

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).

In this connection, due to the diversification of goods and services in recent years, consumer damage caused by actions forbidden by the Act against Unjustifiable Premiums and Misleading Representations and the Act on Specified Commercial Transactions are sharply increasing. This kind of consumer damage tends to spread quickly to many unspecified general consumers. However, dealing with this by means of governmental regulations by the Fair Trade Commission or Ministry of Economy, Trade and Industry has a limited effectivity from the perspective of preventing consumer damage from occurring and expanding. For this reason, it was decided to introduce a consumer organization litigation system also into the Act against Unjustifiable Premiums and Misleading Representations and the Act on Specified Commercial Transactions, and the “Act Revising the Consumer Contract Act, etc.” was enacted.

(<http://www.consumer.go.jp/english/cprj/index.html>)

### **Main Provisions:**

This act includes the “Act Revising the Consumer Contract Act” (Art. 1 and Art. 2), the “Act Revising the Act against Unjustifiable Premiums and Misleading Representations” (Art. 3) and the “Act Revising the Act on Specified Commercial Transactions” (Art. 4). The reason why the “Act Revising the Consumer Contract Act” is divided in two is because the effective date of this amended law is different from the amended provisions of the Act against Unjustifiable Premiums and Misleading Representations and those of the Act on Specified Commercial Transactions.

#### **1. Act Revising the Consumer Contract Act**

- (1) Cooperation among administrative organs for certification and supervision of a qualified consumer organization
- (a) When the Prime Minister intends to certify a qualified consumer organization, the Prime Minister shall seek the opinions of the Fair Trade Commission and the Minister of Economy, Trade and Industry about the presence of grounds prescribed in Art. 13 Para. (3) item (2) of the Consumer Contract Act (Art. 15 Para. (2)).
- (b) Regarding the supervision of a qualified consumer organization, the Fair Trade Commission or the Minister of Economy, Trade and Industry may state his/her opinion to the Prime Minister, if they find

that there is a reasonable ground to suspect that the qualified consumer organization for any reason does not satisfy the requirement of Art. 13 Para. (3) item (2) of the Consumer Contract Act or for any of the reasons listed in Art. 34 Para. 1 item (4) of the said law, and find it necessary for the Prime Minister to take proper measures against the said qualified consumer organization (Art. 38 Para. (1) item (1)).

- (2) Sharing of information about the situation of the demand for an injunction

When the Prime Minister has received any report about the situation of the demand for an injunction by a qualified consumer organization, the Prime Minister shall notify not only other qualified consumer organizations but also the Fair Trade Commission and the Minister of Economy, Trade and Industry of the date and time of the report and its outline, etc., by means that allows all qualified consumer organizations, the Prime Minister, the Fair Trade Commission and the Minister of Economy, Trade and Industry to review the same information electromagnetically or by other means (Art. 23 Para. (5)).

## **2. Act Revising the Act against Unjustifiable Premiums and Misleading Representations**

In the case where a business operator makes or is likely to make such a representation to many unspecified general consumers by which any matter relating to the substance of goods or services will be misunderstood to be much better than it is or by which any trade items of goods or services will be misunderstood to be much more favorable to the general consumers than they are, qualified consumer organizations may demand the said business operator to stop or to prevent such acts, to make public the matters concerning the representation of such acts or other necessary measures to stop or to prevent such acts (Art. 11–2).

## **3. Act Revising the Act on Specified Commercial Transactions**

In the case where a seller or a service provider conducts or is likely to conduct the following acts concerning such types of transactions under the Act on Specified Commercial Transactions as Door-to-Door Sales, Mail Order Sales, Telemarketing Sales, Multilevel Marketing Transactions, Specified Continuous Service Offers and Business Opportunity Related Sales Transactions to many unspecified general consumers, qualified consumer organizations may demand against the said seller, etc. to stop or to

prevent such acts, the disposal of or the removal of materials used for such acts or other necessary measures to stop or to prevent such acts:

- (a) unfair solicitations such as misrepresentation, intentional failure to disclose facts, or intimidating or harassing people, etc.,
- (b) extremely false or misleading advertising,
- (c) conclusion of contracts which include special provisions that make a nonsense of cooling-off or overclaim the amount of damages, etc. pertaining to rescission or default of contract.

(Art. 58-4 to Art. 58-9).

#### **Editorial Note:**

By introducing the consumer organization litigation system also into the Act against Unjustifiable Premiums and Misleading Representations and the Act on Specified Commercial Transactions, we can expect to prevent the same type of damages from spreading to many unspecified general consumers and to exclude acts which violate these laws by providing information closer to consumer lifestyles. And to give qualified consumer organizations the right to demand an injunction as a civil rule apart from the government dispositions enables us to work for a flexible and quick resolution depending on the case. In addition, this can concentrate the resources of the Fair Trade Commission or the Ministry of Economy, Trade and Industry on important matters which call for a more immediate response.

## **6. Criminal Law and Procedure**

**Law for the Amendment of a part of the Law of measures accompanying criminal procedure for the protection of criminal victims' right and profit and the Law for comprehensive legal assistance.**

Law No. 30, April 16, 2008

#### **Background:**

Modern criminal justice strictly distinguishes civil from criminal pro-