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-

pany as a representative and offers to it his individual assets. In the case of the unity of ownership and control of company, even if the late owner tries to concentrate its shares and the like in the hands of its successor, in many cases his heir, like his eldest son, by gift before death etc., the other heirs, such as brothers or sisters of the successor, request distributive share reducing from the successor who was already given much wealth by the late owner in the fight for succession (Civil Code, Art. 1031). In this circumstance, in our authorities, the shares obtained by the successor are subject to this request without special reason, since all donations to heirs are hotchpot (*tokubetsu jueki*); they shall be included in the basis for the calculation of distributive shares, whose price to be included in it shall be assessed at the time of the commencement of succession.

Consequently, even if the successor obtained the shares and the like from the late owner by gift before death, the request by the other heirs would result in the dispersion of these among them; decision-making inside the company would be in trouble, leading to uncertain control. And if the successor heightened its corporate value by his own ability after he had obtained the shares by gift before death, this would have the opposite effect of augmenting the price of the other heirs' distributive share, since the price of shares obtained by gift should be assessed at the time of the commencement of succession. The Courts did not admit that the successor insisted in the request that his effort to raise the stock value was just an extent of contribution (*kiyobun*). It is said to really demotivate the successor.

We have the clause of the abandonment of distributive shares (Civil Code, Art. 1043) for the resolution of this issue. If the other heirs other than the successor abandon their distributive share, the purpose of smooth business succession will be accomplished to some extent. The other heirs, however, hang back from the abandonment, since it is not certain that the successor will continue to run the company after it. In addition, if the late owner has some inheritance property other than the stock or business property, heirs who already abandoned it will not be able to insist on their right for it. Consequently, the utilization of the clause has been to said to have limitations.

This act for the exception to the Civil Code concerning distributive shares, therefore, may facilitate the continuity of business activity by

smoothing business succession at SMEs. Greater effect is hoped for since it also provides some assistance measures facilitating the raising of funds at SMEs, and measures concerning the imposition of inheritance taxes at SMEs, especially for the extension on payment, are now being considered. In our country, SMEs make up 90% of all companies, and 70% of all employees, and form the basis of our economy. By virtue of the enforcement of the act for smoothing business succession at these SMEs, we hope that the rural economy will be revitalized and that greater job security will be ensured at some future date.

Act Revising Part of the Act on Special Measures for Handling Gender for People with Gender Identity Disorder
Law No. 70, June 18, 2008 (Effective on Dec 18, 2008).

Background:

The Act on Special Measures for Handling Gender for People with Gender Identity Disorder (Law No. 111, July 16, 2003, Effective on July 16, 2004) was established corresponding to the argument that the registered gender of people with GID should be modified in the family register, because such people were psychologically or socially in trouble, such as receiving discrimination in employment opportunities. Art. 3 of the pre-revised act provides that an applicant shall, in order that he or she asks the Family Court for a change from the registered gender to the other sex (1) be 20 years of age and older; (2) be unmarried at present; (3) not have any children at present; (4) be incapable of reproduction; (5) have a part of body which assumes the external genital features of the opposite sex. As the requirements of an applicant had come up for debate in legislative process, it was planned to consider it again in 3 years according to its schedule, its enforcement status and changes in the social environment around people with GID. This revised act is in accordance with the result of the debate.

Main Provisions:

As a requirement of application for gender change to family court, an applicant shall not have any "minor children" at present instead of "chil-

dren" (Art. 3, Para. 1, Item 3).

Editorial Note:

The clause of "no children", as it is called, by virtue of the pre-revised act Art. 3, Para. 1, Item 3 was established considering an argument that admitting gender change to people with GID having children at present might disturb the family order or have an adverse impact on child welfare; it was held constitutional in Supreme Court. On the other hand, people with GID having children at present called for a review of the clause owing to fears that they could not ask for gender change so long as they had children, while a part of their family expressed their view calling for a careful review.

Based on these opinions, the extent of the clause of "no children" was limited to "no minor children" in the revised clause in respect for child welfare; People with GID whose children are all adults are permitted to ask for gender change. This reform is extremely proper from the standpoint of balancing between child welfare and the self-determination of people with GID.

5. Law of Civil Procedure and Bankruptcy

Act Revising the Consumer Contract Act, etc
Law No. 29, May 2, 2008 (effective on April 1, 2009, however, the provision of Art. 2 and Art. 4 become effective on the date of enforcement of the Act Revising the Act on Specified Commercial Transactions and Installment Sales Act (Law No. 74, June 18, 2008))

Background:

By a revision of the Consumer Contract Act in 2006, a consumer organization litigation system has been introduced which enables a qualified consumer organization to demand an injunction against inadequate business performances under the Consumer Contract Act. This system contributes to preventing consumer damage from occurring and expanding (see Waseda Bulletin of Comparative Law Vol. 26, 2006, P. 29–32).