

This reform places an emphasis on the former element, because the focus has been to assign determinate roles between the State and the local and to embody and secure these. So it can be said that this reform will make the agency of local politics change from the officials of the central government to officials of the local governments, but it cannot be said to apply to local inhabitants. This package is a great revision, but it should not be overlooked that its scope does not aim to increase the effectiveness of the autonomy of the inhabitants.

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### 3. Law of Property and Obligations

#### Consumer Contract Act

Law No. 61, May 12, 2000 (Effective on April 1, 2001).

#### Background:

In recent years, there has been an increase in the number of disputes concerning consumer contracts, or contracts entered into by consumers and businesses. Because there are differences between consumers and businesses in terms of access to information and negotiating power, the equality of the contracting parties and the principle of private autonomy, presupposed by the Civil Code, do not apply to consumer contracts.

So far, the *gyōhō*, or laws to regulate a particular industry, have dealt with this situation. However, recent Japanese national policy has been to deregulate regulations by government, and so regulation by *gyōhō* has also been deregulated. Therefore it is difficult to deal with this situation by means of *gyōhō*. And again because *gyōhō* apply to particular industries, they do not apply to industries that are recently in trouble with consumers. Moreover the effect of a violation of *gyōhō* is generally administrative or penal in nature, not civil. So consumers are

only protected as an indirect effect of the application of *gyōhō*.

It has, therefore, become necessary to deal with this situation by applying civil rules. Nevertheless, because the Civil Code presupposes the equality of parties in consumer contracts, the provisions of the Civil Code dealing with fraud or duress are rigid, so that they cannot always help consumers who have suffered unjust dealings. And again, however much problems concerning consumer contracts happen to deal with by general provisions such as loyalty and good faith clause or public policy clause, the requirements of these general provisions are obscure, so that there is no legal foreseeability. Therefore, it has become necessary to establish new civil rules to rectify transactions between consumers and businesses, and this Act has been enacted to amend the rules of the Civil Code in connection with consumer contracts.

### **Main Provisions:**

The main contents of this Act are i) that consumers may avoid consumer contracts when they make the specified mistakes as a result of specified acts by businesses, and ii) that unfair clauses in consumer contracts are declared void.

First, consumers may avoid declarations of intention on the ground of the specified unfair acts by businesses (Art. 4). Roughly speaking, the cases in which consumers are permitted to avoid declarations are 1) when businesses explain the facts unfairly, and 2) when a) businesses refuse to leave consumers alone, or b) businesses do not allow consumers to leave when they want to.

Considering the former case in more detail, when consumers misunderstand because businesses give improper explanation as to material items, provide conclusive future evaluations of uncertain items that change in the future with respect to goods, rights, services and so on, such as future prices, or intentionally fail to report disadvantageous facts as to material items, so that consumers make declarations of intention to offer or accept a consumer contract, then consumers may avoid these (Art. 4, para. 1–2). The reason for allowing consumers to avoid in these situations is given as follows; as mentioned above, there are differences between consumers and businesses in terms of access

to information. Nevertheless businesses do not always provide necessary information for consumers properly and consumer contracts are entered into. Thus when consumers enter into contracts which do not correspond with their needs because of the businesses' improper canvassing, it is proper to permit consumers to avoid such a contract, for it is not equity that consumers are bound by that contract because of a defect in the agreement, however there is no fraud such as Article 96 of the Civil Code provides.

In terms of the latter, or lack of dismissal or confinement by businesses, when consumers make a declaration of an intention to offer or accept consumer contracts because of these businesses' acts, they may avoid it (Art. 4, para. 3), for in this situation, even if there is no duress within the meaning of Article 96 of the Civil Code, the defect in the agreement is considered to be serious and crucial.

Second, why does this Act provide nullification of improper provisions of consumer contracts? The answer is as follows; it is possible that businesses produce effects advantageous to themselves through improper contract clauses, because there are differences between consumers and businesses in terms of access to information and negotiating power. Therefore, the proper interests of consumers must be protected.

These improper clauses are i) one which exempts a business from liability for damages, ii) one which improperly raises the level of damages which consumers have to pay, and iii) others which harm consumers' interests one-sidedly.

In terms of the exemption of liability for damages, Article 8 of this Act denies covenants that exempt businesses from liability for damages owed to consumers by the discretionary provisions of the Civil Code, Commercial Code, and so on, in order that consumers can claim proper damages in cases where they have suffered.

In terms of the clauses of consumer contracts providing damages owed by consumers, when damages or penalties provided by consumer contracts exceed some extent, Article 9 of this Act nullifies the clauses to that extent. Article 9 amends the principles provided by Article 420 of Code Civil, which provides that courts cannot alter liquidated damages which parties of contracts have provided.

There are other clauses that are not applied by Articles 8 or 9 but harm consumers' interests one-sidedly. Therefore Article 10 denies the effect of clauses of consumer contracts that restrict the rights of consumers or expand the duties of consumers, against the principle of loyalty and good faith, beyond restrictions and expansions that would otherwise apply by application of the discretionary provisions of the Civil Code, the Commercial Code and so on.

### **Editorial Note:**

It goes without saying that this Act is useful for protecting consumers. But this Act has been criticized for containing various problems from the point of view of the protection of consumers. The biggest problem is that this Act does not impose on businesses the duty to provide to consumers information requisite for consumers to make decisions. While Article 3 of this act requires businesses to strive to provide consumers with the information requisite for consumers to understand the contents of consumer contracts, such as their rights and duties, there is no sanction resulting from the violation of this provision. An early draft of this Act provided with a duty for businesses to provide the information to consumers, the violation of which would give consumers the right to avoid consumer contracts. But finally, because of businesses' loud objections, this draft was changed as mentioned above.

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## **4. Family Law**

### **An Act Regarding the Prevention of Child Abuse**

Law No. 82, May 24, 2000 (Effective on November 20, 2000)