for petition under that paragraph.
- (6) The court in charge of an appeal before which an appeal with permission is pending may quash the order in prior instance if it contains a violation of laws or regulations that apparently affect a final order.

(Mutatis Mutandis Application of Provisions on Immediate Appeals and of the Code of Civil Procedure)

- Article 78 (1) The provisions of Subsection 1 (excluding Article 66, Article 67, paragraph (1), Article 68, paragraph (4) and paragraph (5), Article 69,

paragraph (3), Article 71, and Article 74) apply mutatis mutandis to an appeal with permission and proceedings of that appeal. In this case, the term "written petition for appeal" in these provisions is deemed to be replaced with "petition for permission under Article 77, paragraph (2)"; the term "immediate appeal" in Article 67, paragraph (2) and paragraph (3), Article 68, paragraph (1), paragraph (2), item (ii), and paragraph (3), Article 69, paragraph (1), and the main clause of Article 72, paragraph (1) and the phrase "filing an immediate appeal" in Article 68, paragraph (6) are deemed to be replaced with "petition set forth in Article 77, paragraph (2)"; and the term "immediate appeal" in the proviso to Article 72, paragraph (1) and the first sentence of Article 73, paragraph (1), and paragraph (2) is deemed to be replaced with "appeal with permission."

- (2) The provisions of Article 315 and Article 336, paragraph (2) of the Code of Civil Procedure apply mutatis mutandis to the petition set forth in paragraph (2) of the preceding Article; the provisions of Article 318, paragraph (3) of the Code apply mutatis mutandis when permission is to be granted under paragraph (2) of the preceding Article; and the provisions of the second sentence of Article 318, paragraph (4), Article 321, paragraph (1), Article 322, Article 325, the first sentence of paragraph (1), paragraph (2), the second sentence of paragraph (3), and paragraph (4), and Article 326 of the Code apply mutatis mutandis when permission has been granted under paragraph (2) of the preceding Article. In this case, the term "Article 320" in the second sentence of Article 318, paragraph (4) of the Code is deemed to be replaced with "Article 77, paragraph (5) of the Non-Contentious Case Procedures Act"; the phrase "the preceding two Articles" in Article 322 of the Code is deemed to be replaced with "Article 77, paragraph (5) of the Non-Contentious Case Procedures Act, and Article 321, paragraph (1) as applied mutatis mutandis pursuant to Article 78, paragraph (2) of the Act"; the phrase "Article 312, paragraph (1) or paragraph (2)" in Article 325, the first sentence of paragraph (1) and paragraph (2) of the Code is deemed to be replaced with "Article 77, paragraph (2) of the Non-Contentious Case Procedures Act"; the phrase "In this case" in the second sentence of Article 325, paragraph (3) of the Code is deemed to be replaced with "When a court that has accepted a case remanded or transferred thereto makes a judicial decision"; and the term "set forth in the preceding paragraph" in Article 325, paragraph (4) of the Code is deemed to be replaced with "at a court that has accepted a case remanded or transferred thereto."

## **Section 2 Appeals Against Judicial Decisions Other Than a Final Order**

(Subject of Appeals)

Article 79 An immediate appeal may be filed against a judicial decision other than a final order only in cases where there are special provisions allowing its filing.

(Objection to Judicial Decisions Made by an Authorized Judge or Commissioned Judge)

Article 80 (1) A party who disagrees with a judicial decision made by an authorized judge or commissioned judge may file an objection with the court before which the non-contentious case is pending; provided, however, that this applies only when an immediate appeal may be filed against the judicial decision on the assumption that it is a judicial decision by the court before which the non-contentious case is pending.

(2) An immediate appeal may be filed against a judicial decision on the filing of an objection set forth in the preceding paragraph.

(3) With regard to the application of paragraph (1) to cases where a non-contentious case is pending before the Supreme Court or a high court, the phrase "the court before which the non-contentious case is pending" in the proviso to that paragraph is deemed to be replaced with "a district court."

(Period for Filing an Immediate Appeal)

Article 81 An immediate appeal against a judicial decision other than a final order must be filed within an unextendable period of one week; provided, however, that this does not preclude the effect of an immediate appeal filed prior to that period.

(Mutatis Mutandis Application of Provisions on Appeals Against Final Orders)

Article 82 The provisions of the preceding Section (excluding Article 66, paragraph (1) and paragraph (2), Article 67, paragraph (1), and Article 69, and Article 70 (including cases where these provisions are applied mutatis mutandis pursuant to Article 76, paragraph (1), and Article 78, paragraph (1)) apply mutatis mutandis to an appeal against a judicial decision other than a final order, which is made by a court, a judge or the presiding judge.

## **Chapter V Retrials**

(Retrials)

Article 83 (1) A petition for a retrial may be filed against a final order or any other judicial decision that has become final and binding (limited to judicial decisions that conclude a case; the same applies in paragraph (5)).

(2) With regard to proceedings in a retrial, unless contrary to their nature, the provisions on proceedings in a non-contentious case in the respective instances

apply mutatis mutandis.

- (3) The provisions of Part IV of the Code of Civil Procedure (excluding Article 341 and Article 349 of the Code) apply mutatis mutandis to the petition for a retrial set forth in paragraph (1) and its proceedings. In this case, the phrase "conduct a trial and make a judicial decision on the merits to the extent that an appeal is entered" in Article 348, paragraph (1) of the Code is deemed to be replaced with "conduct a trial and make a judicial decision on the merits."
- (4) The immediate appeal against an order of commencement of a retrial set forth in Article 346, paragraph (1) of the Code of Civil Procedure as applied mutatis mutandis pursuant to the preceding paragraph has the effect of a stay of execution.
- (5) An immediate appeal may be filed against an order to dismiss a petition for a retrial against a final order or any other judicial decision pursuant to the provisions of Article 348, paragraph (2) of the Code of Civil Procedure as applied mutatis mutandis pursuant to paragraph (3), only by a person who may file an immediate appeal against the final order or judicial decision.

(Judicial Decision of Stay of Execution)

Article 84 (1) Where the petition for a retrial set forth in paragraph (1) of the preceding Article is filed, and if the circumstances alleged as reasons for an appeal appear to be legally well-grounded, a prima facie showing is made on factual matters, and a prima facie showing is made to the effect that the execution is likely to cause damage that cannot be compensated for, the court may, upon petition, order a temporary stay of compulsory execution while requiring or not requiring the provision of security, or order the revocation of the disposition of execution already taken while requiring the provision of security.

- (2) No appeal may be entered against a judicial decision on a petition filed under the preceding paragraph.
- (3) The provisions of Article 72, paragraph (2) and paragraph (3) apply mutatis mutandis to the security deposit and security in cases where security is to be provided pursuant to the provisions of paragraph (1).

### **Part III Non-Contentious Civil Cases**

#### **Chapter I Cases Concerning Judicial Subrogation**

(Petition for Permission for Judicial Subrogation)

Article 85 When an obligee is unable to preserve their claim or it is likely to cause difficulty in preserving their claim if the obligee does not exercise the right vested in the obligor before their claim becomes due, the obligee may file a petition for permission for judicial subrogation under Article 423, paragraph



(2) of the Civil Code (Act No. 89 of 1896).

(Court with Jurisdiction)

Article 86 Cases regarding the petition pursuant to the provisions of the preceding Article are subject to the jurisdiction of the district court which has jurisdiction over the location of the general venue (meaning the general venue prescribed in Article 4, paragraphs (2) through (6) of the Code of Civil Procedure; the same applies hereinafter) of the obligor.

(Particulars to Be Stated in a Written Petition)

Article 87 (1) A written petition for the permission set forth in Article 85 must state the following particulars in addition to those set forth in the items of Article 43, paragraph (2):

- (i) the obligor and the person having an obligation with regard to the right to be exercised through judicial subrogation; and
- (ii) the claim to be preserved by the petitioner and a description of the right to be exercised through judicial subrogation.

(2) The provisions of Article 43, the first sentence of paragraph (4), paragraph (5) and paragraph (6) apply mutatis mutandis to cases where the written petition set forth in the preceding paragraph does not state any of the particulars set forth in the items of that paragraph.

(Permission for Subrogation)

Article 88 (1) The court may permit judicial subrogation, while requiring or not requiring the provision of security, when the court finds that the petition filed under Article 85 is well grounded.

- (2) Notification of a judicial decision of permission under the preceding paragraph must be given to the obligor.
- (3) An obligor who receives a notification under the preceding paragraph may not dispose of the right pertaining to the subrogation.
- (4) The provisions of Article 72, paragraph (2) and paragraph (3) apply mutatis mutandis to the security deposit and security in cases where security is to be provided pursuant to the provisions of paragraph (1).

(Immediate Appeals)

Article 89 An immediate appeal may be filed only by the obligor against a judicial decision of permission under paragraph (1) of the preceding Article.

(Special Provision on the Bearing of Procedural Costs)

Article 90 The provisions of Article 61 of the Code of Civil Procedure apply mutatis mutandis to procedural costs for the case set forth in Article 86, by

deeming the petitioner and the obligor to be parties to the case.

(Disclosure of Proceedings)

Article 91 The provisions of Article 30 and Article 40 do not apply to proceedings for the case set forth in Article 86.

## **Chapter II Cases Concerning Retention and Deposit**

(Designation of a Person Who Is to Retain Instruments Regarding Partition of Properties in Co-Ownership)

Article 92 (1) Cases regarding designation of a person who is to retain instruments pursuant to the provisions of Article 262, paragraph (3) of the Civil Code are subject to the jurisdiction of the district court which has jurisdiction over the place where the partition of properties in co-ownership was completed.

(2) When the court makes a judicial decision on the designation set forth in the preceding paragraph, the court must hear statements from the persons who participated in the partition (excluding the petitioner).

(3) When the court makes the judicial decision set forth in the preceding paragraph, the procedural costs are borne equally among all persons who participated in the partition.

(Permission for Execution of Pledge on Movable Property)

Article 93 (1) Cases regarding a petition for permission for immediate appropriation of the pledge to the performance of the claims under Article 354 of the Civil Code are subject to the jurisdiction of the district court having jurisdiction over the place of the performance of the obligation.

(2) When the court makes a judicial decision on the permission set forth in the preceding paragraph, the court must hear statements from the obligor.

(3) When the court makes the judicial decision set forth in the preceding paragraph, the procedural costs are to be borne by the obligor.

(Designation of Official Depository and Appointment of a Custodian of Property to Be Deposited)

Article 94 (1) Cases regarding designation of the official depository and appointment of a custodian of the property to be deposited under Article 495, paragraph (2) of the Civil Code are subject to the jurisdiction of the district court which has jurisdiction over the place of the performance of the obligation.

(2) When the court makes a judicial decision on the designation and appointment set forth in the preceding paragraph, the court must hear statements from the obligee.

- (3) The court may replace the custodian whom it has appointed pursuant to the provisions of the preceding paragraph. In this case, the court must hear statements from the obligee and the person effecting performance.
- (4) When the court makes the judicial decision set forth in paragraph (2) or a judicial decision on replacement pursuant to the provisions of the preceding paragraph, the procedural costs are to be borne by the obligee.
- (5) The provisions of Article 658, paragraph (1), Articles 659 through 661, and Article 664 of the Civil Code apply mutatis mutandis to the custodian who is appointed pursuant to paragraph (2) or replaced pursuant to paragraph (3).

(Permission to Deposit Proceeds from Auction)

Article 95 The provisions of paragraph (1), paragraph (2), and paragraph (4) of the preceding Article apply mutatis mutandis to cases regarding the permission of the court set forth in Article 497 of the Civil Code.

(Appointment of an Appraiser Concerning Extinguishment of a Right of Redemption)

- Article 96 (1) Cases regarding the appointment of an appraiser pursuant to the provisions of Article 582 of the Civil Code are subject to the jurisdiction of the district court which has jurisdiction over the location of the real property.
- (2) When the court makes a judicial decision on the appointment of an appraiser as set forth in the preceding paragraph, the procedural costs are to be borne by the buyer.

(Non-Participation of a Public Prosecutor)

Article 97 The provisions of Article 40 do not apply to proceedings of non-contentious cases under this Chapter.

(Restriction on Appeals)

Article 98 No appeal may be entered against a judicial decision on designation, permission, appointment, or replacement pursuant to the provisions of this Chapter.

## **Part IV Public Notification Cases**

### **Chapter I General Rules**

(Petition for Public Notification)

Article 99 A petition for public notification in judicial proceedings, the purpose of which is to notify right holders to report their rights (hereinafter referred to as "public notification" in this Part) may be filed only when a law or regulation provides that the rights will be forfeited unless the notification is made.

(Courts with Jurisdiction)

Article 100 Cases regarding public notification proceedings (meaning a series of proceedings for forfeiting the rights pertaining to the public notification through making public notification; hereinafter the same applies in this Chapter) (referred to as "public notification cases" in Article 112) are subject to the jurisdiction of the summary court which has jurisdiction over the location of the general venue of the person who has rights pertaining to public notification or the location of the subject matter of the rights pertaining to the public notification; provided, however, that when the rights pertain to registration, the summary court which has jurisdiction over the place where the registration is to be made also has jurisdiction over the case.

(Order of Commencement of Public Notification Proceedings)

Article 101 When the court finds a petition for public notification to be lawful and well-grounded, the court must make an order of commencement of public notification proceedings, and make an order to the effect that public notification on the following particulars is to be made (referred to as an "order of public notification" in Article 113, paragraph (2)):

- (i) an indication of the petitioner;
- (ii) designation of the time limit for the notification of rights;
- (iii) a notice to the effect that the notification of rights should be made by the time limit prescribed in the preceding item; and
- (iv) an indication of forfeit of the right if no notification of a right is made in accordance with the notice set forth in the preceding item.

(Public Notice of a Public Notification)

Article 102 (1) Public notice of a public notification is to be made by means of posting the contents of the public notification prescribed in the preceding Article at the posting area of the court, and also publishing them in an Official Gazette.

(2) When a court finds it to be appropriate, the court may order the petitioner to give public notice of the content of the public notification prescribed in the preceding Article in a daily newspaper that publishes matters on current events, in addition to the means prescribed in the preceding paragraph.

(Period of Public Notification)

Article 103 The period from the day on which public notification is published in an Official Gazette pursuant to paragraph (1) of the preceding Article until the time limit for the notification of rights must not be less than two months, unless otherwise provided for in other laws.

(Order of the Termination of Public Notification Proceedings)

Article 104 (1) If, during the period from when an order of commencement of public notification proceedings is made until an order of nullification of a right pursuant to the provisions of Article 106, paragraphs (1) through (4) is made, it becomes obvious that the petition for public notification is unlawful or groundless, the court must make an order of the termination of public notification proceedings.

(2) An immediate appeal may be filed against the order set forth in the preceding paragraph only by the petitioner.

(Date of Conclusion of Proceedings)

Article 105 (1) Even after the time limit for the notification of rights expires, if the court finds it to be necessary, it may carry out proceedings for a petition for public notification. In this case, the court must specify the date for concluding the proceedings (hereinafter referred to as the "date of conclusion of proceedings" in this Chapter).

(2) If, by the time limit for making a notification of rights, a statement is made to contest the right alleged by the petitioner as the reason for the petition (hereinafter referred to as a "statement to contest the right" in this Part), the court must designate a hearing date on which both the petitioner and the person who made the statement to contest the right are able to attend, and specify the date of conclusion of proceedings.

(3) When the date of conclusion of proceedings is specified pursuant to the provisions of the preceding two paragraphs, a notification of a right or a statement to contest the right may be made even after the time limit for the notification or rights has expired, until the date of conclusion of proceedings.

(4) In order to make a statement to contest a right, a person making the statement must clarify that the person is the right holder or other reasons for contesting the right alleged by the petitioner, as the reason for the petition.

(Order of Nullification of a Right)

Article 106 (1) When no lawful notification of a right or statement to contest the right is made by the time limit for the notification of rights (if the date of conclusion of proceedings is specified pursuant to paragraph (1) or paragraph (2) of the preceding Article, the date of conclusion of proceedings; hereinafter the same applies in this Article), the court must, except in the case set forth in Article 104, paragraph (1), make a judicial decision to forfeit the right pertaining to the petition for public notification (hereinafter referred to as an "order of nullification of the right" in this Part).

(2) When a lawful notification of a right is made by the time limit for the

notification of rights, and no lawful statement contesting the right is made, the court must, except in the case set forth in Article 104, paragraph (1), make an order of nullification of the right by specifying that the right pertaining to the petition for public notification for which a lawful notification of a right has been made is not forfeited (hereinafter referred to as a "limitation order" in this Chapter).

- (3) When a lawful statement contesting a right is made by the time limit for the notification of rights, and no lawful notification of the right is made, the court must, except in the case set forth in Article 104, paragraph (1), make an order of nullification of the right by specifying that the public notification proceedings are to be stayed until a judgment in the litigation on the right between the petitioner and the person who made the lawful statement contesting the right becomes final and binding, or that the order of nullification of the right will not be effective against the person who made the lawful statement contesting the right and will lose its effect if the petitioner is defeated in the litigation (hereinafter referred to as a "reservation order" in this Chapter); provided, however, that if the court finds it obvious that the statement contesting the right is groundless, the court must make an order of nullification of the right without making a reservation order.
- (4) When a lawful notification of a right and a lawful statement to contest the right are made by the time limit for the notification of rights, the court must, except in the case set forth in Article 104, paragraph (1), make an order of nullification of the right by making a limitation order and a reservation order.
- (5) No appeal may be entered against an order of nullification of a right, except in the case set forth in Article 108.
- (6) An immediate appeal may be filed against a limitation order or a reservation order.
- (7) The immediate appeal set forth in the preceding paragraph must be filed within an unextendable period of one week from the day of receipt of notification of the judicial decision; provided, however, that this does not preclude the effect of an immediate appeal filed prior to that period.

(Public Notice of an Order of Nullification of a Right)

Article 107 Public notice of an order of nullification of a right, a limitation order, and a reservation order must be made by publishing them in an Official Gazette.

(Petition for Revocation of Order of Nullification of Right)

Article 108 A petition for revocation of an order of nullification of a right may be filed if any of the following grounds exist:

- (i) the case does not fall under the category of a case in which a petition for

- public notification may be filed under laws and regulations;
- (ii) a public notice on the public notification under Article 102, paragraph (1) was not made or was not made by a means specified by laws;
  - (iii) the period for public notification prescribed in Article 103 was not observed;
  - (iv) a judge who is not permitted to participate in making an order of nullification of a right due to a decision of disqualification or a challenge participated in making the order of nullification of the right;
  - (v) although a lawful notification of a right or a lawful statement to contest the right was made, an order of nullification of the right was made in violation of Article 106, paragraphs (2) through (4); or
  - (vi) when a petition for a retrial may be filed pursuant to the provisions of Article 338, paragraph (1), items (iv) through (viii) of the Code of Civil Procedure as applied *mutatis mutandis* pursuant to Article 83, paragraph (3).

(Court with Jurisdiction)

Article 109 Cases regarding a petition for revocation of an order of nullification of a right pursuant to the provisions of the preceding Article are subject to the jurisdiction of the court which has made the order of nullification of the right.

(Period for Filing a Petition)

Article 110 (1) A petition for the revocation of an order of nullification of a right under Article 108 must be filed within an unextendable period of 30 days from the day on which the petitioner came to know that the order of nullification of the right was made (when the reason for dissatisfaction is either of the grounds set forth in item (iv) or (vi) of the same Article and the petitioner did not know of the existence of the grounds on that day, the day on which the petitioner came to know of the existence of the grounds).

(2) After five years have passed since the day on which the notification of an order of nullification of a right was given, no petition for revocation of an order of nullification of the right under Article 108 may be filed.

(Judicial Decision on a Petition)

Article 111 (1) When a petition for the revocation of an order of nullification of a right under Article 108 is filed, the court must designate a hearing date on which both the petitioner and the respondent are able to attend, and also specify the date of the conclusion of proceedings.

(2) In the case prescribed in the preceding paragraph, if any of the grounds set forth in the items of Article 108 exist, the court must make an order to revoke the order of nullification of a right.

(3) When an order to revoke the order of nullification of a right under the

preceding paragraph becomes final and binding, public notice of the main text of the order must be made by publishing it in an official gazette.

(Inspection of Case Records)

Article 112 Notwithstanding the provisions of Article 32, paragraphs (1) through (4), the petitioner and the person who made a notification of a right, the person who made a statement contesting the right, or any other interested party may make a request to a court clerk for inspection, etc. of the record of the public notification case or the case pertaining to a petition for revocation of an order of nullification of a right, or for the reproduction of the record.

(Exclusion from Application)

Article 113 (1) The provisions of Article 40 do not apply to public notification proceedings.

(2) The provisions of Article 59 do not apply to an order of commencement of public notification proceedings, an order of public notification, and an order of nullification of a right.

## **Chapter II Cases of Public Notification of Declaration of Nullity of Negotiable Instruments**

(Eligible Petitioners)

Article 114 A petition for public notification to be made for declaring the nullity of any stolen, lost or destroyed negotiable instruments which may be nullified pursuant to the provisions of laws and regulations and which are listed in the following items may be filed by the persons specified respectively in those items:

- (i) a negotiable instrument in bearer form or a negotiable instrument which may be assigned by endorsement, which carries a blank endorsement (meaning an endorsement made without designating the endorsee or made merely with a signature or the affixation of the name and seal of the endorser): the final holder thereof; and
- (ii) a negotiable instrument other than that prescribed in the preceding item: a person who may claim their right based on the negotiable instrument.

(Court with Jurisdiction)

Article 115 (1) With regard to cases regarding a petition for the public notification prescribed in the preceding Article (hereinafter referred to as the "public notification of declaration of nullity of negotiable instruments" in this Chapter), if the place of performance of the obligation (in the case of a bill or a check, the place of payment thereof; hereinafter the same applies in this



paragraph) is indicated on the negotiable instrument, the case is subject to the jurisdiction of the summary court which has jurisdiction over the place of performance of the obligation, and if the place of performance of the obligation is not indicated on the negotiable instrument, the case is subject to the jurisdiction of the summary court which has jurisdiction over the location of the general venue of the person who is to assume the obligation under the negotiable instrument, and if such person has no general venue, the case is subject to the jurisdiction of the summary court which has jurisdiction over the location which was the general venue of the person when the person has assumed the obligation under the negotiable instrument.

- (2) Notwithstanding the provisions of the preceding paragraph, if the negotiable instrument set forth in that paragraph was issued with regard to a registered right, the petition set forth in the paragraph is subject to the jurisdiction of the summary court which has jurisdiction over the location of the subject matter of the right.

(Method of Filing Petitions and Prima Facie Showing of Petitions)

Article 116 (1) A petition for a public notification of declaration of nullity of negotiable instruments must be filed by submitting a transcript of the negotiable instrument pertaining to the petition or by clarifying the necessary particulars for identifying the negotiable instrument.

- (2) A prima facie showing is required to be made as to the fact of theft, loss or destruction of the negotiable instrument pertaining to the petition for public notification of declaration of nullity of negotiable instruments, or any other reason based on which a petition may be filed pursuant to Article 114.

(Content of Public Notification)

Article 117 (1) In cases of the public notification of declaration of nullity of negotiable instruments, public notification will be made on the following particulars, notwithstanding the provisions of Article 101:

- (i) an indication of the petitioner;
  - (ii) designation of the time limit for making a statement to contest the right;
  - (iii) a notice to the holder of the negotiable instrument to the effect that the holder is to make a statement to contest the right by the time limit for making a statement to contest the right prescribed in the preceding item and should submit the negotiable instrument; and
  - (iv) indication of a declaration to nullify the negotiable instrument if no statement to contest the right is made in response to the notice set forth in the preceding item.
- (2) With regard to the application of the preceding Chapter to public notification of declaration of nullity of negotiable instruments, the phrase "time limit for

the notification of rights" in Article 103, Article 105, paragraphs (1) through (3), and Article 106, paragraph (1) and paragraph (3) is deemed to be replaced with "time limit for making a statement to contest the right," the phrase "Article 106, paragraphs (1) through (4)" in Article 104, paragraph (1) is deemed to be replaced with "Article 106, paragraph (1) or paragraph (3)," the phrase "a notification of a right or a statement to contest the right" in Article 105, paragraph (3), Article 106, paragraph (1), and Article 108, item (v) is deemed to be replaced with "a statement to contest the right," the phrase "a lawful statement contesting a right is made by the time limit for the notification of rights, and no lawful notification of the right is made" in Article 106, paragraph (3) is deemed to be replaced with "a lawful statement contesting a right is made by the time limit for the notification of rights," the phrase "a limitation order or a reservation order" in paragraph (6) of that Article is deemed to be replaced with "a reservation order," the phrase ", a limitation order, and a reservation order" in Article 107 is deemed to be replaced with "and a reservation order," and the phrase "Article 106, paragraphs (2) through (4)" in Article 108, item (v) is deemed to be replaced with "Article 106, paragraph (3)."

(Declaration of Nullity of Negotiable Instruments by an Order of Nullification of a Right)

- Article 118 (1) In an order of nullification of a right made with regard to a petition for public notification of a declaration of the nullity of negotiable instruments, the court must declare a nullification of the negotiable instrument pertaining to the petition.
- (2) When an order of nullification of a right set forth in the preceding paragraph has been made, the petitioner for the public notification of a declaration of the nullity of negotiable instruments may claim the petitioner's right under the negotiable instrument pertaining to the petition against the person who is to assume the obligation under the negotiable instrument.

**Part V Civil Fine Cases**

(Court with Jurisdiction)

Article 119 Except as otherwise provided by other laws and regulations, civil fine cases (meaning non-contentious cases pertaining to proceedings for making a judicial decision of a civil fine) are subject to the jurisdiction of the district court which has jurisdiction over the location of the general venue of the party (meaning the person who is to be subject to the judicial decision when a judicial decision of a civil fine is made; hereinafter the same applies in this Part).

(Judicial Decisions Concerning Civil Fines)

Article 120 (1) A judicial decision concerning a civil fine must state the reasons therefor.

- (2) When making a judicial decision concerning a civil fine, the court must hear the opinion of a public prosecutor and hear the statement of the party in advance.
- (3) An immediate appeal may only be filed against a judicial decision concerning a civil fine by the party and the public prosecutor. In this case, if the immediate appeal is filed against a judicial decision of a civil fine, it has the effect of a stay of execution.
- (4) Procedural costs required for proceedings for making a judicial decision concerning a civil fine (including proceedings in the instance of an appeal; the same applies in the following paragraph) are borne by the person who was subject to the judicial decision in the case of a judicial decision of a civil fine, and borne by the national treasury in any other case.
- (5) Where the party files an immediate appeal set forth in paragraph (3) against a judicial decision of a civil fine, if the court in charge of the appeal finds that the immediate appeal is well-grounded and makes another judicial decision concerning a civil fine by revoking the judicial decision of prior instance, the procedural costs required for the proceedings for making the judicial decision concerning a civil fine are borne by the national treasury, notwithstanding the provisions of the preceding paragraph.

(Execution of Judicial Decisions of Civil Fines)

Article 121 (1) A judicial decision of a civil fine is executed by direction of a public prosecutor. The direction has the same effect as an enforceable title of obligation.

- (2) A judicial decision of a civil fine is executed in accordance with the provisions of the Civil Execution Act (Act No. 4 of 1979) and other laws and regulations concerning procedures for compulsory execution; provided, however, that it is not necessary to serve the judicial decision before its execution.
- (3) The provisions of Article 507 of the Code of Criminal Procedure (Act No. 131 of 1948) apply *mutatis mutandis* to the execution of a judicial decision of a civil fine.
- (4) When, after a judicial decision of a civil fine has been executed (hereinafter referred to as the "judicial decision of prior instance" in this paragraph), the immediate appeal set forth in paragraph (3) of the preceding Article is filed against the judicial decision, if the court in charge of an appeal finds that the immediate appeal is well-grounded and makes another judicial decision of a civil fine by revoking the judicial decision of prior instance, it is deemed that

the latter judicial decision of a civil fine is executed to the extent of the amount of the civil fine already executed. In this case, if the amount obtained as a result of the execution of the judicial decision of prior instance exceeds the amount of the latter civil fine, the excess amount must be refunded.

(Summary Proceedings)

Article 122 (1) Notwithstanding the provisions of Article 120, paragraph (2), if the court finds it to be appropriate, it may make a judicial decision concerning a civil fine without hearing the statement of the party.

(2) The party and the public prosecutor may file an objection against the judicial decision set forth in the preceding paragraph with the court which made the judicial decision, within an unextendable period of one week from the day on which they received notification of the judicial decision. In this case, if the objection is filed against a judicial decision of a civil fine, it has the effect of a stay of execution.

(3) The filing of an objection set forth in the preceding paragraph may be withdrawn before the judicial decision set forth in the following paragraph is made. In this case, the objection ceases to be effective retroactively.

(4) When a lawful objection is filed, the court must hear the statement of the party and make another judicial decision concerning a civil fine.

(5) If a judicial decision to be made pursuant to the provisions of the preceding paragraph is consistent with the judicial decision set forth in paragraph (1), the court must approve the judicial decision set forth in that paragraph; provided, however, that this does not apply when the proceedings for making the judicial decision set forth in the paragraph are in violation of any laws.

(6) Except where the court approves the judicial decision set forth in paragraph (1) pursuant to the provisions of the preceding paragraph, the court must, in a judicial decision to be made pursuant to paragraph (4), revoke the judicial decision set forth in paragraph (1).

(7) The provisions of Article 120, paragraph (5) apply *mutatis mutandis* to the case where the objection set forth in paragraph (2) is filed by the party against a judicial decision of a civil fine under paragraph (1) and the court makes another judicial decision concerning a civil fine pursuant to paragraph (4) by revoking the judicial decision pursuant to the provisions of the preceding paragraph.

(8) The provisions of paragraph (4) of the preceding Article apply *mutatis mutandis* to the case where, after a judicial decision of a civil fine has been executed under paragraph (1), the objection set forth in paragraph (2) is filed against the judicial decision and the court makes another judicial decision concerning a civil fine pursuant to paragraph (4) by revoking the judicial decision pursuant to the provisions of paragraph (6).

## **Supplementary Provisions**

(Effective Date)

- (1) This Act comes into effect as of the day specified by Cabinet Order within a period not exceeding two years from the date of promulgation.

(Transitional Measures)

- (2) The provisions of this Act apply to proceedings of non-contentious cases for which a petition was filed or for which proceedings were commenced by the court's own authority after the enforcement of this Act.