

Second, the definition of “The Situation which threatens Japan’s survival” is too vague. In this amendment, “The Situation which threatens Japan’s survival” is defined as “the situation that an armed attack against a foreign country that is in a close relationship with Japan occurs and as a result threatens Japan’s survival and poses a clear danger to fundamentally overturn the people’s right to life, liberty and the pursuit of happiness.” But it is not clear that what country “a foreign country which is in a close relationship with Japan” is. Only countries in the military alliance? Or are countries that are in a close economic relationship also included? In addition, what kind of situation is “a clear danger to fundamentally overturn the people’s right to life, liberty and the pursuit of happiness”? It is not clear. These uncertainties are very dangerous because they can lead to an arbitrary use of the self-defense force by the Cabinet.

Third, the Japanese Diet probably will not control the use of forces by the Cabinet. In the Japanese political system, a Parliamentary system is adopted. So the leader of the majority Party becomes the Prime Minister. Further, party discipline is very strict in Japan. As a matter of practice, it is impossible that the Diet controls Cabinet, because it is difficult to assume premise the Diet recognizes the Cabinet to use the self-defense force without meaningful discussion. So the Diet probably cannot meaningfully control the Cabinet. Rather, it increases the validity of the use of force by the Diet and the Cabinet is to warning together, and there is even a risk that domestic brakes are lost altogether.

As such, this amendment has, at least, three problems: ① problem of unconstitutionality; ② Uncertainty of the requirements for the use of force; ③ There will not be a meaningful control on the use of force. This amendment is inappropriate.

2. Family Law

The Enforcement of the Law for Partial Amendment to the Child Welfare Act

Law No. 63, June 3, 2016 (Effective on June 3, 2016 (partly, by October 1, 2016, and April 1, 2017))

Background:

15 years has passed since the enforcement of the Child Abuse Prevention Act established in 2000. Meanwhile, as to child abuse, the continuous support, such as the prevention of occurrence, early discovery/appropriate treatment and care of protection/independence for an abused child, have been promoted through four major revisions of the Child Abuse Prevention Act with the Child Welfare Act, and also the enforcement of an amendment to the Civil Code in 2012. However, the number of cases responding to a consultation of child abuse is respectively increasing year by year. It reached in 2015 more than 100,000 cases in child guidance centers and in 2014 over 80,000 cases in municipal governments. Along with that, according to the Ministry of Health, Labour and Welfare, 69 children died of child abuse in 2013, and the serious case could be in a never-ending situation. On the other hand, other problems have spread, such as the isolation of child-rearing and an increase in the feeling of anxiety/burden, due to the declining ability to raise a child in households/local communities. Additionally, support is lacking in cooperation with local relevant institutions, although such cases as an abused child in need of social care require a lot of time to become independent.

For these reasons, the Support Improvement Project for Child Abuse Prevention was settled to cope effectively with these important issues ranged from preventing occurrence to assisting an abused child to gain his/her independence. Based on this project and the furthermore, in order to strengthen the series of supports, a reform bill for the Child Welfare Act was submitted to the ordinary session of the Diet in 2016, and on May 27, 2016, the Law for a Partial Amendment to the Child Welfare Act (hereinafter referred to as “the Amendment Act”) was approved.

Main Provisions:

Through the Amendment Act, the basic principle of the Child Welfare Act has been reconsidered. Along with that, necessary measures, such as to adjust the system of child guidance centers and to position foster care support in the prefectural services, have been taken for continuous support ranging from the early stages of pregnancy till the child-care period. The

following describes an overview of the Amendment Act along with each effective date in order.

(1) The part of the Amendment Act, which has been promulgated and enforced on June 3, 2016, focuses on the clarification of the Child Welfare Act principles. In the first place, the basic philosophy to guarantee children's welfare is clarified. By the revision, the regulation of the Child Welfare Act principles, which had not been reconsidered just after the promulgation in 1947, provided that children have the rights to be respected a receive adequate care, and to have their healthy growth/development as well as self-reliance fostered [Art.1]. The second point is instructions and measures for a child and his/her guardian in commuting facilities/households. To strengthen home care support, in which a child is not admitted into an institution such as a foster home, the role of the municipal government is emphasized, and as part of that, concerning the instructions and measures given by a child guidance center, it becomes able to entrust this to the municipal government and let it instruct [Art. 26 (1), Item 2]. The third is to clarify the purpose of temporary custody of a child. It could be formerly taken only "when a child guidance center's director finds it necessary," because it makes a child and parents separated and limits the parental authority. However, in the Amendment Act, it can be taken "in order to ensure to child's safety quickly and attain adequate protection, or to grasp the child's situation." [Art. 33] The fourth is to promote care in the same environment as the family. It is legally clarified that as a fundamental rule, a child shall be taken care of continuously in a family-like environment, namely through the promotion of adoption or an entrustment to a foster care and a family home, if he/she is no longer able to receive the adequate care at home because of ill-treatment by his/her guardian. If a child is in need of professional care in an institution, it must be considered whether it has a small-family-scale environment [Art. 3-2].

(2) The part of the Amendment Act which has been enforced on October 1, 2016, focuses on preventing the occurrence of child abuse. The first point is to provide information about pregnant women who require support. The municipal government cannot grasp all situations, especially

in the case of 0-year-old-death from child abuse, because there are some pregnant women who do not have a maternity record book not having notified the municipal office of their pregnancy or undergone the health checkups for pregnant women. It is important to connect them with necessary support from the early stages of pregnancy. Therefore, it is prescribed that organs such as hospitals, child guardian centers and schools, shall endeavor to provide the information to the municipal government, if they have found these women [Art. 21-10-5 (1)]. The second is to strengthen the system of child guidance centers. According to the increase in more complex and difficult cases of child abuse, it is provided that professional people, such as child psychologists, doctors, public health nurses and lawyers, shall be posted in child guidance centers, and also shall develop their qualities, in order to strengthen the system and improve expertise corresponding to the volume of services [Art. 12-3]. The third is the support in restructuring the relationship between a child and parents. It is provided that, before the cancellation of a measure, a child guidance center shall give a guardian advice about how to deal with his/her child, and also carry out counseling, including entrustment to private organizations. Then, after the cancellation, it shall confirm regularly child safety, carry out counseling with guidance and assist them, cooperating with relevant local institutions [Art. 48-3].

(3) The part of the Amendment Act, which has been enforced on April 1, 2017, focuses on rapid and appropriate response upon the occurrence of child abuse. The first point is to prepare a support center in the municipal government which bears responsibility for the child and home. Concerning the level of support in the municipal government, there are not only differences and disproportions in each area, but also a situation which supports the foundations at home has not been sufficiently prepared [Art. 10-2]. The second aim is to promote entrustment to foster care. Consistent foster care support, which ranges from discovering foster parents through enlightenment activities and publicity campaigns, matching them and a child, providing visiting support for them till self-reliance for a child entrusted to foster care is achieved, are treated as services by the prefecture. A child guidance center, foster parents and private organizations working in close cooperation is also important for consistent support,

therefore the prefecture becomes able to entrust these services for foster parents to private organizations such as NPO which have knowledge and experience in this field [Art. 11 (1), Item 2]. The third is to create a local system for adoption by foster parents. In order to ensure a certain national level of care quality, it is legally clarified that enough knowledge to deal with should be acquired as parents and child provided through training toward adoption [Art. 6-4, Item 2, and Arts. 34-19 to 34-21]. The fourth is continuous assistance for a person aged 18 and over admitted into such a foster home. Because it is necessary for them to have continued support for self-reliance, although the term “child” as used in this Act shall mean a person under 18 years of age [Arts. 25-2 (1) (2), 31 (4), 33 (6) (8)]. The fifth is to extend the target of children’s self-reliant living assistance services. Now it includes people aged 20 and under, who have left such a foster home and gone on to a higher stage of education. Because it is difficult for them to get a certain income and it may bring about a bad influence on continuing their studies, if they have to leave a foster home on reaching the age of 20 years old. Therefore, the prerequisite age for admission has been raised to 22 years, limited to the enrollment in a higher stage of education [Arts. 6-3 (1), 33-6].

Editorial Note:

The aim of this revision is especially to improve the welfare of children who need protecting and the following four points are the most significant. First of all, it clarifies the role and responsibility of the municipal government, the prefecture and the State, and to improve cooperation with also local relevant institutions and private organizations. In the next place, it clarifies the child protection principles not to separate a child from parents as far as possible, and to provide continuous support through the early stages of pregnancy and the child-care period, in order to prevent the occurrence of child abuse. In addition, regulations about securing a family-like care environment throughout promoting entrustment to foster parents, including the adoption of new positioning as alternative measures, have a great significance, in a sense it means turning away from the traditional social care system in Japan which has had the peculiarity of placing too much emphasis on entrustment to an institution. At last, the expansion of self-reliance for a person aged 18 and over is of importance

from the view point of going on to college and ensuring an independent future, concerning a person not able to live with parents because of child abuse or for economic reasons.

3. Commercial Law

Partial Amendments to the Banking Act and other related Acts to keep up with environment changes including progress of information and communication technologies of 2016

Law No. 62, June 3, 2016 (Effective Date is To Be Announced)

Background:

This Act (hereinafter “The ACT”) aims to amend the Banking Act and other related Acts (detailed in *Editorial Note*) in order to improve governance systems of financial conglomerates and to make more sophisticated clearance and settlement businesses. In September, 2014, the Minister of State for Financial Services requested the Financial System Council (FSC) to discuss those two themes. The FSC’s Study Group published the Interim Report in April, 2015. FSC organized two working groups corresponding to these themes, and each of them published the Final Report on December 22. The Bill was submitted to the 190th ordinary session of the Diet on March 4, 2016, subsequently approved, and promulgated on June 3. The ACT was set to be effective within one year from the day of promulgation, but did not become so in 2016.

Main Provisions:

1. Improvement of governance systems of financial conglomerates and strengthening of financial intermediation function

In the age of international competition in financial businesses, more efficient governance systems for financial conglomerates are greatly needed.