Top 10 Major Revisions to the Civil Code
From the viewpoint of the transportation and shipbuilding industries

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On Friday, 26 May 2017, a bill to amend the portions of Japan's Civil Code relating to claims passed the National Diet. This is the first major change to this area of the Code in approximately 120 years, since it was first enacted in 1896. Naturally, there are many aspects of current society that are not dealt with in the current Code, such as Internet shopping and mobile phone contracts. Therefore, the aim of this large-scale revision is to update the code for modern society. There are more than 200 revisions which have been made to the Code and the new provisions will take effect sometime between autumn 2019 and spring 2020. However, despite the large number of revisions, most merely codify principles that have already been confirmed in judicial precedents and academic writing.

People involved in the transportation (particularly marine) and shipbuilding industries may already be familiar with a separate bill to revise the Commercial Code that is also before the National Diet. But it is necessary to also be aware of the revisions to the Civil Code, as they will also have a large impact on various aspects of business within these industries. For example, regarding bills of lading used in the transport industry, the revisions to the Civil Code will have a major effect not only upon domestic transport contracts but international transport also. Despite this, there seems to be a lack of commentary regarding the newly enacted revisions of the Civil Code aimed at those in the maritime, shipbuilding and transportation industries. I would therefore like to take this opportunity to introduce the 10 points that I consider especially important. Of course, many of these points will also apply to other industries, so I hope the following is of sufficient benefit for all readers.

The top 10 revisions you should be familiar with

The 10 major revisions within the new Civil Code that all readers should be familiar with are in the areas of (1) terms and conditions forms, (2) extinctive prescription periods, (3) statutory interest rates and damages for late payment, (4) cancellation of contracts, (5) set-off of property damage claims, (6) guarantees, (7) contracts for work, e.g. construction, (8) sales contracts, (9) mistakes in contracts, and (10) leases.

Table of contents

1 Standard terms and conditions

There are no provisions in the current Civil Code that deal with standard terms and conditions, yet such standard forms that define the terms and conditions of contracts have become important in many industries. As provisions relating to terms and conditions forms have now been inserted into the Code, it is important for businesses to consider introducing such forms or revising the forms already in use before the new law comes into force.

(1) Agreements deemed to be standard transactions

A new provision specifies that when parties agree to conduct a standard transaction, they will be deemed to have agreed to each of the individual terms contained in the standard terms and conditions form. Specifically, this will occur when (1) there is an agreement that the terms and conditions form will apply to the contract, or (2) the party which prepared the terms and conditions form indicates to the other party in advance that the terms and conditions will apply.

However, there are some circumstances when this deemed agreement will not apply. The first is when the terms and conditions limit the rights or increase the obligations of the other party in violation of the principle of good faith. The second is when the other party has not previously been provided with a copy of the terms and conditions and they request the terms and conditions prior to entering the standard transaction, but that request is refused.

(2) Changes to terms and conditions

The revised Civil Code provisions also allow changes to be made to the terms and conditions in certain circumstances. Until now, unilateral changes to the terms of conditions were permitted if the change benefited the other party, but raised a difficult problem if the change disadvantaged the other party. Under the revised provisions of the Code, if the terms and conditions themselves contain a provision stating that they are subject to change, then a change will be permitted if the contents of the change are reasonable, even when the other party is disadvantaged by the change. When making such a change to the terms and conditions, it is necessary to set a date that the change will come into effect and notify the relevant parties using the Internet or other appropriate methods of (a) that a change is being made, (b) the details of the change, and (c) the date the change will come into effect.

(3) Practical points to consider

In the shipping and transportation industries, a particularly high number of transactions are conducted using standard terms and conditions. The revisions to the Code provide a good opportunity to make effective use of standard terms and conditions, including in your business relationships with existing consignees and customers.

2 Extinctive prescription periods

Although the current Civil Code defines a basic extinctive prescription period of 10 years, there are a variety of specific provisions applicable to claims for payments owed to hotels, restaurants, doctors, lawyers, etc. that define shorter periods of 1, 2 or 3 years. On top of this, claims related to commercial transactions between businesses are subject to a 5-year extinctive prescription period pursuant to the Commercial Code. Under the revised Civil Code, the extinctive prescription periods have been rearranged into the following two categories, and the shorter periods have been repealed.

Despite these changes, there has been no change to the basic principles that a claim can still be made after the extinctive prescription period has expired until such time that the debtor invokes the prescription, and that a debtor

who acknowledges a debt without invoking extinctive prescription becomes unable to invoke it later. In other words, a debtor has the option to invoke the extinctive prescription and refuse to pay, or they can pay the debt without invoking the extinctive prescription. The ability to set off one debt against a claim that has already passed the extinctive prescription deadline has not been addressed in the revision, so the ability continues to exist.

(1) Revised extinctive prescription periods

Under the revised Article 166, a claim will be subject to one of the two following extinctive prescription periods:

(i) Subjective starting point: 5 years from the time that the person entitled to make the claim (obligee) became aware that they could exercise the right.

(ii) Objective starting point: 10 years from the time that the right become exercisable

However, it should be noted that claims for compensation due to death or personal injury are subject to a 20-year period, as well as property rights other than claims and ownership rights. It is also important to note that these periods are prescription periods, not exclusion periods. It is possible to prevent the extinguishment of a claim by taking the measures described below within the defined period in order to suspend the completion of the prescription.

(2) Repeal of the Commercial Code's extinctive prescription provisions

In conjunction with the revisions to the Civil Code, the 5-year extinctive prescription period that applied to regular commercial transactions (Article 522 of the Commercial Code) has been repealed and the provisions of the revised Civil Code will apply in the future. However, it is necessary to be aware that other specific provisions on extinctive prescription within the Commercial Code will continue to be valid. For example, Articles 566, 567 and 589 will continue to apply; they define a 1-year extinctive prescription period that applies to a freight forwarder or carrier's claim against a consignor or consignee, as well as claims against a carrier for compensation concerning loss or damage of cargo transported by land or domestic sea. There is also a 1-year period that generally applies to a warehousing company's liability for loss or damage (Article 626).

Further, the bill to amend the Commercial Code that is currently before the National Diet will change the limitation period that applies to compensation claims arising from domestic transportation from an extinctive prescription period to a 1-year exclusion period, which matches the current provisions for international sea transportation (but there will be no revisions to the provisions concerning warehousing). On this point, it is important to note that prescription can by suspended ("interrupted" under the current Civil Code) for 6 months via a written demand letter that evidences the details of the claim, but an exclusion period cannot be interrupted. Therefore, it is necessary to file an application within the period. Another difference is that prescription must be invoked, but exclusion automatically applies once the period has lapsed.

(3) Extinctive prescription of tort claims (Revised Article 724)

The extinctive prescription period has been revised for tort claims, for example in the case of an accident at sea or personal injury. A claim for damages in tort will be extinguished after the expiry of either 3 years from becoming aware of the damage and the person who caused it (5 years in the case of a claim for personal injury compensation) (new Article 724-2), or 20 years from the time of the tortious act (new Article 724 (2)). The 20-year period that applies under the current Code is an exclusion period that does not require invocation and cannot be interrupted by a letter of demand, but following the revision it will be a "prescription period" that does require invocation and can be suspended.

(4) Suspension of prescription through negotiation

The current Civil Code defines methods to "interrupt" prescription, which resets the prescription period to zero, and also methods to "suspend" prescription, which temporarily pauses the progress of the prescription period (Articles 158-161). Under the revised Code, the terminology used has been changed from "interrupt" to "renew", and from "suspend" to "suspend completion".

The first substantive change to note is that provisional seizure and provisional disposition, which are reasons for interruption under the current Civil Code (Article 147 (2)), become reasons to temporarily suspend completion in the revised Code (revised Article 149). Further, the current law does not specifically define the parties agreeing to negotiate as a method to prevent the completion of prescription. Conversely, the current *Act on International Carriage of Goods by Sea* defines a 1-year exclusion period, but it can be extended via agreement between the parties. A similar system concerning prescription has been established in the revised Civil Code. The new provisions define that when there is a written agreement between the parties to enter negotiations regarding a claim, prescription will not be completed until the earliest of the following periods:

(i) An agreed negotiation period that is less than 1 year

(ii) 1 year from the time of making the agreement

(iii) 6 months from the time that one party informs the other party in writing that they will not continue the negotiations

A further agreement made while completion of prescription is suspended will also have the effect of suspending completion of prescription, but the total period of suspension cannot exceed 5 years from the original prescription date. It is necessary to note that the above time periods do not apply if there is a further demand (new Article 150-2) or agreement (new Article 151-3) while completion of prescription is suspended due to a demand letter, or a demand letter is issued while prescription is suspended per an agreement (new Article 151-3).

3 Statutory interest rates and late payment charges

(1) Change from 5% to 3% (with a floating rate in the future)

Under the current Civil Code, the statutory interest rate is 5%, while under the Commercial Code it is 6% (the "commercial statutory interest rate"). The revised Civil Code lowers the statutory interest rate to 3%. Afterwards, a floating rate system will be adopted where the rate will be subject to review every 3 years and will consider factors such as changes in market rates. On the other hand, the commercial statutory interest rate of 6% that currently applies to commercial transactions between businesses (Article 514 of the Commercial Code) will be repealed with the revision of the Civil Code.

(2) Reduction of amount for late payment charges, increase of amount for claims for lost benefit

This change to the statutory interest rate will have a large effect on the amount of damages claimed by plaintiffs in personal injury cases. In cases such as traffic and workplace accidents, interest on the amount of compensation can be claimed from the date of the accident, but this will be reduced from the current 5% down to 3%, which means that amount of compensation payable will decrease. On the other hand, the amount of compensation for the plaintiff's loss of future income due to death or permanent injury will be increased.

(3) Deduction of statutory interest from damages for lost profit?

Something to take note of regarding this point is in the case where a company makes a claim for compensation for

the loss of benefit (profits). For example, if a charterparty contract is terminated early due to the fault of the charterer and the shipowner makes a claim for the loss of future profits, there is a possibility that the future interest will be deducted based on the above-mentioned statutory interest rate. Until now, there have been no published court decisions that make a ruling on this point, and the thinking has been that the English law's method of calculation, where the difference in the market charter rates is multiplied by the outstanding period of the charterparty, is generally applied even when the governing law is Japanese law. However, in the future there is a possibility that statutory interest will be deducted. It is therefore necessary to be aware that the amount of compensation will be subject to greater deductions as the period remaining on the contract increases.

4 Cancellation of contracts

The principle regarding cancellation of a contract with notice has been revised, and there are also major revisions to the provisions regarding cancellation without notice. The situations where a contract can be cancelled without notice have been increased and rearranged, as well as new provisions concerning some contracts that can be cancelled without notice. As contract cancellation has an effect on the annulment of contracts and claims for compensation, these revisions are very important.

(1) Obligor at fault

Unlike the current Civil Code, the revised code does not contain prerequisites for cancellation when the obligor is at fault. Accordingly, cancellation becomes possible even in situations where performance of a contract is delayed because of a natural disaster. Also, the provisions state that a contract cannot be cancelled due to the fault of the obligee.

(2) Cancellation for a minor breach

While it is not expressly contained in the current Civil Code, case law says that a contract cannot be cancelled due to a minor breach. The revision clarifies that a contract cannot be cancelled if the degree of non-performance is minor in light of the details of the contract and business norms. In practice, there are not many cases where deciding whether a breach is minor is a problem. But since this issue will now be specified in the Code, it seems the number of cases that dispute whether a breach was serious enough to allow cancellation will increase.

(3) Cancellation after demand (revised Article 541)

In principle, if one party has not performed their obligations under a contract, the other party can make a demand for performance within a reasonable period, then cancel the contract if there is no performance during the specified period.

(4) Cancellation without demand (revised Articles 542, 543)

The revised Code specifies that an entire contract can be cancelled without prior demand if:

① performance of the entire obligation is impossible

② the obligor has manifested an intention to refuse to perform the whole of their obligation.

③ performance of a part of the obligation is impossible, or the obligor has manifested an intention to refuse to perform a part of their obligation, and the remaining portion cannot fulfill the purpose of the contract

④ When, due to the nature of the contract or a manifestation of intention by the parties, the purpose of the contract cannot be achieved unless the performance is carried out at a specific time and date or within a certain period, and that specific time or certain period lapses without the obligor performing the obligation

⑤ When the obligor does not perform the obligation and it is clear that even if the obligee makes a demand, it is unlikely that there will be sufficient performance to satisfy the purpose of the contract.

The revised Code has also clarified the ability to cancel part of a contract without demand when performance of part of the obligation is impossible or the obligor has manifested an intention to refuse to perform part of their obligation.

5 Set-off of property damage

Setting off competing property damage claims, in other words, calculating the amount of damage suffered by each party and the party suffering more damage making a claim for the difference between the two, is not permitted under the current Civil Code unless both parties agree. Therefore, it is often the case that when both parties suffer damage and one party commences litigation, then it is necessary for the other party to commence a separate claim for their own damage. It has been identified that this invites unfair results, such as the situation where, after both parties obtain court orders for the payment of compensation to each other, one party fails to pay or becomes bankrupt before making the payment. In this case, the non-bankrupt party must pay what they owe, but will be unable to receive the full value of their claim (if anything at all).

The revisions to the Civil Code allow a set-off of opposing amounts of damage and a claim for the difference between the amounts in cases concerning property damage, even if the parties have not reached an agreement concerning such a set-off. This revision differs from previous court precedents, which have maintained the position of denying such set-offs. However, set-off is prohibited when it is done in bad faith. It also remains the case that setting off claims involving personal injury by the person that caused the injury will not be permitted unless the person who suffered the injury agrees.

6 Guarantees

(1) Establishment of limits on personal revolving guarantees

The main revision concerning guarantees addresses placing limits on the maximum amount of the principal, interest, penalty and damages that a guarantor is to be liable for under a guarantee that relates to unspecified debts within a specified range ("revolving guarantees") where the guarantor is not a corporation (i.e. "personal revolving guarantees"). The current Civil Code defines that a "revolving loan guarantee" (a revolving guarantee where the main obligation includes a monetary debt) is invalid if it does not define a maximum amount (current Article 465-2). The revision expands the scope of the article beyond revolving loan guarantees to include all personal revolving guarantees (for example, revolving guarantees for business contracts between enterprises and building lease contracts) (revised Article 465-2).

(2) Personal guarantee limits and notarial deeds

The second major revision concerning guarantees is that, when a guarantor other than a corporation either (1) guarantees a loan that is acquired for the conduct of business, or (2) provides a revolving guarantee that includes loans acquired for the conduct of business within the scope of the guarantee, the guarantee will be invalid unless the guarantor manifests an intention to guarantee the performance via a "notarial deed prepared within one month prior to the contract being concluded" (new Article 465-6 (1)). The following formal requirements apply to the preparation of this notarial deed (new Article 465-6 (2)). However, a personal guarantee by a person substantially involved in the business of the principal obligor is exempt from the above formal requirements (new Article 456-9).

① The person who will become a joint guarantor must give oral instructions to the notary public about the parties and their intention to guarantee the performance of the obligation and the total value.

② These oral statements by the guarantor must be written by the notary public and read back to the guarantor, or read by the guarantor.

③ The guarantor sign and affix a seal to confirm the accuracy of the writing.

④ The notary public must add a note that the deed was prepared in accordance with (1) to (3), and sign and affix their seal.

(3) Obligation to provide information at the time of concluding the contract

The principal obligor of an obligation taken in the course of business has the duty to provide to an individual (i.e. excluding a corporation) entrusted by the principal obligor to be the guarantor certain information regarding the credit of the principal obligor, so that the guarantor can determine for themselves the possibility of having to perform the guaranteed obligation. Failure to meet this duty is grounds for rescinding the guarantee contract. Specifically, the principal obligor must provide the following information:

(i) Details of their assets, earnings and expenditure

(ii) the existence of other debts besides the principal obligation, their value and repayment status

(iii) the details of any property that has or will be provided as security for the principal obligation.

If the guarantor enters a guarantee contract on the basis of a mistaken understanding of (i) to (iii) due to the principal obligor either not providing an explanation or there being factual inaccuracies in the explanation, and the creditor is aware that the principal obligor has either not provided the explanation or that there are factual inaccuracies, then the guarantor can rescind the guarantee contract.

(4) Duty to provide information on repayment status when requested by guarantor (new Article 458-2)

When requested by the guarantor, the creditor must, without delay, provide information regarding the principal obligation and all obligations that are secondary to the principal obligation, such as interest, penalties, damages, etc., as well as any amounts that are due or overdue.

(5) Duty to provide information when the principal obligor loses the benefit of time (new Article 458-3)

If a guarantor is unaware that the principal obligor has failed to perform their obligation, it can result in severe consequences for the guarantor if they are subsequently required to perform the guarantee after a large amount of interest or penalties have been accrued due to the delay. Therefore, where the guarantor is an individual (i.e. not a corporation) and the prinicpal obligor loses the benefit of time, the creditor must notify the guarantor within 2 months of becoming aware of the principal obligor's breach. If notice is not given during this period, the creditor cannot make a claim against the guarantor for any damages for delay that accrue during the period from when the principal obligor lost the benefit of time until the guarantor received notice (excluding any amounts that would have accrued even if the benefit of time had not been lost).

7 Sales contracts

The revised Civil Code contains major changes to interpretations and several major revisions to the law concerning sales contracts. The main feature is that under the revised Code, if there is a problem with the type, quality or quantity of the subject matter (the term "defect" has been changed), the buyer's options are not limited to compensation for damages or cancellation, but claims can also be made for reduction of the purchase price or "subsequent completion"

(i.e. repair or delivery of a replacement), regardless of whether the subject matter is an “identified good” or “unidentified good”.

(1) Current position

Sales contracts are currently divided into contracts for "identified goods", where the contract deals with a specific item (e.g. real estate, second hand goods), and "unidentified goods" that are generic, substitutable items. The Civil Code's warranty against defects applies to hidden defects in identified goods, but it is only applied to unidentified goods in exceptional circumstances. Therefore, in the case of unidentified goods, the buyer’s options are generally cancellation of the contract or a claim for compensation, where the scope of compensation is limited to an amount that corresponds to a reduction of the purchase price. In regard to identified goods, a claim for delivery of a replacement item cannot be made due to the major premise that identified goods cannot be substituted, and claims for repair cannot be made either. Also, claims for a reduction of the purchase price will only be recognised when there is a shortage in the quantity.

(2) Revisions to the buyer’s options

Under the revised Civil Code, the buyer has four types of claim that will be recognised if there is a problem with the type, quality or quantity of the subject matter, regardless of whether the subject matter is an identified or unidentified good. The first type to consider is a claim for “subsequent completion” (revised Article 562), which is a claim for the repair of the subject item, delivery of a substitute item, or delivery of the deficient portion if there is a shortage in quantity. It should be noted that the seller can perform subsequent completion in a manner that is different from the buyer's claim if it does not unreasonably burden the buyer.

The second type of claim is a reduction of the purchase price (revised Article 563). In principle, it is necessary for the buyer to submit a demand to the seller for subsequent completion to be performed with a reasonable period; if the seller does not respond to the demand then the buyer can make a claim for a reduction of the purchase price that corresponds to the level of nonconformity with the contract. As an exception, a claim for reduction of the purchase price can be made without a demand in the following circumstances:

(a) when subsequent performance is impossible
(b) when the seller has indicated their intention to refuse to perform subsequent performance
(c) when the nature of the contract requires performance to be carried out at a specific time and date or within a certain period, and that specific time or certain period lapses without the seller performing the obligation
(d) when it is clear that the buyer is unlikely to receive subsequent performance even if they make a demand

The last two claims are for cancellation of the contract and compensation for damages (revised Article 564). The scope of the right to compensation for damages has been expanded to include the benefit of performance, as is the case for general claims for compensation. Each of these types of claim require the buyer to give notice to the seller within 1 year of the buyer becoming aware of the nonconformity in the subject matter. The time limit itself has not been changed, but it has been revised so that notice to the seller is sufficient, where under the current Code the buyer must submit a claim. However, this time limit will not apply if the seller was aware of the nonconformity at the time of delivery or was unaware due to gross negligence.

(3) Relationship with the current Article 526 of the Commercial Code

It is necessary to be aware that Article 526 of the Commercial Code will apply to commercial transactions subject to

the Commercial Code. In a sales transaction between merchants under the Commercial Code, the buyer must inspect the item without delay after receiving delivery of it and immediately notify the seller if they discover any defects or shortage in quantity. However, if the nature of a defect in the delivered item means it cannot be identified immediately, it is necessary to notify the seller within 6 months of receipt of the item. If this inspection and notification is not performed, the defect will not be able to give rise to a claim for cancellation of the contract, compensation for loss or a reduction of the purchase price. The applicability of this Commercial Code provision is very easy to overlook so caution is required.

(4) Transfer of risk for loss or damage of the subject matter

The transfer of risk refers to the issue of which party should be responsible for the risk of loss or damage to the subject matter that may occur through no fault of either party. Under the revised Civil Code, risk transfers to the buyer upon delivery of the subject matter. In principle, a buyer cannot make a claim (for subsequent performance, reduction of purchase price, compensation or cancellation) based on loss or damage if the loss or damage occurs after delivery of the subject matter. However, there is an exception if the loss or damage is the seller's fault. This principle also applies if the buyer does not accept delivery of the goods provided by the seller.

8 Work contracts

(1) Claim for remuneration when it becomes impossible to complete the work

Unless there is a prior agreement to the contrary, payment under a contract for work is made after the work has been completed (contracts for large projects such as shipbuilding may provide for payment in installments, but even then, the final payment after delivery is normally the largest amount). The nature of this contract for work is that, theoretically, the contractor has no claim for remuneration if the contract is terminated before the work is completed, but court decisions have recognised claims in some situations. Under the revised Civil Code, when a contract for work cannot be completed through no fault of the party that ordered the work, or the contract is cancelled before the work is completed, the contractor can claim remuneration for the proportion of the contract that has been completed if the party that ordered the work can receive a benefit from the completed portion.

(2) Time limit upon ordering party's rights under warranty (revised Article 637)

The contractor's warranty against defects is currently defined as being for 1 year after delivery, but in order to achieve balance with sales contracts, it has been changed to 1 year "from the time that the ordering party became aware of the nonconformity" under the revised Civil Code, with the word "defect" being replaced with "nonconformity". If the ordering party does not give notice during this period, they cannot use the nonconformity as a reason to claim for subsequent performance, a reduction of the remuneration, compensation for loss or cancellation of the contract. However, this provision does not apply if the contractor was aware of the nonconformity at the time of delivery to the ordering party (or upon completion of the work if delivery is not required), or they were unaware due to gross negligence.

(3) Cancellation due to the ordering party commencing bankruptcy procedures (revised Article 642)

The revised Civil Code does not change the contractor's and bankruptcy administrator's ability to cancel the contract if the ordering party enters bankruptcy. However, the revised Code specifies that the contractor cannot cancel the contract after the work has been completed. Cancellation of a contract for work in the case of bankruptcy differs to that of civil rehabilitation or corporate reorganisation, so caution is required.

9 Mistake

(1) Effect of mistake: from invalidity to rescission

Under the current Civil Code, a mistake in an element of a contract makes the contract invalid, and there are no time limits placed upon being able to assert the invalidity of a contract. However, under the revised provisions, a mistake in an element of a contract will make the contract subject to rescission, similar to cases of fraud or coercion. As a result, if the right to rescind is not exercised within 5 years, the ability to rescind will be lost. Further, the Civil Code provisions concerning statutory ratification will apply to the rescission. Therefore, the ability to rescind a contract will be lost if certain acts are performed that are deemed to be an acceptance of the mistake. This change of the remedy from invalidity to rescission signifies a big change in the effect of a mistake.

(2) Gross negligence and mistake

A person cannot assert that there is a mistake if that person was grossly negligent. This point is consistent in both the current and revised Civil Code. However, under the revised Code it has been specified that a mistake can be asserted in the case of gross negligence, if (1) the other party was aware of that gross negligence, or was unaware due to their own gross negligence, or (2) both parties made the same mistake.

(3) Practical points to consider

Until now, asserting mistake was not subject to any time limits, plus it was easier to assert and prove than fraud or coercion, making it the most common assertion amongst the three. But considering these revisions, it will be necessary to reserve an objection in order to avoid statutory ratification, and it is important to manage the issue carefully to avoid exceeding the time limit.

10 Leases

Several revisions to the Civil Code have been made to codify judicial precedents concerning leases of real estate, but here I would like to discuss some important revisions concerning leasing of property other than real estate.

(1) Maximum duration

Article 604 of the current Civil Code limits the duration of each lease or renewal to 20 years, but this limit has been increased to 50 years. This responds to the need to be able to make long-term leases that exceed 20 years in situations such as leases relating to large-scale projects, heavy machinery and factory plant equipment.

(2) Repair of leased items

The lessor's obligation to repair a leased item has been codified in the revised Article 606. However, the obligation does not apply when the lessee is responsible for the damage.

(3) Repair and restoration by the lessee

If the leased item requires repair, the newly added Article 607-2 allows the lessee to perform repairs when (1) the lessee notifies the lessor that repairs are required, or the lessor is aware of that fact, but the lessor does not perform the repairs within a reasonable period, and (2) in the case of emergency.

In accordance with past judicial precedents, the revised Article 621 clarifies that normal wear and tear and aging of

the leased item is not subject to restoration by the lessee at the end of the lease. Similarly, the lessee is not obliged to restore any damage which is not the fault of the lessee.

Conclusion

As mentioned in the introduction, it will be at least two years before these revisions to the Civil Code come into effect, in the second half of 2019 at the earliest. Some of the points above (such as mistake) only come into consideration once a contract is in force, so all we can do is bare them in mind and be ready to act if necessary. On the other hand, we can start planning in advance for some of the other matters, like the revised laws governing standard terms and conditions forms. The two-year period before the revisions come into force gives everybody in industry the opportunity to plan their response, including updating forms or drafting new ones. I hope this column has given you an insight of what to expect when the revised Code comes into effect.