

### 3. Law of Property and Obligations

#### **A partial amendment to the Act on the Specified Commercial Transactions and the Installment Sale Act**

Law No, 74 June 16, 2008 (Effective on December 1, 2009)

#### **Background:**

Recently, problems concerning consumer protection have been worked on by legislative efforts, for example, a partial amendment to the Money-Lending Business Regulation Act in 2006 etc., but we have many problems to solve, including new problems caused by changes in the situation around consumers and the development of information technology. Especially, problems concerning door-to-door sales to the aged on credit and new forms of transactions using the internet, etc. must be quickly solved. Those problems include excessive sales contract on credit, which is the sales contract to force a consumer to purchase goods or services considered as exceeding quantitatively a normal needs of a consumer, as well as excessive credit indicated as one of the causes of excessive sales contracts, and troubles on returning goods and sending nuisance advertising e-mails, and leaks of information concerning credit cards. For resolution of those problems, the Act on the Specified Commercial Transactions (hereinafter the SCT Act) and the Installment Sale Act (hereinafter the IS Act) have been amended. The reason why those two acts have been amended together is the following: usually, vicious door-to-door sales dealers make excessive sales, which is especially indicated by the recent steady increase in using specified commodity credit which is concluded on each purchase of goods etc., different from credit cards where the upper limit of credit is fixed in order not to make consumers purchase goods etc. the price of which is beyond the consumer's capacity to pay. As a result of concluding an sales contract using specified commodity credit, a consumer often comes to lack the minimum of living costs, and in addition loses the home in order to pay his/her debt. Thus excessive sales are closely connected with the specific commodity credit contract and accord-

ingly the SCT Act, which regulates door-to-door sales and the IS Act, which regulates credit contracts, were investigated in parallel and amended together.

### **Main Provisions:**

#### **1. Shutting loopholes in former legislation.**

- (1) The abolition of the system of *designated goods* and *designated services*  
The former system restricting the objects of application of the SCT Act to certain transactions of goods and services provided by administrative rules was abolished. Instead, a system where application of the SCT Act to exceptional transactions is provided by administrative rules is newly introduced (Art. 2 and Art. 26 of the SCT Act). Regulations on credit in the IS Act are applied to transactions in all sorts of goods or services, except for the sale of real property in principle (Art. 2 and Art. 35–3–60 (1) Item 6 and Art. 35–3–60 (2) Item 6 of the SI Act). While the area of application of the SCT Act and SI Act is expanded, exceptions to the cooling-off period for goods and services that are not suitable for cooling-off is provided (Art. 26 of the SCT Act, Art. 35–3–60 of the IS Act).
- (2) The extension of the area of application of the IS Act  
For three-party (a seller or a service provider, a buyer and a credit provider) credit, the area of application of the IS Act is revised from an installment sale where the payment period is more than 2 months and the number of times of payment is more than 3 times, to a long-period credit of more than 2 months (Art. 2 (3) and Art. 2 (4) of the IS Act).

#### **2. Stricter regulations on door-to-door sales**

- (1) The prohibition of re-solicitation  
When a seller or a service provider intends to conduct door-to-door sales, it shall make an effort to make sure that the consumer has a will to accept such a solicitation, and a seller or a service provider shall not solicit a sales contract or a service contract relating to door-to-door sales from a person who has manifested his/her intention of not concluding the sales contract or service contract (Art. 3–2 of the SCT Act).
- (2) The rescission of a contract for excessive sales  
A consumer may rescind a contract for the sale of goods or providing

a service which exceeds quantitatively the consumer's general needs for daily life not longer than one year from a conclusion of the contract, unless there is a special reason on the part of the consumer that necessitates the conclusion of such a contract (Art. 9-2 of the SCT Act).

### **3. Stricter regulations on credit**

- (1) The institution of registration for a specific commodity credit provider  
The institution of registration of a credit provider for specific commodity credit sale is introduced. For the registration, a specific commodity credit provider must meet certain requirements, such as holding certain assets (Art. 35-3-23–Art. 35-3-35 of the IS Act).

- (2) The obligation of research into member-shops for a specific commodity credit provider

In the case of a credit contract for a transaction to which the SCT Act may be applied, except for mail orders, a specific commodity credit provider is obligated to research member-shops and prohibited from concluding a credit contract in the case of inappropriate solicitation (Art. 35-3-5, Art. 35-3-7 of the IS Act).

- (3) The obligation to deliver a document concerning a credit contract

In the case of a credit contract for a transaction to which the SCT Act may be applied, except for mail orders, a specific commodity credit provider shall be obligated to deliver a document concerning the credit contract immediately if a specific commodity credit contract is offered and concluded (Art. 35-3-8 and Art. 35-3-9 of the IS Act).

- (4) The cooling-off period for a credit contract and the rescission of a specific commodity credit contract for an excessive sales contract

A cooling-off period is introduced into a credit contract for a contract to which the SCT Act may be applied, except for mail orders. When a credit contract for a sales contract etc. is withdrawn/rescinded on the grounds of cooling-off period system, the sales contract is automatically withdrawn/rescinded in principle (Art. 35-3-10 and Art. 35-3-11 of the IS Act). A credit contract for an excessive sales contract etc. to which the provisions on rescission of an excessive sales contract of the SCT Act may be applied can be withdrawn/rescinded no longer than one year from the conclusion of the sales contract etc. (Art. 35-3-12 of the IS Act).

## (5) The rule on the return of paid money

In the case that a credit contract for a contract to which the SCT Act may be applied, except for mail orders, is concluded, if a door-to-door seller etc. operates an act of misrepresenting information or intentionally failing to disclose information on important matters to do with the credit contract or sales contract etc., and thereby a purchasing party makes an application for the said contract or manifests his/her intention to enter into such a contract, he/she may rescind the contract. In the above-mentioned case, the purchasing party may claim for return of paid money against a specific commodity credit provider (Art. 35-3-13-Art. 35-3-16 of the IS Act).

## (6) The designated credit reporting agency system

To research a consumer's capacity for payment, the designated credit reporting agency system is introduced (Art. 35-3-36 of the IS Act). The credit provider is obligated to register for credit information concerning the consumer with the agency and to research into the consumer's capacity for payment on reference to the agency (Art. 35-3-56, Art. 30-2 and Art 35-3-3 of the IS Act). The credit provider is prohibited to give the consumer credit over his/her capacity for payment (Art. 30-2-2 and Art. 35-3-4 of the IS Act).

## (7) The reinforcement of the protection of information on credit

An appropriate control of important information, for example credit card numbers, is placed on the credit card provider etc. (Art. 35-16 of the IS Act). The Minister of Economy, Trade and Industry may order appropriate measures to be taken against a provider controlling information inappropriately (Art. 35-17 of the IS Act). An illegal presentation of important information, for example credit card numbers, is sanctioned criminally (Art. 49-2 of the IS Act).

**4. Stricter regulations concerning internet transactions etc.**

## (1) The clarification of the rule on the return of goods

In the case of mail orders, if no provision on return of goods exists, a purchaser may rescind a contract for 8 days (Art. 15-2 of the SCT Act).

## (2) The prohibition on sending advertising e-mail without prior consent

Sending advertising e-mail to consumers without his/her prior consent or request is prohibited in principle (the *opt-in* regulation). This

regulation is imposed not only on a mail order service provider but on a provider contracting to send advertising e-mail as a lump (Art. 12-3 and Art. 12-4 of the SCT Act). A violation of this regulation is sanctioned administratively and criminally (Art. 14, Art. 15 and Art. 72 of the SCT Act).

#### **5. Other points of the amendment**

- (1) The claim for paid money in the case of cooling-off after using goods  
If cooling-off is carried out after using goods, a provider may not claim any price in general (Art. 9 of the SCT Act).
- (2) The authorized installment sale association  
An installment sale association authorized by the Minister of Economy, Trade and Industry on certain conditions makes rules for the installment sale world for the self regulation concerning research into member-shops, prevention of inappropriate credit and control of information etc. under administrative control (Art. 35-18-Art. 35-24 of the IS Act).
- (3) The reinforcement of self regulation by door-to-door sales associations  
A door-to-door sales association should provide that a door-to-door sales provider ordered to suspend business is refused an admission to the association in the articles of association (Art. 27-2 of the SCT Act). New system that if a member of a door-to-door sales association does not return paid money to a consumer in spite of the rescission of a door-to-door sales contract due to the provisions of the SCT Act, the association compensates the consumer for the paid money is introduced (Art. 29-2 of the SCT Act).

#### **Editorial Note:**

In addition to the amendments above-mentioned, a partial amendment to the Consumer Contract Act for the introduction of the group action into the Premiums and Representations Act and The SCT Act and a partial amendment to the Act on the National Consumer Affairs Center of Japan on alternative dispute resolution for consumer affairs has been legislated in 2008, for consumer protection. And in September 2009, the Consumer Affairs Agency has been established. We need to pay attention to legislative and administrative movements on consumer protection policy

from now on.

## 4. Family Law

### **Act for Smooth Business Succession at SMEs**

Law No. 33, May 16, 2008 (Effective on Nov 1, 2008). 16 clauses and 3 supplementary ones.

#### **Background:**

At most SMEs in Japan, stockholders run the company as their own representatives and offer to it their individual assets; its ownership is unified with its control. In this circumstance, the inheritance by death of the stockholder results in some problems for smooth business succession and can cause the company to shrink. This issue has needed resolving.

#### **Main Provisions:**

The price of shares etc., which the successor and heir obtained by donation etc., from the late owner of a SME or from one of the heirs who had obtained them from the late owner by donation etc., shall be excluded, in whole or in part, on the basis of the agreement of all heirs, from the price of assets which provides the basis for the calculation of distributive shares (Art. 4, 5 and 6).

The price of shares etc., especially stock, which the successor and heir obtained by donation etc., from the late owner of a SME or from one of the heirs who had obtained them from the late owner by donation etc., shall be the price to be included in the calculation of distributive shares at the time of the agreement (Art. 4, Para. 2).

This agreement shall be made in writing (Art. 5 and 6, Para. 1). The successor and heir shall go through the necessary procedures to obtain confirmation from the Minister of Economy, Trade and Industry (Art. 7) and the permission of Family Courts (Art. 8).

#### **Editorial Note:**

At Japanese SMEs, the stockholder, in many instances, runs his com-