

CY Japan Legal Update

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Pre-formulated Terms and Conditions

The amendment of part of the Civil Code (law of obligations) was enacted and will be enforced within three years from June 2, 2017 (Part 1 - Pre-formulated Terms and Conditions (teikei yakkan))

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The Act Partially Revising the Civil Code was enacted in May 26, 2017 (hereinafter the Civil Code after amendment by this Act will be referred to as “Amended Code”). The Amended Code amends the part concerning obligations relations of the current Civil Code (promulgated in 1896 and enforced in 1898 and basically not substantially amended previously) and was promulgated on June 2, 2017 and will be enforced within three years from the promulgation date except for certain provisions (the enforcement date will be provided for in future cabinet order).

The measures provided for by the Amended Code are wide ranging, however, this article will introduce the outline of rules newly established in regard to the Pre-formulated Terms and Conditions (teikei yakkan) (“Amendment”)

General terms and conditions are widely used by modern companies for transactions such as utilities, deposit, and transportation, and internet transactions. However, the current Civil Code does not have provisions for general terms and conditions. In the transactions using general terms and conditions, ordinarily, as a contract is not made after confirmation one by one of the contract terms stating the general terms and conditions, the situation was that there have been disputes about the grounds for recognizing the binding effect of general terms and conditions and the scope for recognizing the binding effect. Consequently, the Amended Code defines certain terms and condition of general terms and conditions as “Pre-formulated Terms and Conditions (teikei yakkan)” and has the intention of clarifying general rules for Pre-formulated Terms and Conditions.

First, “Pre-formulated Terms and Conditions” means the whole of provisions prepared by a specific person for the purpose of providing content of the contract in a “Pre-formulated Transaction (in a transaction to be conducted by a specific person with an unspecified number persons as the other party, it is reasonable for both parties that all or a part of the content thereof be uniform). Contracts focusing on the individuality of the party such as an employment agreement and contracts where the content is revised through negotiation, etc. prior to execution are not included in Pre-formulated Terms and Conditions.

Next, the parties of the Pre-formulated Transaction will be deemed to have agreed to the individual provisions of the Pre-formulated Terms and Conditions in either of following cases. Namely, (1) in the case that the contract parties have agreed that the Pre-formulated Terms and Conditions will be the contract content and (2) in the case that the person preparing the Pre-formulated Terms and Conditions (“Preparer of Pre-formulated Terms and Conditions”) indicates to the other party the Pre-formulated Terms and Conditions are the content of the contract in advance (e.g., in an internet transaction, if a method such as ensuring that the webpage for the transaction is only accessible by clicking on the link for the Pre-formulated Terms and Conditions is taken). Provided, however, that with regard to provisions that restrict the rights of the other party or make the obligations of the other more onerous, if from the viewpoint of situation and actual circumstances of standard transactions and socially accepted transactions, the provision unilaterally harm the interests of the other party in violation of the principles of good faith and fair dealing, the binding effect will not be recognized.

For the Preparer of Pre-formulated Terms and Conditions conducting a Pre-formulated Transaction, if there is a request from the other party during a reasonable period prior to the agreement or after agreement to conduct the Pre-formulated Transaction, there is an obligation to indicate the content of Pre-formulated Terms and Conditions (it is sufficient to provide an electronic record such as PDF file for the method of indication). If there is a refusal of request for disclosure from the other party made prior to the agreement without legitimate reason, binding effect in regard to provisions of the Pre-formulated Terms and Conditions will not be recognized.

The Preparer of Pre-formulated Terms and Conditions, in certain cases, may amend the content of the Pre-formulated Terms and Conditions after the execution of contract by deeming that there was agreement for provisions of Pre-formulated Terms and Conditions after the amendment. Provided that (i) the amendment conforms to the general interests of the other party or (ii) the amendment of Pre-formulated Terms and Conditions is not contrary for purpose for which the original contract was made and is reasonable in light of the necessity of the amendment, appropriateness of the content after amendment, the existence of provisions that the Pre-formulated Terms and Conditions may be amended under the Civil Code and other circumstances related to the amendment.). In such case, if the Preparer of Pre-formulated Terms and Conditions does not provide for the timing of the amendment taking effect and provide notice of the timing of the amendment taking effect by an appropriate method (such as using the Internet), the Pre-formulated Terms and Conditions shall not take effect.

The Amendment concerning the Pre-formulated Terms and Conditions will also apply to foreign companies. If a foreign company is the Preparer of Pre-formulated Terms and Conditions conducting the Pre-formulated Transaction, even if the governing law of the terms and conditions designates a foreign law other than the law of Japan, if the other party of the transaction is an individual within Japan, based on the conflict of laws rules of Japan, it is necessary to warn that the Amendment may be applicable (as a result, there is possibility of the effect of the terms and conditions not being recognized).

Finally, provisions for Pre-formulated Terms and Conditions of the Amended Code will apply, in principle, for contracts related to Pre-formulated Transaction executed prior to the enforcement date of the Amended Code. It is desirable to prepare and amend Pre-formulated Terms and Conditions premised on the above rule even prior to the enforcement of the Amended Code.

For more information, please contact:

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