

(judgment of the Supreme Court of November 24, 2011/MINSHU vol. 65, No. 8, p. 3213) so that the stance of the precedents may be deemed to be secured, and this judgment as a herald thereof may be considered very important theoretically and practically.

(on 11 August 2012)

3. Condominium Legal System in Japan and Current Movement

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1. Outline

As of the end of the year 2011, 5,790,000 condominium units existed in Japan, and about 14 million people (one out of eight Japanese people) lived in one. The basic act with regard to the buildings of unit ownership, including condominiums, is the Act on Building Unit Ownership, etc., and it was established with reference to legislation in Germany (WEG) in 1962 when condominiums were becoming common (there were about 10,000 condominium units at that time). After that, major revisions were made in 1983 and in 2002. The parts and particulars of the same Act (total number of provisions are 72 Articles) are as follows. In Section 1 to Section 3 of Chapter I, the rights and interests pertaining to buildings and grounds thereof owned or co-owned by the unit owners are stipulated, and in Sections 4 to 6 of the same chapter, the system and method of management of the buildings of unit ownership and the grounds are stipulated. In Sections 7 and 8 of the same chapter, the measures in case any special reasons arise with regard to management or building (a decision by majority resolution at a meeting) are stipulated (Chapter 2 to be described later).

Chapter I Building Unit Ownership

Section 1 General Provisions

Section 2 Common Elements, etc.

- Section 3 Right to Use the Grounds
- Section 4 Managers
- Section 5 Bylaws and Meetings
- Section 6 Incorporated Management Associations
- Section 7 Measures against Persons Who Violate Their Obligations
- Section 8 Restoration and Reconstruction
- Chapter 2 Housing Complexes
- Chapter 3 Penal Provisions

2. Features of Japanese Law

(1) Association of Unit Owners

The Act on Unit Ownership in Japan, with regard to the basic structure thereof, is not different from legislation in European countries and American countries (abovementioned Section 1 to Section 5 and Section 7 of Chapter 1), but differs in the following three points. The first point is the understanding that the **Association of Unit Owners** for the purpose of management (Article 3), which all unit owners naturally organize when they acquire unit ownership (this right unifies a co-owning equity right of common elements of buildings and a co-owning equity right of grounds.), is not a juridical person but is considered an organization to plan the scope of the power of a person who exercises a voting right at a meeting and the basic scope of a resolution approved at a meeting (under a certain theory, the legal nature of the same association is considered “An Association without Legal Capacity,” but even if it is considered so, debts and credits of a third party shall not [commonly] belong to the said association [refer to Article 29]). However, the same association may become “incorporated management association” by a special majority resolution at a meeting (Article 47. abovementioned Section 6 of Chapter 1).

(2) Relations between Buildings of Unit Ownership and the Grounds

The second point is, different from legislation of countries in Europe and America, the feature based on the civil legislation that does not deem a building and the grounds thereof as unified real estate but separate and independent real estate (two pieces of real estate) in Japan. Japanese legislation on unit ownership provides, as exceptions, first the stipulation to the effect that a unit owner may not, unless the relationship between a

building and the grounds thereof is changed and “otherwise provided in the bylaws, dispose of unit ownership and the right to use the grounds thereof separately” (Article 22, paragraph[1]). Second, in the event there are several buildings of unit ownership on a parcel of land, separate disposition of each building and grounds is prohibited (abovementioned Article 22, paragraph[1]), and, the management of the co-owned grounds is carried out integrally in “**Housing Complex**” (**an association of building owners in a housing complex**) (Article 65 of Chapter 2), but the integral management of each building in a housing complex is not carried out (the management is carried out per building). However, under the stipulation in the bylaws of the housing complex pursuant to the special majority resolution at a meeting of the housing complex and each building, the integral management of all buildings in the housing complex may be carried out in the housing complex (Article 68, paragraph[1]) except for the measures against persons who violate the stipulated obligations (Section 7 of Chapter 1) and the reconstruction and restoration (Section 8 of Chapter 1).

(3) Reconstruction

The third point is, different from the legislation of countries in Europe and America, in Japan, there is a system of “**Reconstruction**” that allows the buildings of unit ownership to be demolished and new buildings to be constructed on the grounds of the buildings to be demolished by a special resolution by at least a four-fifths majority regardless of the reasons (Article 62 to Article 64). With regard to the buildings of unit ownership in the housing complex, there is a system of “separated reconstruction per building,” which requires the resolution for reconstruction at the each building and the approval of co-owners of the grounds in the housing complex as a special majority regarding the said resolution (Article 69) and a system of “combined reconstruction” to collectively reconstruct all of the buildings in the housing complex (Article 70). Such a system that approves the reconstruction by majority resolution is not found from the viewpoint of comparative laws (but Korean law has the same system and was adopted as Japanese law in 1984). However, as for the cases of reconstruction so far, there are only about 180 cases as of today other than about 100 cases from the Great Hanshin Awaji Earthquake in 1995. Under Japanese law, there is no system of “Termination” by a special majority resolution, which

is found in the United States and England.

(4) Actual Situation of Bylaws and Managers

As a matter that cannot be overlooked with regard to Japanese law, there is a fact pertaining to the bylaws and managers that the situation assumed by laws does not correspond to actual situations. First, the bylaw is stipulated in the Act on Unit Ownership to be established by a special resolution at a meeting by at least a three-fourths majority (Article 31, paragraph[1]), but actually, in most buildings of unit ownership, the draft of a bylaw prepared by the company selling land in lots is presented at the time of sales in lots, and all unit owners to whom land is sold in lots agree to the draft in writing, and as such, the bylaw is established (it is called “**primitive bylaw**”). Since the Act on Unit Ownership deem the resolution to have been made at a meeting in case there are agreements in writing by all unit owners (Article 45, paragraph[2] and paragraph[3]), such bylaw is considered lawful.

Furthermore, as for the bylaw, the administration has prepared “Condominium Standard Management Bylaw” as a standard model without legally binding force, and the actual bylaws of the most condominiums correspond to this standard.

Next, as for managers according to the Act on Unit Ownership, a manager is appointed at a meeting (Article 25, paragraph[1]), and the authority for such management is given to the manager (Article 26), but actually, in the most condominiums, plural directors are appointed at a meeting, and management duty is executed by a board of directors as a council thereof. Besides, a chief director elected by mutual vote among directors is appointed as a manager in accordance with the Act on Unit Ownership, and in many condominiums, concrete management duties are put in management companies’ charge.

3. Problems and Movement pertaining to Legislation

Urgent issues of legislation regarding condominiums in Japan today are the treatment of increasingly older condominiums based on legislation, seismic resistant reinforcement of condominiums preparing for a great earthquake expected to occur in the near future, and legal measures for earthquake-stricken condominiums, so that the government, learned societies, etc., have started studies thereabout. As for a trend regarding

the latter two issues, moderation of the requirement for a majority resolution on anti-seismic reinforcement (from a special resolution by at least a three-fourths majority to an ordinary majority resolution), introduction of the termination system by a special majority resolution with regard to earthquake-stricken condominiums, etc., are now being considered.

For reference, there exists a translation of the Act on Building Unit Ownership in the web pages of the Ministry of Law. Please see the link below.

<http://www.japaneselawtranslation.go.jp/law/detail/?id=2015&vm=04&re=01&new=1>

(on 26 August 2012)

4. Report on Litigation Involving the World Heritage Site at Tomo-no-ura

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Tomo-no-ura, Fukuyama City, Hiroshima Prefecture, is an important harbor that has prospered since the ancient Man-yo era as a good natural harbor and strategic point for Setouchi marine transportation. The area accommodated Joseon envoys during the Edo era. Tomo-no-ura is a globally important harbor heritage site where most of the medieval harbor facilities of all-night lights, gangi (stepped pier), hato (dock), and tadeba (one of the facilities for the maintenance of wooden vessels), still exist. The whole neighborhood of Sensui-jima outside the port of Tomo-no-ura is picturesque and thus was designated a place of scenic beauty by the Act on the Protection of Cultural Properties in Japan. Furthermore, the townscape of the remaining marine transportation and historic buildings preserves the look of the past when the harbor was prosperous (during dispute, the area was designated a Preservation Area for Groups of Historic