

## 4. Commercial Law

### **Partial Amendments to the Commercial Code and the Act on International Carriage of Goods by Sea of 2018**

Law No. 29, May 25, 2018 (Effective on April 1, 2019)

#### **Background:**

The Commercial Code (hereinafter “the Code”) was legislated in 1899. Some of its parts have been frequently amended since then, but provisions on transportation business and maritime commerce remained unchanged in substance for more than 100 years. Though several legislations of special laws, including the Act on International Carriage of Goods (hereinafter “the Act”), have provided new rules on these areas<sup>1</sup>, some rules were incompatible with contemporary situations and reforms have been needed.

On February 7, 2014, the Minister of Justice requested the Legislative Council to produce an amendment proposal on the above issue. A subcommittee founded by the Legislative Council to fulfill this task presented a proposal on January 27, 2016. It was approved by the Legislative Council and submitted to the Minister of Justice on February 12. A bill drafted based on it was firstly submitted to the 192nd ordinary session of the Diet on October 18. However, it was dropped due to the dissolution of the House of Representatives on September 28, 2017. A secondary bill whose contents were identical to the first one was submitted to the 196th ordinary session of the Diet on February 6, 2018, subsequently approved, and promulgated on May 25.

---

<sup>1</sup> In general, the Code is applied to domestic transportation and shipping, and the Act regulates international transportation and shipping where the Japanese law is applied according to the conflict of laws.

**Main Provisions:**

## 1. General remarks

In its formal aspect, some articles of the Code were written in old-style Japanese and difficult to read for modern people. Those articles have been rewritten in modern ways without modification of their contents by the amendment.

In its substantial aspect, the amendment contents altered many things<sup>2</sup>. It is impossible to review all of them here for want of space, and so some topics have been selected from two major categories of the amendment, transportation in general and maritime commerce.

## 2. Transportation in general

## (1) Introduction of definitions of transportation by air and multimodal transportation

The Code had provisions on transportation by land and by sea but lacked rules on transportation by air and on multimodal transportation. The definitions of them are introduced by the amendment, and the general rules on transportation basically govern transportation by land and by air, though transportation by sea is regulated substantially by special provisions in the Code and the Act as in the past. Relating to multimodal transportation, rules on the applicable law to the carrier's liability against loss of goods etc. are defined [the revised Code art. 578].

The definition of transportation by air in the Code does not include transportation realized by uncrewed aerial vehicles, including *drones*. The reasons for this exclusion explained in the Diet deliberations on this amendment act by the government are concerning the new transportation style using uncrewed aerial vehicles, (1) it is inappropriate to introduce provisions on the Code before an investigation in the public law domain on how to establish discipline from the view of securing safety of carriage and appropriate management of businesses; and (2) there is a need to harmonize with foreign countries' trends on legislation concerning uncrewed aerial vehicles<sup>3</sup>.

---

<sup>2</sup> Details are nicely ordered (written in Japanese) at <http://www.moj.go.jp/content/001261326.pdf>

## (2) Rules on carriage of goods

A new consignor's duty is introduced by the amendment. When goods to be transported have the nature of inflammability, explosibility or other dangerousness, the consignor owes a duty to inform the carrier about the fact that the goods have that kind of nature and the information needed to transport them safely before passing them to the carrier [the revised Code art. 572].

Concerning the international carriages of goods by sea, an amount of limit of carrier's liability was calculated on each good before. After the amendment, it is calculated on the goods as a whole, defined as (a) the product gained by 666.67SDR multiplied by the number of goods or (b) the product gained by the total weight of the goods measured as a kilogram scale multiplied by 2SDR, whichever is bigger [the revised Act art. 9 para.1].

## (3) Rules on carriage of passengers

There may be a special agreement in contracts between carriers and passengers which intends to limit the liability to damages of the former in case of accidents where the lives or bodies of the latter are infringed. After the amendment, this type of agreement will be invalid in general [the revised Code, art. 591 para. 1]. Some exceptions are allowed in the cases such as the transportation in time of mega disaster to carry rescue teams, or where the passengers may be damaged by ordinary factors such as vibration in running train [the revised Code, art. 591 para. 2].

## 3. Maritime Commerce

(1) Introduction of rules on *Teikiyousen Keiyaku*

The Code had rules on the lease of ships, but lacked provisions on "*Teikiyousen Keiyaku*," a very popular contract type of chartering of ships in Japan, making their legal status somewhat unclear.

The definition is introduced by the amendment as a contract where one of the parties (i.e., a shipowner, though not mentioned in the provision) rigs a ship, arranges crews and offers the ship and the crews for

---

<sup>3</sup> See the Diet record of the House of Representatives, Japan concerning this amendment (written in Japanese), available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/196/0004/19604180004009a.html>

a certain period, receiving commission (so-called “charterage”) from the other party [the revised Code art. 704]. The latter can direct the captain as to the determination of the route and other elements concerning the usage of the ship, except for matters relating to the safety of the sailing [the revised Code art. 705].

(2) Abolition of the strict liability of the shipowner (transporter) on guaranteeing the seaworthiness of ships

Before the amendment, the Code stated that shipowners owed a liability to pay damages for losses caused by a lack of seaworthiness of the ship on a strict liability basis, and special provisions made to the contrary were rendered invalid. This was contrasted with the Act where that liability is set on a negligence liability basis and was inconsistent with foreign legislations and treaties.

By the amendment, the subject of that liability is changed from shipowners to carriers, and the strict liability basis is modified to a negligence liability basis [the revised Code art. 739 para.1 item 1]. Special agreements on disclaimer clauses are also allowed in general, but will be invalid in contracts of transportation by sea where carriers enter agreements with multiple persons to carry goods [the revised Code art. 739 para. 2].

### **Editorial Note:**

Though the name of the amendment act refers only to the Commercial Code and the Act on International Carriage of Goods by Sea, in addition to these two, the other 25 acts are also amended in minor or technical ways. A list of them, including the above two, is as follows.

1. Commercial Code (Act No. 48 of 1899)
2. Act on International Carriage of Goods by Sea (Act No. 172 of 1957)
3. Ship Act (Act No. 46 of 1899)
4. Act for Enforcement of the Commercial Code (Act No. 49 of 1899)
5. Railway Operation Act (Act No. 65 of 1900)
6. Agricultural Cooperatives Act (Act No. 132 of 1947)
7. Fishery Cooperative Act (Act No. 242 of 1948)
8. Pilotage Act (Act No. 121 of 1949)
9. Coastal Shipping Business Act (Act No. 151 of 1952)
10. Act on the Japan Railway Construction, Transport and Technology

- Agency, Independent Administrative Agency (Act No. 180 of 2002)
11. Small and Medium-Sized Enterprise Cooperatives Act (Act No. 181 of 1949)
  12. Marine Transportation Act (Act No. 187 of 1949)
  13. Local Tax Act (Act No. 226 of 1950)
  14. Act on Compensation of Damages Related to Fishing Vessels (Act No. 28 of 1952)
  15. Warehousing Business Act (Act No. 121 of 1956)
  16. National Tax Collection Act (Act No. 147 of 1959)
  17. Act on Compensation for Nuclear Damage (Act No. 147 of 1961)
  18. Shopping District Promotion Association Act (Act No. 141 of 1962)
  19. Stamp Tax Act (Act No. 23 of 1967)
  20. Act on Limitation of Shipowner Liability (Act No. 94 of 1975)
  21. Act on Liability for Oil Pollution Damage (Act No. 95 of 1975)
  22. Forestry Cooperative Act (Act No. 36 of 1978)
  23. Civil Execution Act (Act No. 4 of 1979)
  24. Insurance Business Act (Act No. 105 of 1995)
  25. Act on Special Provisions, etc. of the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims (Act No. 104 of 1998)
  26. Norinchukin Bank Act (Act No. 93 of 2001)
  27. Supplementary Provisions of the Act on Revision of Related Acts in Line with Enforcement of the Act for Partial Revision of the Civil Code (Act No. 45 of 2017)

## 5. Labor/Social Security Law

### **An act on the development of laws for promotion of work style reform**

Law No. 71, Jun 29, 2018(Effective on Apr.1, 2019)

#### **Background:**

Japanese Labor Standards Act provides for the regulation of working hours, overtime working, and annual paid leave. However these regulation