

also to implement “evaluation in order to secure integrity and comprehensiveness” and “evaluation in order to secure objective and strict implementation”. But it is unclear whether or not this Ministry has the position to guide and supervise each administrative body. Concerning the recommendation and offering of opinions, there are qualifications such as “if he/she finds necessary” or “if he/she finds especially necessary”. So it is doubtful that, in practice, the ministry of PM can implement critical evaluation. Though the status of the ministry of PM was elevated from an Agency to a Ministry in 2000, there is a history that that Agency had the power of administrative supervision, but it had become the mere shell of that power. As to third party organs, there is a duty to “attempt to utilize knowledge of the learned and experienced”, but this language is too restrictive. And, as stated above, the Act does little to specify third party organs.

The introduction of third party organizations should be carried out, because otherwise policy evaluation supposed to be implemented by each administrative body will become literal self-evaluation, so the effectiveness of the policy evaluation will be doubtful. As for the latter, it seems that opening information to the public is more thorough to a considerable degree. So it is unnecessary to comment on this point in this paper. At any rate, it can be said that the true value of the Policy Evaluation Act depends on its practical use. It is necessary to pay attention to the policy evaluation of the Policy Evaluation. Act.

3. Law of Property and Obligations

Middle Corporation Act

Law No. 49, June 15, 2001 (Effective as of January 1, 2002).

Background:

The Civil Code of Japan prescribes, in article 33, that “No corporation can come into existence otherwise than in accordance with the provisions of the present Code or of other laws”. On the one hand,

in its article 34, it prescribes that the eleemosynary corporation may be established subject to the permission of the competent authorities. But on the other hand, it prescribes, in its article 35, that "Associations which have for their object the acquisition of gain may be incorporated in accordance with the conditions prescribed for the formation of trading companies".

But, for the associations which do not concern public interests, nor have for their object the acquisition of gain (for example an alumni, an association to cultivate mutual friendship, or a mutual aid association), there was no general legal regime which incorporated them. And then they could not be incorporated, unless individual laws were prescribed. Up to this time, in case law, they were treated as quasi corporations in accordance with the theory of unincorporated association. However, problems remain concerning the possession of rights (registration of real property) and protection of association's creditors. And because of such a gap in the legal regime, these associations were often incorporated, even if they did not positively have for their object public interests.

Therefore, in order to respond to such necessities that these associations be able to be incorporated and that their possession of rights, their organizations and their responsibility become clarified, this Middle Corporation Act was enacted.

Main Provisions:

This act consists of 163 articles and 6 chapters. The chapters are as follows; the first "General Provisions", the second " Limited Liability Corporation", the third "Unlimited Liability Corporation", the fourth "Amalgamation", the fifth "Miscellaneous Rules", and the sixth "Penal Regulations".

The main contents are as follows.

First concerning the associations which may be incorporated. Since this act is intended for the associations which do not concern public interest and are non profit, this act may incorporate only the associations which have for their object not public interests but interests common to their members and do not have for their object the distribution of interests to their members (article 2 number 1).

Second concerning the conditions for incorporation. This act prescribes that the middle corporation, which is made in accordance with the rules concerning incorporation, may be incorporated via registration of incorporation without the permission of the competent authorities (article 6 etc.). It is unnecessary to decide whether they have as their object public interests or not.

Third concerning the inexistence of shares. For a middle corporation, shares cannot be envisaged, unlike a business corporation. This is because shares increase their value as assets increase, and then a middle corporation lose their non profitability because of the substantial distribution of interests. And when a middle corporation dissolves, it is not natural that the members have a remainder in corporation's assets, because of the inexistence of shares.

Fourth concerning the types of middle corporation. In order that this act incorporate various associations, from the associations composed of many members and positively doing external activities to those composed of a few members and mainly doing internal activities, this act presents 2 choices, a limited liability middle corporation (article 2 number 2) and an unlimited liability middle corporation (article 2 number 3), and leaves it up to the member's choice.

In the first place, concerning the limited liability middle corporation (chapter 2). Since it carries out positively external activities, it is reasonable to limit the member's external responsibility, and so the members are not responsible to the creditors of this corporation. Therefore, it becomes necessary to protect its creditors. This act adopts a foundation system like a capital system, which it cannot adopt because of the inexistence of shares. In this system, the members contribute money or other properties to the corporation and it is charged debt on its return, which is detached from the member's position and deferred.

Besides, in order to prevent the abuse of the limited liability system, this act prescribes provisions concerning its organization as follows ; the first, it prescribes the general meeting of its members as the decisive institution, which decides the matters that this act or the certificate of incorporation stipulates (article 28), the second, a director who represents it as a managing institution (article 44 section 1), and

a kanji as the inspecting institution (article 55 section 1). The provisions concerning its organization and its management generally correspond to those of a limited company, except when contrary to its nature.

In the second place, concerning unlimited liability middle corporation. When it cannot pay its debt, its members assume joint liability (article 97 section 1, 2). Therefore, this act does not adopt a foundation system, for it is not as necessary as a limited liability middle corporation for a unlimited liability middle corporation to establish a financial foundation. And this act prescribes briefly as regard its incorporation and its management, in which the member's authority is sharply admitted, because their number is limited because of its nature and the relations between the members are intimate. The provisions about its organization and its management generally correspond to those of partnership, except when contrary to its nature.

Editional Note:

This act makes it possible for associations which do not concern public interest and are non-profit, which up to this time could not be incorporated, unless individual laws prescribe, to be incorporated. It clarifies their relations concerning the possession of their property, stabilizes its organization and its management, and finally makes non-profit social activities vigorous.

However, after this act becomes effective, associations which are not concerned with public interests and are non-profit, which cannot be incorporated, still remain. Moreover, previously the associations which did not have for their object public interests positively were often incorporated as eleemosynary corporations. But this act does not translate such corporations into middle corporations. In the consideration of the criticism that these corporations are favorably treated as eleemosynary corporations, this problem, which still remains after this act enacted, is one of the big subjects for future.

Problems have been pointed out with eleemosynary corporations, and recently the government started to investigate this regime. Consequently, this act is an important but only one step for the establishment for the whole non profit corporation regime, which contains that

of eleemosynary corporation.

The Act Concerning Exceptions to the Civil Code Related to Electronic Consumer Contract Acts and Electronic Notices of Acceptance

Law No. 95, June 29, 2001 (Effective as of December 25, 2001).

Background:

The Intellectual Technology Revolution, including the rapid diffusion of the Internet, has brought about new technologies and markets, and had various kinds of impact on the existing legal regime which had not anticipated it. In our country various kinds of adjustments of the legal regime have been advanced, and this act was enacted as a part of the adjustment of the rules for the development of electronic commerce.

Main Provisions:

This act consists of the regulations about invalidity due to a mistake and about a notice of acceptance in a contract between remote parties.

First concerning the regulation of invalidity due to a mistake. The Civil Code, in a proviso to article 95, says that if there has been a gross negligence on the part of the declarant of an intention, he cannot himself claim its nullity. But recently troubles have been rapidly increasing such as a case when a consumer makes an offer by operation missed without actually intending to do so in electronic commerce by means of the Internet. Therefore this act, supposing the nature of an electronic contract, in its article 3, prescribes that the proviso of article 95 of Civil Code is not applicable to the electronic consumer contract, except when the firm has taken measures to ask a consumer to confirm his intention or the like.

Second concerning the regulation of a notice of acceptance in a contract between remote parties. The Civil Code, in its article 97, prescribes that a declaration of intention between remote parties shall be effective at the time when a notice of acceptance has reached the op-

posite party. But, in its article 526 section 1, it prescribes that a contract between remote parties is formed at the time when the notice of acceptance is dispatched. Supposing the technical limitation that a notice takes a long time to arrive, it intended the rapid formation of a contract. But today the means of communication having highly developed, especially in electronic contracts, it has become unnecessary for the contract to be formed when the notice of acceptance is dispatched, since the notice of acceptance of a contract given by electronic means reaches the opposite party in an extremely short time. Therefore this act, in its article 4, prescribes that article 526 section 1 of the Civil Code and its article 527, concerning a notice of the revocation of an offer, are not applicable when a notice of acceptance is given by electronic means in a contract between remote parties.

4. Law of Civil Procedure and Bankruptcy

Civil Rehabilitation Law

Law No. 225, Dec. 14, 1999 (effective on April 1, 2000).

Background:

In the conventional Bankruptcy Law system, various procedures of a claim type for processing bankruptcies with the aim of reconstructing a corporation exited, a procedure for the reorganization of a corporation a procedure for the liquidation under the commercial law, and a procedure for composition. However, many years have passed since these laws were established, and the social and economic system has seen big changes and developments, and many problems, which cannot be dealt with under old Bankruptcy Law have arisen. It was especially difficult under the old Bankruptcy Law to respond to the increase in the personal bankruptcies because of consumer loans as well as the expansion in business bankruptcies, and the rapid internationalization of recent years. Thus to meet the needs of the present economic and social situation, the Civil Rehabilitation Law, which aims