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Amended Guidelines on Distribution Systems and Business Practices

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1. Distribution and Business Practice Guidelines

The Distribution and Business Practice Guidelines (the "Distribution Guidelines") were established in 1991 by the Japan Fair Trade Commission ("JFTC") for two purposes, namely, to prevent violations of the Antimonopoly Act[1] and to ensure the proper development of business activities through the concrete explanation of what kinds of action prevent free and fair competition, and violate the Antimonopoly Act. These guidelines clarified the views of the JFTC on distribution and business practices in Japan to promote consumer interests and market liberalization.

The Distribution Guidelines were issued as a result of the Japan-US Structural Impediments Initiative between 1989 and 1990. Specifically, such guidelines were intended to demonstrate clear and concrete Japanese antimonopoly practices both at home and abroad. They were also intended to protect fair competition from the effects of unique anticompetitive Japanese distribution and business practices between corporate group companies.

For more than 20 years, the Distribution Guidelines have not changed substantially, and their usefulness and coverage have gradually decreased. Moreover, the circumstances surrounding Japanese distribution and business practices have dramatically changed because of the development and expansion of e-commerce, and the facilitation of deregulation. There was also concern that the guidelines might not be able to handle additional changes in distribution and business practices in the future. Thus, in June 2017, the JFTC issued amendments to the Distribution Guidelines.[2]

2. The Distribution Guidelines as Administrative Guidelines

The guidelines of the JFTC are just interpretations of a law by an administrative body. They are non-binding on courts. However, many court decisions seem to have considered such guidelines for the purpose of interpreting the Antimonopoly Act. Since the Antimonopoly Act contains many broad articles, the guidelines of the JFTC provide concrete interpretations and are thus important in the Japanese practice.

The guidelines of the JFTC are also of practical importance because the JFTC is likely to impose administrative sanctions in case of violation thereof. Such guidelines are classified under the following two types:[3]

(a) those that provide rules; or
(b) those that aim to enlighten a specific industry or business.

In Japanese practice, the first type is considered more important than the second type. The Distribution Guidelines are classified under the second type. Nonetheless, since these guidelines mention the rules on "vertical restraints," which other guidelines are silent on, they have been considered important despite the fact that they are usually considered as explanatory guidelines.[4]

3. Three Main Points of the Amendments to the Distribution Guidelines

(1) Change of Structure

The old Distribution Guidelines were organized into three parts based on the nature of the property involved. Such guidelines were not sufficiently useful and there were many descriptions of topics which are no longer big issues nowadays. Thus, in the amended Distribution Guidelines (the "Amended Distribution Guidelines"), the guidelines are now structured in a way that combines types of actions that are judged by the same standard of legality to increase ease of understanding and usefulness.

(2) Clarification of the Standard of Illegality

The Amended Distribution Guidelines reorganize and clarify the analysis process, such as the views of the JFTC on the legality of vertical restraints and the risk to fair and free competition, and provide more details for the purpose of addressing various business models, such as e-commerce. Such guidelines especially clarify the views of the JFTC on the foreclosure effects on the market based on an understanding from an economics perspective.

Additionally, the Amended Distribution Guidelines clarify the views of the JFTC on the types of actions that are considered illegal and those to which safe harbor provisions would apply. The guidelines also describe the views of the JFTC on vertical restrictions on online trades, which have been increasing in recent years. For example, there is now no difference in the treatment of online trades and trades at real stores.

(3) Additional Descriptions and Clarifications based on Antimonopoly Practices

Based on antimonopoly practices, the Amended Distribution Guidelines add new descriptions on "tie-in sales," which featured in some antimonopoly cases, such as the case of Microsoft Excel in 1998.[5] Furthermore, the guidelines add provisions on boycotts and transactions between subsidiaries. Based on the old guidelines, boycotts were an issue only in terms of an unreasonable restraint of trade, however, in the Amended Distribution Guidelines, boycotts have also become an issue in terms of a private monopoly, in addition to being an unreasonable restraint of trade. As to transactions between fellow subsidiaries, in substance, they are deemed equivalent to intra-company transactions as well as transactions between a parent company and a subsidiary.

4. Possible Future Action

The Amended Distribution Guidelines have become more understandable, useful and applicable to a wider range of situations involving enterprises. Enterprises are expected to better understand and use these guidelines to prevent antimonopoly violations and engage in proper business activities.

The guidelines may be further revised if there are substantial changes in distribution and business practices in the future. The JFTC will consider such further revisions properly and in a timely manner.[6] Thus, in addition to knowing and using the guidelines, we also recommend that enterprises pay attention to changes therein.

1. Shitekidokusen no kinshi oyobi kouseitorihiki no kakuho ni kansuru horitsu [Act on Prohibition of Private Monopolization and Maintenance of Fair Trade], Act No. 54 of April 14, 1947 as last amended by Ordinance No. 7 of Dec. 7, 2013.
2. *See* the press release of JFTC at http://www.jftc.go.jp/en/pressreleases/yearly-2017/June/170616.html.
3. Tadashi Shiraishi, Dokusenkinshiho [Antimonopoly Act], 3rd Edition, Yuhikaku, 2016, pp. 6-8.
4. Tadashi Shiraishi, Ryutsu torihikikanko gaidorain no enkaku to ichizuke [History and Status of Guidelines Concerning Distribution Systems and Business Practices]. Tsuyoshi Ikeda, et al. (editors), Bijinesu wo sokushinsuru dokkinho no michishirube [Antimonopoly Waymarks that Facilitate Business] (Lexis Nexis Japan, 2015) pp. 2-15.
5. A trial recommended decision of the JFTC, December 14, 1998, 45 Kosei Torihiki Iinkai Shinketsushu, p. 153.
6. Masaya Sakuma, Ryutsu torihikikanko ni kansuru dokusenkinshiho jo no shishin no kaisei ni tsuite [Amendments to JFTC's Guidelines Concerning Distribution Systems and Business Practices] 803 Fair Trade, 2017, p. 33.

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Disclosure of Individual Voting Records under the Revised Stewardship Code

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Summary

In view of the newly revised Japan's Stewardship Code[1] ("Revised Code"), institutional investors now have to carefully consider whether or not to disclose the voting records of each investee company in the manner required, and investee companies may now want to have close and in-depth dialogues with their institutional investors to avoid systematic and hostile voting activities.

What is Japan's Stewardship Code?

The Stewardship Code is a set of principles for responsible institutional investors, originally formulated by a council of experts in the Financial Services Agency on February 26, 2014. Under the Revised Code, institutional investors are requested to, among other things, have a clear policy on conflicts of interest and voting activities, with the aim of enhancing medium to long-term investment returns for their clients and beneficiaries by improving and fostering the corporate value of their investee companies through constructive dialogues. Although the Revised Code is not a law or governmental regulation, but a soft law, it has had *de facto* binding effect on institutional investors doing business in Japan because most of them have signified their commitment to comply with the Revised Code.

The significance of the Revised Code must be understood in the larger context of the corporate governance reforms of Japan. Following the pro-shareholder amendments to the Companies Act in 2014, another soft law, Japan's Corporate Governance Code, was adopted as a rule of the Tokyo Stock Exchange in June 2015,[2] requiring listed

companies to provide further disclosure and transparency as well as conduct constructive dialogues with their shareholders. Both of these codes are regarded as "two wheels of a cart" that will boost the Japanese economy. They commonly take a "principles-based approach" and a "comply-or-explain approach," meaning that (i) the principles in these codes are intentionally broad and mostly undefined to enable each institutional investor or investee company to take unique and tailored actions, and (ii) non-compliance is allowed if reasons are provided.

Why and How the Stewardship Code was Revised

Three years after the introduction of the Stewardship Code, it was widely recognized that the stewardship policies adopted and disclosed by institutional investors were by and large standardized and sometimes superficial, and the said code should shift its focus from "form" to "substance." In light thereof, the Stewardship Code was revised on May 29, 2017 to address the following issues:

(a) Effective oversight by asset owners;
(b) Governance and management by asset managers of their conflicts of interest;
(c) Engagement in passive management;
(d) Enhanced disclosure of voting records; and
(e) Self-evaluation by asset managers.

With respect to item (d), disclosure of voting records, which is the subject of this article, the previous Stewardship Code only required the disclosure of aggregated voting records on each major kind of proposal. Thus, a typical disclosure before would be that Insurance Company A made 1,450 yes votes in 1,500 investee companies on the proposal on the appropriation of the surplus in accordance with its voting policy.

Now, under the Revised Code, institutional investors must disclose the voting records for each investee company on a per agenda item basis. The two reasons for this revision are: (i) it is important that asset managers enhance the transparency of their activities for the ultimate beneficiaries of the assets they manage, and (ii) it is important that asset managers, who often belong to financial groups, disclose company-specific voting records on a per agenda item basis to eliminate concerns that they may not have taken appropriate actions in managing their conflicts of interest.[3]

Reactions of Institutional Investors

Following the revision of the Stewardship Code, institutional investors were expected to renew their stewardship policies by the end of November 2017.[4] Many foreign institutional investors have disclosed their individual voting records even before the revision. As to domestic institutional investors, more than ten who have previously disclosed aggregated results only declared their commitment to comply with the Revised Code even before the said deadline.[5]

However, it is noteworthy that one of the largest life insurance companies have reportedly decided not to comply with the individual disclosure requirement for the reason that the mere fact of having voted no to a proposal of an investee company may convey the wrong

message to the market that it will sell the stock of such company.[6] We must carefully watch how the rest of the larger financial institutions take their new positions.

Impact on Investee Companies

Generally, investee companies are concerned that it might become more difficult to pass proposals at their shareholders meetings under the Revised Code because more than 50% of the shares of listed companies in Japan are usually held by institutional investors, including trust banks and insurance companies, and such institutional investors might systematically object to some of their proposals just to avoid any claim of being inconsistent with their general stewardship policies, without first looking into the details of each investee company. Such concern has been amplified by some "shocking" news reports, including the one where Mitsubishi UFJ Trust Banking Corporation opposed the proposal of Mitsubishi Motor Corporation to invite a top executive of Mitsubishi Heavy Industries, Ltd. as an outside director for lack of independence. This act was seen as a departure from the business practice among group companies in Japan.

Now is the time for listed companies to have deeper and substantial dialogues with their institutional investors to make the latter understand their unique business landscape and circumstances. This is exactly what the Revised Code intends to happen.

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1. *See* http://www.fsa.go.jp/en/refer/councils/stewardship/20170529/01.pdf.
2. *See* http://www.jpx.co.jp/english/equities/listing/cg/tvdivq0000008jdy-att/20150513.pdf.
3. *Id.*, footnote 15.
4. Revised Code, item 7 of the preamble.
5. An example is Mitsubishi UFJ Trust and Banking Corporation. *See* http://www.tr.mufg.jp/houjin/jutaku/unyou_kabu.html#item2 (in Japanese).
6. *See* https://www.nikkei.com/article/DGXLZO18478870U7A700C1EE9000/ (in Japanese).

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The Latest Movement on Maternity Harassment

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1. Statutory Protection of Workers Who are Pregnant or Raising Infants Against Maternity Harassment

In Japan, certain statutory rights are given to pregnant female workers and those who are raising infants. More specifically, a pregnant female worker may take a leave for a period of six weeks before and eight weeks after childbirth,[1] and request the employer to transfer her to a

job assignment that is less demanding in terms of quantity and quality.[2] Moreover, a worker who is taking care of a child less than two years of age[3] is legally entitled to take childcare leave.[4] After the childcare leave, a worker who is raising a child under three years of age is legally entitled to shorter working hours of six hours or less,[5] and may set a limit on overtime work as long as the child is of preschool age.[6]

A number of companies have reportedly harassed or treated workers exercising the aforementioned rights unfavorably, and hence, maternity harassment has recently become an issue. Although there is no statutory provision that specifically defines maternity harassment, it is generally understood to refer to both: (1) unfavorable treatment due to pregnancy, childbirth, taking a childcare leave, etc.; and (2) bullying or harassment in the workplace in relation to pregnancy, childbirth, taking a childcare leave, etc. Paragraph 3 of Article 9 of the Act on Securing, etc., of Equal Opportunity and Treatment between Men and Women in Employment (the "Equal Employment Opportunity Act") prohibits some of the acts described in item (1) above, *i.e.,* those concerning leaves before and after childbirth; and Article 10 of the Childcare and Caregiver Act prohibits some of the other acts described in item (1), *i.e.,* those concerning the exercise by a worker of his or her right upon or after a childcare leave. Item (2) above is a form of tort.

In Japan, sexual harassment and power harassment (*i.e.,* bullying or harassment of a subordinate by a superior) have previously attracted attention and a number of claims have been made. Now, based on the number of consultations made with Prefectural Labour Bureaus in 2016 as officially announced by the Ministry of Health, Labour and Welfare ("MHLW"), consultations concerning maternity harassment have reached twice the number of those concerning sexual harassment.[7] From these statistics, an increased awareness of this issue can be seen.

The foregoing has prompted us to outline in this article a judicial precedent of the Supreme Court of Japan and an administrative circular notice concerning maternity harassment as well as relevant recent amendments to the laws.

2. Seminal Supreme Court Judgment

A seminal Supreme Court judgment[8] on maternity harassment was rendered three years ago, which had a material impact on employers. In this case, the claimant (a worker), who was working in a hospital as a physical therapist with the title of "deputy foreperson," became pregnant and requested for a transfer to a less demanding job assignment. The defendant hospital lightened her assignment but at the same time removed her title as the "deputy foreperson," and did not reinstate her title as such even after the end of the childcare leave (as a result, a monthly allowance of JPY 9,000 was cut off).

Therefore, the claimant alleged that these measures taken by the hospital constituted unfavorable treatment, which was prohibited by paragraph 3 of Article 9 of the Equal Employment Opportunity Act, and thus, are void.

The Supreme Court basically upheld the claim finding that deputy foreperson is not a status but a qualification (*i.e.,* representing certain years of experience and skills), and ruled that there was no reasonable explanation for depriving the claimant of such qualification on account of her transfer to a less demanding job assignment. Furthermore, the Supreme Court changed the framework of deciding on maternity harassment issues adversely for employers, which has become a cause for concern for them. Specifically, although workers have so far borne the burden of proof concerning whether or not unfavorable treatment was made on the ground of pregnancy, etc., the Supreme Court effectively shifted such burden of proof to the employers by holding that if the unfavorable treatment in question was "preceded by" pregnancy, etc., then in principle, it constitutes maternity harassment (*i.e.,* it contravenes paragraph 3 of Article 9 of the Equal Employment Opportunity Act). Moreover, prior to the above Supreme Court decision, as to the effect of such unlawful conduct (*i.e.,* the unfavorable treatment), while in principle it was valid unless in exceptional cases it was considered invalid where it constituted a violation of public policy in terms of the seriousness of the consequences, wrongfulness, etc., now, the Supreme Court held in this case that the effect of such unlawful conduct was invalid just by contravening the Equal Employment Opportunity Act.

3. Administrative Circular Notice

In January 23, 2015, the MHLW issued an administrative circular notice which, while it follows the aforesaid framework set by the Supreme Court, enlarges the ambit of its application. This notice construed that the wording "preceded by," as specified in the above Supreme Court decision, should be determined based on the timing thereof, and shows the ministerial interpretation that any unfavorable treatment committed within one year from the exercise of the right of the relevant worker (*e.g.,* taking of a childcare leave) is illegal.

As to the scope of "unfavorable treatment," the notice also shows a broader interpretation, which includes not only acts that are relatively easy to understand, such as dismissals, demotions or salary cuts, but also acts such as performance ratings and job transfers, if they are unfavorable to the worker.

It is arguable what kind of job transfers and performance ratings are considered "unfavorable treatment." While a job transfer or low performance rating may be construed as being prohibited if made within one year from the exercise of the right, job transfers and performance ratings of a worker upon returning from a leave, in particular, deserve closer attention because it may be tougher to determine whether or not such acts would constitute unfavorable treatment. Another act that deserves close attention is the non-renewal of an employment contract upon its expiration of a non-regular worker (*i.e.,* an employee under a fixed-term labor contract) since this can also be considered as unfavorable treatment.

4. Mandatory Measures to Prevent Maternity Harassment

Amendments to the Equal Employment Opportunity Act and the Childcare and Caregiver Act were made in response to the foregoing increased awareness of maternity harassment. Effective from January 1, 2017, it became mandatory for employers to take measures to prevent the same.

Such mandatory preventive measures are analogous to those meant to prevent sexual harassment that have already become mandatory. More specifically, the said measures include: (1) identifying the prohibited acts and stipulating that such acts are subject to punishment, etc. (and thus, modification of work regulations, etc., are necessary); (2) informing and educating employees about the prohibited acts and the corresponding punishment therefor; (3) establishing a consultation desk; and (4) upon consultation, taking the appropriate follow up measures (*e.g.,* an investigation, etc.).

Compared to sexual harassment, however, it has been pointed out as a problem specific to maternity (or paternity) harassment that the victim thereof must also be considerate to his or her co-workers. To illustrate, if an eligible worker takes a leave or shortens his or her working hours, then his or her co-workers have to take on additional work. Excessively disproportionate workloads are likely to create dissatisfaction and friction among the workers. Accordingly, victims must be made aware of this possible consequence and they should be considerate and thankful to their co-workers. Furthermore, from the viewpoint of balancing the workload of each worker, employers must take certain organizational measures, including by establishing a personnel management system as well as rationalizing job assignments and shifts. These features are unique to maternity (paternity) harassment.

In addition to the preventive measures already mentioned, the following are required by the amended Equal Employment Opportunity Act, and Childcare and Caregiver Act:
- Inform and educate the workers who exercise their statutory rights to be conscious that in performing their duties, they should make an effort for smooth communication with their co-workers, taking into account their own physical condition and the like; and
- Take measures to deal with elements and circumstances that may cause maternity harassment, including, for example, implementing appropriate adjustments to the division of work to mitigate any increased workload of the co-workers of a pregnant worker.

Employers must implement preventive measures based on the foregoing features that are specific to maternity harassment. It must also be noted that, if any employer fails to implement the required mandatory measures, then the name of such employer may be publicly disclosed by the MHLW. In addition, a worker may likely file a claim against such employer for damages for any maternity harassment suffered by the worker alleging that such employer breached its obligation to secure good working conditions. Thus, employers must comply with the mandatory requirements to protect its reputation and avoid any unwanted liability.

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1. Rodo kijyun ho [Labor Standards Act], Law No. 49 of April 7, 1947, art. 65, paras. 1 and 2, as last amended by Law No. 31 of May 29, 2015.
2. *Id.,* art. 65, para. 3.
3. The age limit was recently extended from one and a half years to two years due to the shortage of nurseries in Japan.
4. Ikujikyugyou kaigokyugyou tou ikuji mataha kazokukaigo wo okonau roudousha no fukushi ni kannsuru houritsu [Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members], Act No. 76 of May 15, 1991, art. 5 *et seq.,* as amended by Act No. 14 of March 31 2017 (the "Childcare and Caregiver Act").
5. *Id.,* art. 23.
6. *Id.,* art. 17.

7. According to the MHLW, there were 7,526 cases of consultation on sexual harassment while there was a total of 15,527 cases of consultation relating to maternity harassment, including 7,344 cases relating to art. 9 of the Equal Employment Opportunity Act (Prohibition, etc., of Disadvantageous Treatment by Reason of Marriage, Pregnancy, Childbirth, etc.), 5,256 cases relating to art. 10 of the Childcare and Caregiver Act (Prohibition of Disadvantageous Treatment), and 2,927 cases relating to art. 16, sec. 4, art. 18-2, art. 20, sec. 2, art. 23, sec. 2, and arts. 52-4 and 52-5 of the Childcare and Caregiver Act (Disadvantageous Treatment for Non-maternity Leave).
8. Supreme Court, October 23, 2014, 68 Minshu 1270-1324.

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Amendments to the Civil Code of Japan (Part 2): Cancellation of Contracts and Guarantee Obligations

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I. Introduction

Following the article in the 2017 Autumn Issue, this article continues to outline the amendments to the Civil Code of Japan. The previous article described the amendments to extinctive prescription for claims and statutory interest rates. This article covers the cancellation of contracts and the assumption of risks relating thereto as well as guarantee obligations.

II. Cancellation of Contracts and Assumption of Risks Relating Thereto

1. Fault of the obligor will no longer be required for the cancellation of a contract
The Civil Code currently requires fault of the obligor in order for the obligee to cancel a contract based on impossibility of performance. Under the commonly accepted theory, any cancellation due to delayed performance, which is not expressly provided for in the Civil Code, must also be based on the fault of the obligor.

However, if a seller (obligor) fails to deliver goods by the delivery date, the buyer (obligee) would usually desire to cancel the relevant sales contract to be excused from its payment obligation to the seller and to purchase alternative goods from another supplier, whether or not the failure is due to the fault of the seller. The validity of the cancellation in such circumstances has seldom been denied by courts on the ground of absence of the fault of the obligor. It is a prominent academic theory that the existence of any fault of the obligor is irrelevant to the cancellation of a contract because the purpose of the cancellation is to release the obligee from being bound thereby rather than to impose a penalty on the obligor.

The amended Civil Code adopts such prominent academic theory and repealed the requirement of fault of the obligor for a cancellation with or without notice. However, since the obligee should not be released

from its obligations in cases where it is at fault, the obligee cannot cancel a contract if it is at fault.

2. Requirements for cancellation with notice
Under the amended Civil Code, the exercise of the right to cancel a contract varies depending on whether the cancellation is made with or without notice.

The requirements for cancellation with notice are: (i) delayed performance by the obligor; (ii) demand for performance by the obligee; and (iii) lapse of a reasonable period of time. These requirements are the same as those stipulated in the present Civil Code. However, the amended Civil Code includes a new proviso, which stipulates that "if the default [in the performance] of the obligation after the lapse of such period is minor in light of the relevant contract and the social norms related to commercial transactions," then the obligee will not have any right to cancel the contract. This is because if the default in the performance of the obligation is minor, then it should be sufficient for the obligee to receive compensation for its damages or the like, and the obligee should not be released from the binding effect of the contract.

3. Requirements for cancellation without notice
For a cancellation without notice, the amended Civil Code stipulates different requirements for a cancellation of the entire contract and a partial cancellation.

A cancellation of the entire contract without notice is permissible if, among others, (i) it is impossible to perform all of the obligations thereunder; (ii) the obligor clearly expressed its intention to refuse the performance of all of its obligations, (iii) in cases where, it is impossible to perform part of the obligations or the obligor clearly expressed its intention to refuse the performance of part of its obligations, and the purpose of the contract cannot be achieved by the performance of only the remaining parts; or (iv) in cases where, due to the nature of the contract or the expressed intention of the parties, the purpose of the contract cannot be achieved unless the obligations are performed on a certain date and time or within a certain period, and the obligor failed to perform its obligations before such time or the period has lapsed.

On the other hand, a partial cancellation of a contract without notice is permissible if (i) it is impossible to perform the subject part of the obligations; or (ii) the obligor clearly expressed its intention to refuse the performance of that part of its obligations.

4. Assumption of risks
If, for example, the goods subject of a sales contract are lost for a reason not attributable to the seller (the obligor) before the performance of the obligation to deliver becomes due under the said sales contract, and it becomes impossible for the seller to perform the contract, then how would such situation affect the payment obligation of the buyer (the obligee)? This question relates to the assumption of risks.

The basic principle currently adopted by the Civil Code is that, in the abovementioned circumstances, the reciprocal obligation of the obligee will cease, or in other words, the principle that "the obligor assumes the risks" would apply. At the same time, the present Civil Code also provides for a vast range of exceptions, whereby it applies

the principle that the obligee should assume the risks and its reciprocal obligations will not cease "if the purpose of the bilateral contract is to create or transfer real rights on a specific thing." In practice, however, such principle of "the obligee assumes the risks" is not well-balanced in terms of its consequences. Therefore, actual sales contracts often include a clause that the risk of loss or the like concerning the relevant goods shall transfer to the buyer only upon delivery thereof.

For the above reason, the principle of "the obligee assumes the risks" has been repealed in the amended Civil Code.

III. Guarantee Obligations

1. Revolving guarantee contracts by individual guarantors
Under the present Civil Code, revolving guarantee contracts for an unlimited amount (the "Unlimited Revolving Guarantee") by individual guarantors are only prohibited for obligations arising from loans of money or discounts of negotiable instruments (the "Loan Obligations"). As a result, individual guarantors sometimes end up with revolving guarantee obligations for an unlimited amount for other obligations, such as the obligation to pay rent under a lease contract and the obligation to pay the price of the goods under a continuous sales transaction.

The scope of the protection given to individual guarantors for revolving guarantees under the amended Civil Code has therefore been extended to revolving guarantee contracts in general, requiring such contracts to provide a maximum amount regardless of the cause of the principal obligation.

2. Special rule for guarantee contracts for business-related obligations
As described above, under the present Civil Code, Unlimited Revolving Guarantees are prohibited for Loan Obligations. However, in the case of guarantees for loans for business funds, the amount borrowed often far exceeds the financial ability of any normal individual, and individuals cannot be sufficiently protected by simply requiring a maximum amount to be set.

The amended Civil Code requires that, to enter into a guarantee contract or a revolving guarantee contract with an individual for Loan Obligations for a business, a notarial deed must be executed no later than one month prior to the execution of such contract. However, as an exception, a notarial deed does not need to be executed if there exists a certain close relationship between the guarantor and the principal obligor, such as where a director guarantees the Loan Obligations of the company. Although the notarial deed does not by itself protect the guarantor, this formality will cause the guarantor to be more cautious in agreeing to become a guarantor, and the notary public will confirm whether or not the guarantor is acting on his or her own free will. Requiring a notarial deed will thus prevent creditors from forcefully requiring a guarantor to sign a guarantee letter.

3. Obligation to provide information or give notice to individual guarantors
To protect individual guarantors further, the amended Civil Code requires the obligee and the principal obligor to give notice to an individual guarantor about certain matters.

First, if any principal obligor consigns an individual to be a guarantor of its obligations for its business, then it must provide the guarantor with information concerning its finances and profits. If the guarantor enters into a guarantee contract based on any misunderstanding of the facts resulting from the failure of the principal obligor to perform its obligation to provide such information, and the obligee acted in bad faith or was negligent with respect to such failure of the principal obligor to perform the said obligation, then the guarantor has the right to cancel the guarantee contract.

Second, at the request of the individual guarantor (who became a guarantor by consignment of the principal obligor), the obligee must promptly provide information concerning the performance of the principal obligations being guaranteed. Furthermore, if the obligations of the principal obligor are accelerated, then the obligee must give notice thereof to the individual guarantor within two months following the time the obligee becomes aware of the acceleration. If such notice is not given, then the delinquency charges to be paid by the principal obligor for the period before such notice is actually given will be excluded from the scope of the guarantee.

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