

danger, in other words at the stage of “risk”. However, traditional political regulation cannot fully respond to this situation.

Given this situation, the Food Safety Basic Law provides for “risk analysis” as the regulation method. Above all, it is noteworthy to separate the agency that assesses risks on the basis of science from the agency that manages risks on the basis of policy. An administrative agency, which is given the ambivalent duty both to promote businesses and to regulate businesses, would often have a cozy relationship with the business operator. It is also noteworthy that it provides for the distribution of information and opinions not only from the government but also from the business operators and the public on the idea of risk communication, in view of both the speedy collection by the government of information concerning food safety and the transparency of food safety administration process.

3. Law of Property and Obligations

Amendment of Civil Code etc.

Law No.134, August 1, 2003 (Effective on April 1st, 2004).

Background:

The provisions concerning real security rights in the Civil Code were established in 1897, and have not been revised except for when the maximal-hypothec was newly incorporated in the Civil Code in 1971. It has been pointed out that as a result the existing laws cannot meet actual social and economic circumstances which have become highly complicated and diversified. What has triggered this revision directly has been the fact that, along with the bursting of the bubble economy from the '90s onward, various system fatigues have become obvious. In other words, with the aim of effective recovery of bad debts, which highly increased with the marked decline in the value of real property and the chronic recession, a review of the laws was needed. Then this Amendment of Civil Code was carried out in order to remove obstacles

to the enforcement of hypothec, to promote the official auction of real estate, and to make evacuation easier and smoother.

Main Provisions:

This Amendment can be divided into two parts. One part concerns the reform of the substantive law, and the other part that of the procedural law. Here only the revisions of the substantive law will be discussed.

First, with the aim of protecting wages, the Amendment prescribes that not only those who supply work on an employment contract, but also “servants”, including of those who supply work on contracts for work or mandate, have the labor’s lien for every claim which accrues from the employment relationship without limit of time (article. 308).

Second, the Amendment prescribes that when a nominative claim, apart from the claim of credit whose transfer requires the delivery of a certificate even if the claim has a document evidencing it, validity of the pledge does not require the delivery of a document (article. 363).

Third, the Amendment newly establishes a procedure for the execution of profits from real estate, which makes the ways of execution of hypothec diverse and with which the holder of security can receive preferential performance with profits from things held in his possession as security (Law of Civil Execution. article. 180 number. 2). And in order to define the ground of this procedure, the new article 371 prescribes that the hypothec will have an effect on any fruits produced after the default of the claim secured.

Fourth, this Amendment makes a great revision of the system for extinguishment of hypothec. First, the Amendment restricts those who can claim extinguishment of hypothec to the third purchaser. Second, the Amendment does not require the notice of enforcement of hypothec to the third purchaser. Third, the Amendment still prescribes that the third purchaser can claim the extinguishment of the hypothec at a price he decides by himself, however, the Amendment also prescribes that when the extinguishment of a hypothec is claimed, the hypothecary creditor can set an official auction up against it within two months, and that he has no obligation to buy the hypothecates immovable (article. 378). Fourth, the Amendment does not require the consent of another creditor to the withdrawal of application for an official auction which was already set

up by the hypothecary creditor against a claim for the extinguishment of hypothec.

Fifth, the Amendment prescribes that when a building is built on the hypothecated land, even if it is built by someone other than the hypothecator, except when the owner of the building has a right to the land which can be set up against the hypothec, the hypothecary creditor on the land can sell the land with the building all together by official auction (article. 389).

Sixth, the Amendment abolishes short-term lease and prescribes that a lease set after a hypothec cannot be set against the hypothecary creditor and the successful bidder in official auction without regard to the length of its term. On the other hand, the Amendment, with the aim of the protection of a lessee who is claimed to evacuate the building because of the sale by official auction, gives the lessee six months' grace to evacuate. And the Amendment prescribes that when the lease is registered and every hypothecary creditor who is registered before the registration of the lease gives approval and this approval is registered, the lease can be set against the hypothecary creditor and the successful bidder (article. 387). However the Amendment prescribes that the existing Civil Code is still applied to the short-term lease on a hypothecated immovable which exists on the effective date (Schedule. article. 5).

Seventh, the Amendment, with the aim of clarifying the ground on which the hypothec becomes final, prescribes that, except when the date is fixed in advance, the principal becomes final at the time when a creditor who has a maximal-hypothec claims it (article. 198-19).

Editorial Note:

This Amendment has greatly revised the systems on security and execution whose insufficiency has been indicated with the bursting of the bubble economy and the recession. Especially, the revision with a view to preventing the obstruction of enforcement has been thoroughly carried out. And, with the establishment of the system of the extinction of profits on the ground of hypothec, it is indicated that the function of system of security has been changed. Additionally, with the Amendment, protection of wages is reinforced. By the way, the Amendment still has many issues to be examined, and discussion about the revision of laws of

security continues still now. The significance of this Amendment should be appreciated as a new step for the modernization of the laws of security.

4. Family Law

Personal Status Litigation Law

Law No.109, July 16, 2003 (Effective on April 1, 2004).

Background:

In Japan, cases relating to matters of family affairs are largely divided into adjudgements of domestic relations and actions of personal status. Adjudgement cases mean the disputes where, providing that certain legal rights have existed among the concerned parties, the Family Court may decide the contents of such rights in the light of the effective resolution of domestic disputes, such as the distribution of marital properties, the determination of the person exercising the parental power, the estimation of child support or the partition of a deceased's estates. On the other hand, the actions of personal status mean the disputes that involve issues concerned with a fundamental personal status and those disputes should be resolved in the District Court through litigation.

The Family Court exists as a special court for resolving family affairs in Japan. The Court has expert staff, typically a family court investigator, and flexible procedures, such as adjudgement and conciliation in order to keep up with the nature of domestic affairs such as the reconciliation of human relationships, the scientific elucidation of cases and the protection of privacy about those concerned. However, the Family Court neither treats the litigation procedure, nor has jurisdiction for actions of personal status. Because the Constitution of Japan secures the right of access to a court, meaning in public, and then, the disputes concerning the fundamental personal status have to be resolved in a rigid litigation procedure. As a result, despite the fact that the Family Court has general jurisdiction for family affairs, personal status cases are excluded from its jurisdiction and have to be resolved in the civil procedure of the District Court.