

2. Law of Property and Obligations

“Interim report to list issues on the revision of the Civil Code (pertaining to the Law of Obligations)”

April 12, 2011

Background:

In 2009, the Minister of Justice consulted the Legislative Council of the Ministry of Justice concerning revision of the law of obligations except tort. It is said that there are mainly two reasons to revise the law of obligations. First, the law should correspond to the socio-economical changes that have occurred since the original Civil Code was enacted in 1896. Second, the provisions of the Civil Code should reflect the precedents developed during the last one hundred years, and also clarify the ambiguities which some of the current provisions contain.

The Legislative Council established a “special committee for the revision of the Civil Code (Law of Obligations).” Any particular date is not fixed to submit the final report to the Council, because it is essentially necessary to secure sufficient time for deliberation. In May 2011, the committee listed up the issues which should be considered, and published them.

Main Contents:

1. Concerning the demand to compensate for the damages caused by the failure to perform an obligation:
 - (1) Reconsidering the reasons which can be acknowledged as those “attributable to the obligor” (Article 415, 2nd paragraph of the Civil Code).
 - (2) Reconsidering the clause, “due to reasons attributable to the obligor”. Its meaning and the necessity to revise it.
2. Concerning the right to cancel:

Reconsidering the necessity of the putting the clause, “due to reasons not attributable to the obligor”, in this article (Article 543 of the Civil

- Code).
3. Concerning risk-bearing (Article 534 to 536 of the Civil Code):
Reconsidering the relation between right to cancel and bearing risks in case of default.
 4. Concerning the Obligee's subrogation right:
Regarding the case in which Conventional Obligee's subrogation right can be applied in the conventional scheme
 5. Concerning manifestation of intention:
 - (1) Regarding the special provision which prohibit the assignment of claims (Article 466 of the Civil Code)
 - (2) Regarding the effects of special provision that prohibit assignment of claims.
 6. Manifestation of intention:
Considering to increase the proper regulations for manifestation of intention.
 7. Concerning regulation of unfair contract terms:
 - (1) Is it necessary to regulate unfair contract terms? And in which cases?
 - (2) Regarding the framing of the theory to judge each case.
 - (3) Is it necessary to list up forms of conduct which are judged unfair?
 8. Concerning extinctive prescription:
 - (1) Regarding the period of prescription, extinctive, and its commencement point
 - (2) Regarding the period of extinctive prescription in principle
 9. Concerning transactions – the effects of transactions (warranty):
 - (1) Regarding warranty against defects (Article 570 of the Civil Code).
 - (2) Regarding the relationship between the general principle of default and warranty (the legal nature of warranty)
 10. Concerning provisions that regulate service contracts as an alteration of a quasi-mandate:
Is it necessary to add this provision in a statutory form?

Editorial Note:

The report shows 63 issues, including various points to consider, which enables Committee members to share the tasks needed. And also by publishing them, the Committee hopes to open the door wide to public

comment. The Civil Code would concern the day-to-day living of the people, so public comment should be necessary before the final report is submitted to the Legislative Council.

3. Family Law

Act Revising the Part of the Civil Law

Law No. 61, June 3, 2011 (Effective on April 1, 2012)

Background:

In recent years, child abuse has become one of the grave social problems. The two acts that directly relate to this problem, the Act Preventing Child Abuse (Law No. 82, May 24, 2000) and the Child Welfare Act (Law No. 164, December 12, 1947), have been revised several times. However, the provisions of the system of parental authority in the Civil Law have not been revised; especially, it has been noted that the provisions of removal of parental authority, indirectly related to child abuse, are hard to make use of today.

Article 2 of the supplementary provisions of these acts (Law No. 73, June 1, 2007) has a very good opener: ‘The Government shall conduct a review of the system of parental authority to prevent child abuse and to protect the rights of children, and shall take necessary measures based on the results of the examination, within three years after the effective date of this act’. ‘The group for studying the system of parental authority’ was set up by the Ministry of Justice, where they sorted out some agendas in the Civil Law and related acts. In addition, taking their review into consideration, it was discussed further by ‘the working group for a system of parental authority to prevent child abuse’ in the Legislative Council of the Ministry of Justice, and came to be revised at last.

Main Provisions: in order explained in the editorial note

Article 834 (Removal of Parental Authority): underlined parts revised

If a father or mother conducts child abuse or malicious abandonment of his/her child or if the child’s interests are sufficiently harmed by a