

vided the law to treat subsidies for reorganization of paddyfields as income (classified as temporary income) for individuals and provided measures to allow reduced value entry for corporations, reducing income tax and corporate tax loads.

(c) Others: The Law for Partial Amendment of the Act to Control Business Which May Affect Public Morals (Law No. 76 of 1984, proclaimed on August 14, 1984, coming into force on a date decided by the ordinance within 6 months after the date of proclamation) made provision for maintaining good morals and a “clean” moral environment in businesses which might corrupt the public morals, stipulated the need for rational operation of such businesses, and forbade activities that might affect the soundness of the nation’s youth. The law was prompted by recent changes in the social environment and the trend of increasing juvenile delinquency. As a result, the range of businesses which are deemed to affect public morals and to which the Act is applicable has been expanded and restrictions on them have been increased.

**By Prof. KENJI URATA
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2. Law of Property and Obligations

1. The Act Partially Amending the Copyright Act.

Promulgated on May 25, 1984. Ch. 46. Effective since Jan. 1, 1985.

The Act amended the Copyright Act (Law No. 48, 1970).

1. The Copyright Act

The Copyright Act 1899 was replaced by the present Copyright Act in 1970. According to the Copyright Act, “work”

is defined as "a creative expression of thought or sentiment which falls within the literary, scientific, artistic or musical field", and "author" is defined as "a person who creates a work" (Art. 2, pars. 1 and 2). Examples of "a work" are as follows: a novel, a drama, a lecture, a musical work, choreographic work, a painting, engraving, sculpture, a cinematographic work, a photographic work, and others (Art. 10). The "author" shall solely have the right of reproduction (Art. 21), the right of performance (Art. 22), and the right of cinematographic presentation and distribution (Art. 26). A copyright owner may grant a license to utilize his work to another person, and a person who has obtained a license may utilize the work within the scope of conditions set forth in the grant of the license.

The Copyright Act gives a "performer" (actor, musician, singer and other person who gives a performance, Art. 2, par. 4) and a "producer of phonograms" (Art. 2, par. 6) the similar rights (Chap. 4) and protects their economic interests.

2. Background of the Amendment

The most important background reason for the amendment was an increase in rental phonograph record shops. The first rental phonograph record shop appeared in Mitaka, Tokyo, in 1980, and since then they have spread all over Japan. The reasons are that a renter can rent a long-playing record for 250 yen a day which costs 2,800 yen to buy, and can record a rented phonograph record on tape and reproduce it in his home with a cassette tape recorder. According to a report of the Japan Phonograph Record Association, 97.4 per cent of people who rent records from rental phonograph record shops have recorded a rented record on tape. Because of these developments, the sales of phonograph records have decreased, and the economic interests of the "authors", including composers and songwriters, "performers" such as singers and musicians, and producers of phonograms have suffered. According to the same report, sales of retail record shops near rental phonograph record shops decreased an average of twenty to thirty per cent.

Under these conditions, in 1981 and 1982 several phonograph record companies and the Japanese Society of Rights of Authors and Composers filed cases against rental phonograph record shops asking for an injunction to prevent the renting of phonograph records.

The claims made by those phonograph record companies and the Japanese Society of Rights of Authors and Composers were as follows:

The Copyright Act prohibits the reproduction of works and phonograph records without the license of the author and producer of phonograms. The rental phonograph record shops rent records to customers, knowing and supposing that customers will record them on tape and reproduce them.

On the other hand, the defendant rental record shops argued that rental record shops only rented records and didn't reproduce them, and that the reproduction by customers was protected by Article 30 of the Copyright Act as a reproduction for private use.

3. Contents of the Amendments

1) The Act Concerning the Author's Right of Lending Commercial Phonograms to the Public:

This Act was promulgated on December 2, 1983, and became effective on June 2, 1984. The Act provided that those who had the right to reproduce and make visual recordings of their works and performances which were recorded in commercial phonograms should solely have the right of lending commercial phonograms to the public (Article 3). Also, the Act provided that those who engaged in the business of lending commercial phonograms to the public had to have a license from those who had the right of lending (Article 4).

This Act was enacted as a temporary measure until the amendment of the Copyright Act. As the Copyright Act was amended on May 25, 1984, and became effective January 1, 1985, so this Act was abolished on January 1, 1985.

2) The Act Partially Amending the Copyright Act:

(i) Creation of the author's rights of lending:

Until the amendment of the Copyright Act, there were no provisions for lending the copies of an author's work to the public, except for the author of a work reproduced in a cinematographic work. The author of a work reproduced in a cinematographic work had the sole right to present such work publicly and to distribute his work by using copies of the cinematographic work. Through these rights of cinematographic presentation and distribution, authors were able to protect their interests.

As mentioned above, there was a situation of economic infringement on authors and others by the appearance of rental record shops. By this amendment, the Copyright Act provides that the author shall solely have the right to offer his work (excluding cinematographic works) to the public by lending the copies thereof. (Article 26-2).

By the creation of the author's right to lend, the right to offer his work to the public by lending the copies thereof belongs to the author; therefore the lending of a work without the license of the author becomes an infringement of copyright.

Also, the objects of the right of lending now include publications, and softwares for personal computers as well as phonograph records. The Act provides that "lending" includes affording of any similar right to use, regardless of its designation or method of granting the right. Therefore an installment sale of goods, on condition of a purchaser's right to return the goods, and after returning them, discontinued installment payments, becomes equivalent to a rental transaction in which installment payments are regarded as rental payments. These transactions are included in the category of lending.

(ii) The right of performers and producers of phonograms to lend commercial phonograms:

For the same reasons as those applying to an author's right to lend, the performers and producers of phonograms were granted the right of lending commercial phonograms of the similar nature (Articles 95-2 and 97-2).

During the period of time determined by the Cabinet order

(twelve months) from the time when commercial phonograms were first sold in this country, the lending of them are not allowed without a license of the performers and producers of phonograms. At the end of the twelve month period, those who engage in the business of lending commercial phonograms to the public have to pay a reasonable remuneration to the performer of the said performance and the producer of the said phonograms.

(iii) Prohibition of installation of automatic copying machines for the purpose of use by the public:

Even before the amendment of the Copyright Act, a work which was the subject matter of a copyright could be reproduced by any user thereof for the purpose of his personal use, family use or other similar uses of limited scope (Article 30). However, by this amendment, reproduction made by an automatic copying machine installed for the purpose of use by the public is no longer allowed.

Recently there are many entrepreneurs who are engaged in the business of reproducing music tapes and video tapes. They install automatic copying machines for use by the public and let the customer use an automatic copying machine for reproduction, instead of the entrepreneurs themselves. As this kind of situation infringed on the copyright and interest of the author, so the Copyright Act was amended.

2. The Act Partially Amending the Installment Sales Act.

Promulgated on June 2, 1984. Ch. 49. Effective since December 1, 1984.

The Act amended the Installment Sales Act (Law No. 159, 1961).

1. The Installment Sales Act

The Installment Sales Act was enacted in 1961, and regulated installment sale transactions which meant the selling of a product on the condition that it would be paid for in partial periodic payments over a relatively long period of time. At the time of

the legislation, the main purpose was the protection of the seller in installment sale transactions, the protection of the purchaser in installment sale transactions, and prevention of excessive competition of sellers in installment sale transactions; but in 1972, in order to expand protection of the economic interests of purchasers in installment sale transactions, this Act was substantially amended. The amendment in 1984 further extended the application of the Act to Cabinet designated commodities and expanded the protection for consumers for certain types of factoring.

The main characteristic of this Act is the limitation on the freedom of contract for the purpose of protecting the consumer's interests. Major points are as follows:

(i) The Act applies to sales of certain articles designated by Cabinet orders.

(ii) The sellers in installment sale transactions shall disclose certain terms such as the cash transaction price, the installment sale transaction price, the period and number of installment payments, the interest rate of the commission charged for installment sale transactions and so on (Article 3).

(iii) The seller in installment sale transaction shall deliver a document which specifies the terms required by Article 3 at the time of conclusion of the contract (Articles 4 and 4-2).

(iv) In cases where a purchaser offers or concludes installment sale transactions other than in the place of business of the entrepreneur of installment sale transactions (door to door sale contracts and so on), the purchaser can withdraw any offer to enter a contract or revoke the contract within seven days in accordance with certain required conditions (before this amendment, the cooling off period was four days after receiving the document) (Article 4-3).

(v) There are several limitations on actions for contract revocation and claims for damages based on the breach of the purchaser's obligation by the installment sale entrepreneur (Articles 5 and 6).

2. Outline of the Amendment

1) The increase in the number of the types of contract to which this Act applies:

The Installment Sales Act applies to installment sale transactions and secured credit financing and, as a result of the amendment, the Act now applies to a certain type of factoring as well which has been used increasingly in recent days (Article 2).

An installment sale transaction means that the seller himself or a special monthly installment sale company within the same group as the seller extends credit to the buyer-consumer. This is the normal way for an ordinary retail shop or an installment sale transaction company to give credit to the consumer in order to extend the period for payments.

Secured credit financing means that a consumer and a seller make a sale contract for the product with cash payments, and at the same time the consumer borrows part or all of the price for the product from a bank with a guarantee made by the seller, and pays the price of the product to the seller on the condition that the consumer should pay back that amount of money to the bank in installment payments.

There are two types of factoring; one is the individual type and the other is the comprehensive type.

The individual type of factoring means that in cases where the consumer seeks the installment purchase at a designated store such as a department store or a "specialized store", the designated store contacts the factoring company which in turn examines the credit rating of the consumer. After this examination, the factoring company pays the whole price for the product to the designated store, and at the same time makes a defrayment contract with the consumer through the designated store, and an installment payment contract for the defrayment money with the consumer. There was no provision for this type of factoring before this amendment.

The comprehensive type of factoring refers to a "ticket sale" or a credit card transaction, under which a factoring company issues a ticket or a card to its member after the examination and satisfaction of the member's credit rating. A member can buy

goods by showing the card or ticket at shops which the factoring company designates. The factoring company pays the purchasing money to the shop on behalf of the member, and collects the money from the member in installments. Recently purchases by showing a card have become more common than ticket sales for which a cooperative retailer prints "tickets" for consumers indicating their credit line, and the designated goods have expanded to include the offering of services such as dining at restaurants and other leisure activities.

Before this amendment, provisions of the designated article determined by ministerial ordinance did not apply to the comprehensive factoring.

2) Increase in the number of types of payment which are subject to the regulation:

Before the amendment, the ordinary method of installment payments was that the amount of each payment was determined by the price of the individual goods. Recently a new method of payment has become popular, and the so-called revolving installment payment contract is included in the designated contracts of the Act.

The revolving method means the payment of periodic installments of a certain amount or certain percentage of an outstanding price which amounts to the aggregate of the price of the goods bought by the purchaser using a credit card.

The ordinary installment payment regulated by the Act is related to the price of individual products, but the revolving installment payment requires installment payment of the whole outstanding amount without regard to the prices of individual goods. This is the most important difference between these two methods.

The revolving installment payment can apply to the installment payment, secured credit financing and a certain type of factoring.

A new provision on revolving installment payments is included in the installment payment and secured credit financing

(Article 2(1)(ii) and (2)(ii)). Also, the provision on revolving installment payments is regulated by a new enactment of two different types of factoring (Article 2(3)(iii)).

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3. Family Law

Special adoption system

1. On July 6, 1982, the Civil Law Section of the Advisory Committee on the Legal System, an advisory body of the Minister of Justice, decided to reconvene its Family Law Subcommittee. As a result, on Sept. 28, 1982, the Family Law Subcommittee held its first meeting, and decided to review the adoption system, taking into consideration the present adoption system in Japan and systems used in various foreign countries. As a result of its discussions, the Subcommittee proposed the introduction of its so-called “special adoption system”, which would dissolve the relationship between natural parents and their child. Before conducting any further examination of the adoption system, the Subcommittee published the result of its discussions and also published “an interim tentative draft on the amendments to the adoption system” through the Office of the Minister’s Councilors of the Civil Affairs Bureau of the Ministry of Justice with a view to seeking the opinions of the general public.

2. The interim tentative draft includes an introduction of the aforementioned special adoption system and some revisions to the present adoption system. An outline of the special adoption system will be given below.

The present adoption system in Japan recognizes adoptions of