# 2. Law of Property and Obligations

**1. (1) Loan Business Regulation Act.**

Promulgated on May 13, 1983. Ch. 32. Effective since Nov. 1, 1983.

Provisions cited below are all taken from this Act (hereinafter referred to as the Loan Act) unless otherwise noted.

**(2) Acceptance of Investment, Money Deposit, Interest, etc. Regulation Reform Act.**

Promulgated on May 13, 1983. Ch. 33. Effective since Nov. 1, 1983.

The Act (hereinafter referred to as the Investment Reform Act) amended the Acceptance of Investment, Money Deposit, Interest, etc. Regulation Act (1954. Ch. 195. Hereinafter referred to as the former Investment Act).

***[Issues]***

Public attention has been called to social problems involving the so-called "salaried men's loan" (*sara-kin* for short) since the middle of the 1970's in Japan. *Sara-kin* is a consumer loan on unsecured bond. It is characterized by usurious interest rates, excessive amounts lent to the debtor, and extortionate means to enforce repayment. In some cases, harassed by a lender, a debtor experiencing difficulties in repayment runs away or even commits suicide, often with his/her family. The problem has aroused strong social concern in the nation.

Under these circumstances, the Bar Association and other citizens' groups stressed the necessity of a consumer loan regulation law. Consequently the Liberal-Democratic Party and the opposition parties each published a bill to solve the *sara-kin* problems after 1979. The 98th National Diet in 1983 passed the bill proposed jointly by the LDP and the New Liberal Club-Democratic Union, and the two Acts mentioned above were

proclaimed.

***[Contents]***

1. Registration of a lender

The Loan Act defines a "lender" as a person who lends money or mediates loans as a regular business practice. Loan business also includes bill discounts and mortgaged loans (Art. 2(1)). A lender, a person who is to engage in loan business, must register with the Minister of Finance or the prefectural Governor; the registration shall lose effect unless it is renewed every three years (Art. 3(1) and (2)).

2. Regulation of loan business activities

A lender shall be subject to the following obligations and regulations:

a. Prohibition of excessive lending

"A lender shall inquire into the resources or credit and loan records, payment schedule, etc. of a loan applicant or expected guarantor and shall not enter into a contract extending a loan which exceeds the applicant's capacity for payment" (Art. 13). This restriction was included because part of the consumer loan problems were due to the lenders' willingness to extend loans without considering the customers' capacity to repay. Nevertheless, none of the possible sanctions, such as suspension of business, annulment of registration, or fines, are imposed on an offender; the provision is merely hortatory, and its language may be enforced only through the administrative guidance (*gyosei shido*).

b. Advertisement regulation

When advertising loan conditions, a lender must publish the interest rates and other conditions as directed in the Act (Art. 15), and no exaggeration is permitted in advertisement (Art. 16).

c. Notification of loan conditions in a business office

In each business office, a lender must display a notice in a clearly visible manner containing the interest rates, means, terms and schedules of payment (Art. 14).

d. Issue of documents

A lender shall issue to the debtor a written statement clarifying the terms of contract on making a loan agreement (Art. 17(1)) and a receipt at the time of payment (Art. 18(1)). A lender shall return a bond to the debtor at the time of full payment (Art. 22). In case of guaranty, a lender shall issue to a gurantor a written statement clarifying the contents of the contract of guaranty (Art. 17 (2)). A lender, when receiving from a debtor or guarantor a document (hereinafter referred to as a letter of attorney) proving that the latter has issued a notarial deed declaring that the debtor or guarantor shall be subject to immediate execution in case of nonperformance of the obligation of the loan agreement, shall not accept such a letter of attorney unless it contains the amount of the loan made, the interest rate, etc. of the agreement (Art. 20).

In the past, lenders often did not issue such documents. Sometimes they even received a blank letter of attorney, in which case a debtor or guarantor was at a great disadvantage. The issue of documents as provided above is a basic principle of civil law, and according to the Civil Code, it is a debtor's right to demand a receipt or return of a bond on repayment. The Loan Act requires lenders to duly perform legal obligations that were often neglected before.

e. Restriction on debt collection practices

It is provided that, in debt collection, a lender or debt collector acting on the lender's behalf shall not harass anyone through an act of threat or disturbance of the peace in the debtor or guarantor's private life or business activities (Art. 21(1)); an offender may be subject to up to six month's imprisonment and/or a fine of no more than one million yen (Art. 49(3)). Another problem in consumer loans has been abusive means of enforcing repayment; this provision is intended to restrict those acts, even though they are difficult to classify as criminal offenses within the scope of the Penal Code.

3. Penalty for usurious interest rates

The former Investment Act (Art. 5) provided a penalty for contracting for or receiving interest payment at a rate exceeding 109.5% annually or 0.3% per day. (There has been no change concerning this point.) The Investment Reform Act distinguishes a loan by a lender engaged in loan business activities from other cases; under a special clause, it also requires that a lender shall not contract for or receive interest at a rate exceeding 40.004% annually or 0.1096% per day. An offender may be subject to up to three years of imprisonment and/or a fine of no more than three million yen (Art. 5(2)).

As regards the rate ceiling sanctioned by fines or jail, however, temporarily applicable clauses provide as follows:

(1) For the three years following the effective date of the Investment Reform Act, the maximum allowable interest rate shall be 73.0% annually (0.2% per day);

(2) After the three-year period mentioned above, the maximum rate shall be 54.75% annually or 0.15% per day until "the date determined by law";

(3) "The date determined by law" shall be fixed after consideration of economic and financial conditions, business activities of lenders, etc. five years after the effective date of the Reform Act.

4. A so-called "deemed payment" clause

If a debtor pays interest which exceeds the maximum provided in Art. 1(1) of the Interest Regulation Act (1954. Ch. 100) and a lender has issued a contract document and a receipt in compliance with the Loan Act, the payment of such interest shall be "deemed to be a valid payment of the interest obligation" (Art. 43 of the Loan Act).

***[Comments]***

Many lawyers, both law teachers and attorneys, have been critical of the two Acts which were supposedly designed to solve serious social problems surrounding *sara-kin* consumer loans.

Targets of criticism are the mere hortatory nature of the clause prohibiting excessive lending (2a); the abstract wording of the clause restricting debt collection activities (2e), which may hinder immediate action of the police and other responsible authorities in urgent cases of undue transactions; and so forth. The most important criticism, among others, focuses on the "deemed payment" clause (4).

Lenders in *sara-kin* consumer loan business typically made loans at the maximum interest rate of 109.5% per annum permitted by the former Investment Act. On the other hand, victims of loan sharking and their attorneys have tried to reduce their debt by applying the excess interest paid to the repayment of principal, and demanded a restitution for unjust enrichment when the excess interest paid exceeded the outstanding principal. These claims are based on three doctrines: (1) the rate ceiling provided by the Interest Restriction Act; (2) the decision by the Grand Bench of the Supreme Court on Nov. 18, 1964 (18 *Minshū* 1868); (3) the decision by the Grand Bench of the Supreme Court on Nov. 13, 1968 (22 *Minshū* 2526).

(1) The Interest Restriction Act provides that the annual interest rate shall not exceed 20% for a principal of less than 100,000 yen, 18% for between 100,000 and 1,000,000 yen, and 15% for 1,000,000 yen or more; any interest obligation at rates over the maximum is void and null.

(2) The Supreme Court decided that when a debtor paid interest beyond the maximum provided by the Interest Regulation Act, the amount paid in excess should be applied to the outstanding principal in accordance with Art. 491 of the Civil Code.

(3) The Supreme Court decided that when a debtor voluntarily continued to pay interest beyond the legal maximum of the Interest Regulation Act and when the amount paid in excess, if applied to the principal, was calculated to equal the outstanding principal, then restitution for unjust enrichment might be demanded out of what was paid thereafter in accordance with the Civil Code.

Contrary to these Supreme Court decisions, however, the

Loan Act provides that an interest payment which exceeds the legal maximum rate shall "be deemed to be a valid payment of the interest obligation" (Art. 43). Consequently, *sara-kin* lenders are legally able to collect the interest within the maximum fixed by the Investment Reform Act (that is 73.0% per annum for the first three years of the Act, 54.75% afterwards, and 40.004% still afterwards according to the transitory clause).

The two Acts contain many deficiencies as measures against *sara-kin* consumer loan problems. At a minimum, though, the administration should strictly enforce the existing laws.

**2. Condominium and Real Property Registration Reform Act.** Promulgated on May 21, 1983. Ch. 51. Effective since July 7, 1983.

The Act (hereinafter referred to as the Reform Act) amended the Condominium of Building etc. Act (1962. Ch. 69. Hereinafter referred to as the Condominium Act) and the Real Property Registration Act (1899. Ch. 24.).

***[Issues]***

The Condominium Act, promulgated in 1962 as a separate law under the Civil Code, regulates the relations of separate ownership of individual units in a multiple-unit building and the means of joint management of such a building. Since the promulgation of the Condominium Act, private-owned apartment houses (so-called *mansion*) have rapidly become very common. Particularly in big cities, condominiums play a very important role in providing citizens' living space. Along with recent social changes, however, new problems, which were not predictable at the time of the proclamation of the Act, have arisen concerning the registration and management of condominium buildings and their sites. The Act was amended in an attempt to solve those problems.

1. Condominium

The Condominium Act provides in its Art. 1 that "If a single building contains structurally separate multiple units which may be used independently as an apartment, store, office, warehouse or in other building uses, the respective portion thereof may be the object of ownership as provided in this Act". The ownership of the portion of the building is defined as "condominium", and the unit which is the object of the condominium is an "exclusively owned portion" (Art. 2(1)(3)). In addition, the Reform Act has established a new concept of "site use", which is "a right on the site of a building for purposes of ownership of an exclusively owned portion" (Art. 2(6)).

The Reform Act established for the first time a new principle of the unity of the exclusively owned portion and site use: "If site use is co-ownership (Art. 249 of the Civil Code) or another property right in common (Art. 264 of the Civil Code; i.e., Superficies or Lease, Arts. 265 and 601 of the Civil Code), a condominium proprietor may not separately dispose of his exclusively owned portion and of pertaining site use, except as otherwise provided by a bylaw (infra)" (Art. 22(1)).

In Japan land and buildings normally are separate immovables (Art. 86 of the Civil Code). The principle of the unity of condominium and site use established by the Reform Act forms an exception. Through this unity principle, the condominium is established as a special right which unites a proprietor's share in space for common use and his site use where ownership of the exclusively owned portion constitutes the core concept.

2. Managing Union

On entering the condominium relationship, the proprietors automatically by law form an association (commonly called the managing union) for management of the building, site and facilities appurtenant thereto. This body may assemble, adopt bylaws and employ a concierge (Art. 3). The new provision has given a formal legal recognition to the managing union which, already in past practice, was constituted by all the proprietors of

each condominium complex. It is expected in this provision that any doubts or inconsistencies concerning the managing union should be cleared away.

3. Bylaws and Assembly

With respect to bylaws, the Reform Act, following the former Condominium Act, provides "Matters between the condominium proprietors concerning management or use of the building, site or facilities appurtenant thereto may be regulated by bylaws except where governed by this Act" (Art. 30). In addition, the Reform Act has empowered the assembly to establish, alter and abolish bylaws by a special vote (infra) (Art. 31(1)) whereas the former Act required a written agreement of all the condominium proprietors for such decisions.

The Reform Act has given the assembly authority as a decision making body of the managing union, and given it functions much more extensive and important than were provided under the former Condominium Act. In particular, by a special vote, i.e. a majority vote of no less than three-fourths of all the proprietors that represents three-fourths or more of the whole voting power, the assembly may effect alterations etc. of the bylaws (Art. 31(1)) and incorporation of the managing union (unless the number of the condominium proprietors is less than thirty) (Art. 47(1)). The voting power of each proprietor is in proportion to the floor space of his exclusively owned portion (Art. 38) unless otherwise provided by the bylaws.

4. Obligations of the condominium proprietor and sanction for nonperformance

It is provided in the Reform Act, as in the former Condominium Act, that a condominium proprietor may not do any act injurious to preservation of the building or contrary to the common interest of the other condominium proprietors (Art. 6(1)). The Reform Act has laid down sanctions for violation of this provision as follows:

a. Where a condominium proprietor has acted in contravention of the provision, all the other proprietors or incorporated managing union may demand suspension of the violator's act and

the assembly may resolve to initiate legal proceedings for an injunction (Art. 57(1 to 3)).

b. If it is difficult to maintain the common life of the condominium proprietors through measure *a.*, the proprietors or incorporated managing union may, by a special vote of the assembly, demand a court decision to prohibit the offender from use of his exclusively owned portion (Art. 58).

c. If it still is difficult to maintain the common life through measure *b.*, an action may be brought, again by a special vote of the assembly, to demand a sale by auction of the offender's exclusively owned portion and site use (Art. 59).

d. If an occupant, e.g. a lessee, has acted in contravention of his obligations and if it is difficult to maintain the common life of the other proprietors through other measures, all the proprietors or incorporated managing union may, by a special vote of the assembly, demand through legal proceedings that the offender should cancel his lease contract and turn over the exclusively owned portion (Art. 60).

Through the measures cited above, it is expected that the provision (Art. 6(1)) prohibiting injurious acts by a condominium proprietor will have real impact.

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## 3. Commercial Law

### 1. Legislative Project for Regulation of Small or Closely-Held Corporations.

Following the amending Act of 1981 on the Corporation Law (*cf.* Vol. 3 of this bulletin, p. 121), the Commercial Law Division of the Legislative Council, an advisory body to the Minister of