



## Revision of the Consumer Contract Act (Early Report)

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### I. Introduction

A draft amendment with respect to the Consumer Contract Act (the “Act”) and the Act on Special Measures for Court Proceedings for Consumers (the “Special Measures Act”), which was submitted to the 208th session of the Diet, was enacted into law on May 25, 2022. This article aims to offer the readers an overview of the amended Act, which is scheduled to be enforced within one year from the date of its promulgation, in case you need to deal with this amendment as a trader, for it includes some additional rights to cancel a contract and imposes new obligations on traders to make efforts to explain about the cancellation fee.

### II. Amended Consumer Contract Act

#### 1 Addition to distressing situations

In response to the supplementary resolutions adopted at the time of the 2018 revision, the expansion of the right to rescind an offer or acceptance in connection with so-called “distressing situations” had been considered, and the present revision enabled consumers to rescind their manifestation of intention in the event the consumer has manifested his/her intention to offer or accept a Consumer Contract (as defined in the Act) as a result of being distressed by the act of a trader by which (i) the consumer was led, without being informed of the trader’s intention to solicit, to a place from which it was difficult to leave, and was then solicited in such a place (the amended Act, Art. 4, para. 3, item 3), (ii) the consumer’s attempt to contact others for consultation was interfered with by intimidating words or behavior (ibid., item 4), or (iii) the present condition of the subject matter of the contract was changed to a state that was extremely difficult to restore it to its original condition (e.g., showing the goods to the consumer by unwrapping its neatly-wrapped package, so that the consumer feels hesitant to reject the trader’s offer) (id., item 9).

#### 2 Additional restriction on unreasonable clauses

Article 8(1)(ii) and (iv) of the Act before the present amendment provided that any contract terms setting forth a partial exemption of the trader's liability for damages based on a default or tort arising out of a willful misconduct or gross negligence were null and void. Until now, however, there have been some cases where consumers were led to think that it might be pointless to make a claim for compensation because the terms did not clearly specify in what case the liability of the trader was exempt. In response to this, a new provision has been added to the amended Act, providing that any partial exemption clause will be null and void unless it clearly states that the exemption is applicable only in the event of negligence but not gross negligence (the amended Act, Art. 8, para. 3) Therefore, it should be noted that clauses stating, for example, that "the amount of compensation shall be limited to 10,000 yen insofar as permitted under applicable laws" are null and void.

### **3 Expansion of the obligation to make efforts**

#### **(1) Obligation to make efforts in connection with solicitations**

In the amended Act, obligations to make efforts are expanded in connection with two major fields: (i) solicitation, and (ii) offer and cancellation.

First, regarding solicitation, when traders solicit a consumer to conclude a Consumer Contract that falls under the category of a standard transaction agreement, traders are required to provide the consumer with information required to exercise his/her rights to request the presentation of the standard form of contract, unless its details are readily available (the amended Act, Art. 3, para. 1, item 3).

Furthermore, in addition to the existing obligations to make efforts to provide information that is considered to be appropriate for the customer based on his/her knowledge and experience at the time of solicitation, it is now explicitly provided that also the age and both mental and physical condition of the consumer should be taken into account as part of a comprehensive consideration, and that such factors are to be based on what the trader may possibly know (the amended Act, Art. 3, para. 1, item 2).

Moreover, under the amended Act, Qualified Consumer Organizations (as defined in the Act) are authorized to request traders to disclose the applicable provisions when an offer is made based on a Consumer Contract that contains any unreasonable terms (the amended Act, Art. 12-3, para. 1). In such a case, the trader is mandated to make efforts to comply with such request (id., para. 2).

#### **(2) Obligations to make efforts in connection with cancellation**

Secondly, with regard to the obligations to make efforts in connection with cancellation,

the trader must endeavor to explain the outline of the grounds for calculation of the charged amount at the consumer's request when the trader makes a claim against the consumer for damages or a penalty pursuant to clauses setting forth liquidated damages or a penalty upon termination of the Consumer Contract (the amended Act, Art. 9(2)).

Furthermore, Qualified Consumer Organizations are authorized to request explanations from the trader in cases where there are reasonable grounds to suspect that the total amount of damages calculated in accordance with the clause setting forth liquidated damages or a penalty to be paid upon termination of the Consumer Contract exceeds an average amount of damages (the amended Act, Art. 12-4, para. 1). In such a case, the trader is mandated to make efforts to comply with such request except in cases where justifiable grounds exist (*id.*, para. 2).

In addition, as there have been cases where consumers who intended to terminate a contract did not know how to do so, a new provision is also included in the amended Act, under which a trader is mandated to endeavor to provide consumers, at the consumers' request, with necessary information for exercising their right to terminate a Consumer Contract in the manner stipulated therein (the amended Act, Art. 3, para. 1).

### **(3) Other changes**

In addition, in the event an injunction sought by a Qualified Consumer Organization calls on a trader to take some remedial steps, the Qualified Consumer Organization that applied for such injunction may further request that the trader disclose what particular steps the trader took to comply with such injunction (the amended Act, Art. 12-5, para. 1). In such a case, the trader is mandated to make an effort to comply with the request (*id.*, para. 2).

## **III. Concerning the Act on Special Measures for Court Proceedings for Consumers**

### **1 Regarding the Court Proceedings for Redress for Damage**

The present amendment has also made a certain change to the Court Proceedings for Redress for Damage (as defined in the Special Measures Act).

To begin with, the details of these proceedings, or even the fact that such proceedings exist, may be new to quite a few readers. For those who are not familiar with them, below is the outline of the proceedings. First, the proceedings consist of two steps: (i) a court procedure to determine whether or not a trader is liable to consumers (Litigation Seeking Declaratory Judgment on Common Obligations, as defined in the Special Proceedings Act) (the "Litigation"), and if the trader is held liable, (ii) a procedure to let the consumers join in the proceedings and determine to whom and how

much the trader should pay (Simple Determination Proceedings, as defined in the Special Proceedings Act), followed by subsequent procedures including enforcement. These proceedings are especially useful when the amount of damages is relatively small but the number of victims is large. For example, these proceedings were recently used to make a claim for reimbursement of examination fees in connection with allegations of injustice in administering medical entrance examinations.

However, these procedures can be pursued only by a Specified Qualified Consumer Organization (as defined in the Special Proceedings Act) (each, "SQCO"), and according to the announcement issued by the Consumer Affairs Agency, these proceeding were used only on four occasions in the last five years.

## **2 After Amendment**

In response to the circumstances described above, some provisions are additionally included in the present revision, including a provision that enables the court before which the Litigation is pending to decide and order the trader taking part in such Litigation as a party to disclose information about the Target Consumers (as defined in the Special Proceedings Act), including their names and addresses, to the SQCO (the amended Special Proceedings Act, Art. 9, para. 1), in an attempt to enhance the provision of information to consumers and also to reduce the burden on SQCOs.

That said, considering the fact that only four SQCOs exist nationwide as of May 27, 2022 according to the Consumer Affairs Agency's website, it is unlikely that the present amendment will dramatically increase the number of these proceedings, although it may to some extent.

## **IV. Postscript**

Please note that the matters described in this article do not cover all of the revisions made in the present amendment. Moreover, as little time has passed since the enactment of the amended Act in the Diet, it is expected that the Consumer Affairs Agency will issue guidelines and/or other instructions in the future. Readers are advised to keep abreast of the latest information made available by the Consumer Affairs Agency.

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