



JAPAN LEGAL UPDATE

Corporate

The Bill to Partially Amend the Commercial Code and the Act on International Carriage of Goods by Sea Submitted to the Diet

On October 18, 2016, the Japanese Government submitted to the Diet a bill to partially amend the Commercial Code and the Act on International Carriage of Goods by Sea ("Amendment Bill"). The Amendment Bill would update the provisions pertaining to transport businesses and maritime commerce in the Commercial Code, which have not been substantially revised since the introduction of the Code in 1899.

In addition to a number of changes, the Amendment Bill has newly introduced:

- Provisions regarding domestic air transportation as well as general provisions applicable to land/sea/air transport and provisions on combined transport, which refers to two or more of the above types of transport (Articles 569 of the Code and after);
- A consigner duty to notify a carrier of certain facts when hazardous goods are transported (Article 572 of the Code); and
- Provisions on charter parties, which are widely used in practice, in parallel with the existing provisions on lease of ships (Articles 704 of the Code and after).

Because the Amendment Bill, if enacted, will affect not only carriers but also any business that may use transport services as a consigner, those who will be affected should pay attention to the debate at the Diet. In addition, any changes to the general contractual terms and conditions of carriers resulting from changes to the Code made by the Amendment Bill should be reviewed.

Labor

Two High Court Decisions Relating to Reemployment after Retirement

Two notable successive court decisions relating to disputes concerning reemployment after retirement have been issued.

First, on September 28, 2016, the Nagoya High Court ordered an employer to pay its former employee approximately 1.2 million JPY as compensation for damages equal to the employee's expected amount of wages, although the court rejected the employee's request for classification as a white-collar worker and payment of wages. The former employee, previously a white-collar worker at the company, claimed that the new position of employment, consisting of cleaning duties, offered by the company after the age of retirement (60) was unreasonable. The current Act on Stabilization of Employment of Elderly Persons ("Stabilization Act") provides that if an employer sets a mandatory retirement age of 60 or older and below the age of 65, the employer is required to retain an employee until he or she reaches the age of 65, after the mandatory retirement age, if the employee desires employment (Article 9 of the Stabilization Act). The court found that the employer was liable for damages on the grounds that reemployment with completely different duties is not substantially equivalent to continued employment and is contrary to the purpose of the Stabilization Act.

In addition, on November 2, 2016, the Tokyo High Court reversed an original decision of the court of first instance. The plaintiffs were previously indefinite-term employees but later reemployed as fixed-term employees upon reaching the age of retirement. The plaintiffs claimed that the difference in the amount of wages between fixed-term employees and regular employees (i.e., indefinite-term employees) with the same duties was unreasonable and not in compliance with Article 20 of the Labor Contract Act. As opposed to the original decision, the High Court allowed a difference in wages between fixed-term and regular employees to some extent. The situation, however, remains unpredictable because the plaintiffs have announced their intention to appeal to the Supreme Court, and the Supreme Court may provide a unified standard as to the interpretation of Article 20.

When seeking to reemploy retired employees, a company's actions will be in conflict with Article 9 of the Stabilization Act if it offers a type of work different from the previous work, and they will be in conflict with Article 20 of the Labor Contract Act if a company offers changes unfavorable to employees as to working conditions other than the type of work. Accordingly, it is advisable that any company that has set a mandatory retirement age of 60 or older and below the age of 65 review its system for reemploying elderly workers to confirm the existence of any risks concerning the issues above.

Antitrust

JFTC Strengthens the Monitoring of IT/Digital-Related Area

On October 11, 2016, the Japan Fair Trade Commission ("JFTC") partially amended its "Guidelines Concerning the Interpretation of 'Specific Business Field' as defined in the Provisions of 'Monopolistic Situations'" and added additional fields that meet the criteria for the definition of "monopolistic situation," such as tablet manufacturing, security software, computer ticketing, and education by telecommunications. Further, on October 21, 2016, the JFTC set up a special point-of-contact on its website in order to gather information about suspicious conduct that may violate the Antimonopoly Act within the IT/digital-related business area. Previously, on August 2, 2016, the JFTC had issued a report on "Issues Concerning Competition Policy in the Mobile Phone Market," and on September 15, 2016, the Ministry of Economy, Trade and Industry also issued a report introducing examples of electronic commerce deals that have anticompetitive effects, based on research conducted in cooperation with the JFTC. The authorities seem to be strengthening the monitoring of these areas.

Tax

Amended Japan–Belgium Tax Treaty Signed

On October 12, 2016, the amended tax treaty between Japan and Belgium was signed. The amendments made substantial changes to the existing treaty, including an expansion of the exemption from or mitigation of source-country taxation on investment income (i.e., dividends, interest, and royalties) and the introduction of a limitation of benefits clause.

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