Review Process Timeline

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<td>Sept. 2016</td>
<td>by Minister of Justice</td>
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<td>Beginning of investigation and deliberations in Legislative Council committee meetings</td>
<td>Nov. 2016</td>
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<td>Compilation of interim draft proposal</td>
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Section 1

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

Background

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

Issues with the Existing System/Direction of the Revisions

Section 1-1

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

- Information about (1) claims to money in deposits and savings, and about (2) listed shares, JGBs, and similar assets will be acquired from financial institutions. (banks, credit unions, workers’ credit unions, credit cooperatives, agricultural cooperatives, securities firms, and others) [New Civil Execution Act, Art. 207]
- Information about (3) land and buildings will be acquired from registry offices. [New Civil Execution Act, Art. 205]
- Information about (4) claims to a salary (place of employment) will be acquired from municipalities, Japan Pension Service, and similar organizations. [New Civil Execution Act, Art. 206]

- Only an obligee who has a claim to child support or similar maintenance or a claim to damages for wrongful death or trespass to the person can file a petition initiating procedures to acquire information about an obligor’s claim to a salary.

Section 1-2

Revision of Existing Asset Discovery Procedures

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

Revision (1)

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

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

Revision (2)

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

Things such as failure to appear will be subject to criminal sanction (imprisonment for no more than six months or a criminal fine of no more than 500,000 yen), making discovery procedures more effective. [New Civil Execution Act, Art. 213]
The public and private sectors have been working to exclude organized crime groups from public projects and business activities, and continue to see progress in their efforts to exclude these groups from private-sector real property transactions.

No provisions of the existing Civil Execution Act specifically restrict current and former members of organized crime groups from buying real property at auction.

⇒ It has been discovered that approximately 200 of the properties used as offices by organized crime groups have a history of sale at auction (out of approximately 1700 such locations nationwide). [National Police Agency investigation]

The strategy for Making Japan the Safest Country in the World was established (through a December 2013 Cabinet Decision).

⇒ “We must look into measures that will prevent organized crime groups from participating in real property auctions and public sales.”

The courts handle approximately 23,000 real property auctions every year (this figure is from 2016).

Background

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Issues with the Existing System/Direction of the Revisions

[Overview of the New System]

★ At the decision of the court, current members of organized crime groups, former members of organized crime groups, and corporations with officers that are current or former members of organized crime groups will be restricted from becoming buyers at auction.

* former member of an organized crime group: a person who has ceased to be a member of an organized crime group within the last five years

★ Persons who are not current or former members of organized crime groups will also be restricted from offering to buy real property at the direction of a current or former member of an organized crime group.

→ For example, even if the buyer is not personally a member of an organized crime group, a purchase will also be restricted if a member of an organized crime group has allowed or led the buyer to buy the piece of real property by providing them with the funds for the purchase or in other ways.

Court Auctions of Real Property

Philings of Case

Bidding Period

Bid Opening Date (Ruling on the Highest-Bidding Prospective Buyer)

Order Permitting or Not Permitting the Sale

Parties Proceed with the Sale

Prospective Buyers...

... will each enter a statement expressing that they are not a current or former member of an organized crime group. [New Civil Execution Act, Art. 65-2]

The Court...

... will file an inquiry with police regarding whether the highest-bidding prospective buyer is a current or former member of an organized crime group. [New Civil Execution Act, Art. 68-4]

The Court...

... will rule not to permit the sale on finding the prospective buyer to be a current or former member of an organized crime group or on finding there to be similar circumstances. [New Civil Execution Act, Art. 71]

False statements will be subject to criminal sanction (imprisonment for no more than six months or a criminal fine of no more than 500,000 yen. [New Civil Execution Act, Art. 213]
Compulsory Execution of Orders to Handover Children in Japan: As existing law relating to civil execution includes no express provisions on this matter, the provisions relating to movable property are being applied by analogy.

The rules for this need to be made clarified from perspectives such as according consideration to the interests of the child while ensuring the effectiveness of court judgments.

Compulsory Execution of Orders to Return Children to Foreign Countries: The rules for this need to be revised from the same perspectives as above.

- The Hague Convention prescribes that the most expeditious procedure among those that are available is to be used.
- There are about 100 cases a year involving compulsory execution of orders to hand over children in Japan (and one or two cases a year involving execution by substitute of return of children to foreign countries).

### Issues with the Existing System/Direction of the Revisions

#### Section 3-1

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

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

One of a fixed set of requirements for filing a petition that have been added to the Act must be met. For example:
- There is not found to be a prospect of the child being handed over through indirect execution.
- There is a need to prevent imminent danger to the child.

According to the child being handed over through indirect execution.

Whereas it will now be unnecessary for the child and the obligor to be together when this takes place, in consideration of the interests of the child, it will become standard procedure for the obligee to be present.

#### Section 3-2

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

Although it will become unnecessary for indirect execution to be attempted first, in consideration of the interests of the child, one of a fixed set of requirements that have been added to the Act must be met. For example:
- There is not found to be a prospect of the child being returned through indirect execution.
- There is a need to prevent imminent danger to the child.

Whereas it will no longer be required that both the child and the taking parent be there at the time, in consideration of the interests of the child, it will become standard procedure for the left-behind parent to be present.

* *indirect execution* a means of execution in which the execution court attempts to compel performance by the obligor through psychological coercion, by ordering the obligor to pay money.
Revision of Rules Involving Claims Whose Seizure Is Prohibited

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

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

Revision of Rules Involving the End of an Execution Against Claims

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

Effective Date [for All of Sections 1 to 4]
★ The relevant provisions come into force on April 01, 2020, as specified by Cabinet Order (within a period of one year from the day of promulgation (May 17, 2019)). [Article 1 of the Supplementary Provisions]
★ The procedures referred to in Section 1-1 that concern the acquisition of information on the real property of the obligor become applicable on the date specified by Cabinet Order, within a period of two years from the day of promulgation (May 17, 2019). [Article 5 of the Supplementary Provisions]
第1 債務者財産の開示制度の実効性の向上【民事執行法の改正】

背景

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

第1－1 債務者以外の第三者からの情報取得手続を新設

【新制度の概要】
★金融機関から、①預貯金債権や②上場株式、国債等に関する情報を取得【新民執法207条】
★登記所から、③土地・建物に関する情報を取得【新民執法205条】
★市町村、日本年金機構等から、④給与債権（勤務先）に関する情報を取得【新民執法206条】

第1－2 現行の財産開示手続の見直し

【見直しの概要】
★現行の財産開示手続をより利用しやすく実効的なものにする

債権者 申立て 裁判所 手続の実施を決定 債務者 財産開示期日（非公開）
手続の実施を決定
債権者 申立て 裁判所 裁判所
情報提供を命令 債務者を出頭・自己の財産に関する陳述

現行制度では、手続の申立権者が、確定判決等を有する債権者に限定
申立権者の範囲を拡大して、仮執行宣言付判決を得た者や、公正証書により金銭（例えば養育費など）の支払い権を有する者も利用可能にする【新民執法197条】

現行制度では、債務者の不出頭や虚偽陳述に対する罰則（30万円以下の過料）が弱い
不出頭等には刑事罰（6か月以下の懲役又は50万円以下の罰金）による制裁を科し、手続の実効性を向上させる【新民執法213条】
不動産競売における暴力団員の買受け防止の方策
【民事執行法の改正】

背景

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

現行制度の課題と見直しの方向

【新制度の概要】
★裁判所の判断により暴力団員, 元暴力団員, 法人で役員のうちに暴力団員等がいるもの等が買受人となることを制限
（※）「元暴力団員」： 暴力団員でなくなってから5年を経過しない者
★暴力団員等でない者が, 暴力団員等の指示に基づき買受けの申出をすることも制限
⇒例えば, 買受人自身は暴力団員ではなかったとしても, 暴力団が買受人に資金を渡すなどして買受けをさせていた場合も, 買受けを制限

裁判所における不動産競売の手続

1. 申立て
2. 入札期間
3. 開札期日（最高価買受申出人の決定）
4. 売却許可・不許可決定
5. 売却へ

裁判所

● 暴力団員等に該当しないこと等を陳述
【新民執法65条の2】

最高価買受申出人が暴力団員等に該当するかどうかを警察へ照会
【新民執法68条の4】

裁判所

● 暴力団員等に該当する
【新民執法71条】

虚偽の陳述には刑事罰（6か月以下の懲役又は50万円以下の罰金）による制裁
【新民執法213条】
国内の子の引渡しの強制執行に関する規律の明確化
国際的な子の返還の強制執行に関する規律の見直し

第3-1 国内の子の引渡しの強制執行に関する規律の明確化
【民事執行法の改正】

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

申立てに一定の要件を付加
・間接強制では引渡しの見込みが有るとの認められない
・子の急迫の危険を防止する必要がある等【新民執法174条2項】

新旧p12

【現行制度】
間接強制手続
申立て
執行裁判所
債務者

新旧p27

第3-2 国際的な子の返還の強制執行に関する規律の見直し
【ハーグ条約実施法の改正】

【現行制度】
間接強制
申立て
執行裁判所
子

新旧p28

接強制前置が常に必要
子と債務者が共にいること（同時存在）が必要

接強制前置を不要とし、債務者に子の利益に配慮し、申立てに一定の要件を付加
・間接強制では返還の見込みがあるとは認められない
・子の急迫の危険を防止するために必要がある等【新ハーグ条約実施法136条】

同時存在の要件を不要とし、子の利益に配慮し、債権者の出頭を原則化
【新ハーグ条約実施法140条（新民執法の準用）】

（※）間接強制：執行裁判所が、債務者に対して金銭の支払を命ずることによって、心理的な強制を与える、債務者に履行を強い強制執行の方法
差押禁止債権をめぐる規律の見直し

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

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

債権執行事件の終了をめぐる規律の見直し

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

施行日

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

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

法律p28
法律p31