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Labor Contract Law (Law No. 128 of December 5, 2007, entered into force March 1, 2008)

The Labor Contract Law (hereinafter the "Law") was newly enacted during the 168th extraordinary session of the Diet.

The reason given for passage of the Law was that, "it is necessary to establish a principle of agreement, that is, that a labor contract shall be executed or revised upon the agreement of the parties through voluntary negotiations between the worker and the employer, and also to establish the relationship between the labor contract and office regulations in order to respond to diversification in the forms of employment, an increase in disputes based on individual labor relations, etc., and to contribute to the stabilization of individual labor relations."

The Law provided that it would enter into force on a day not exceeding three months from the date of its promulgation as set forth in an Ordinance, and this date was set for March 1, 2008 as written above.

1. Outline of the Law

The outline of the Law is as follows:

(1) General rules (Articles 1 to 5)

1) A labor contract shall be executed or revised based on an agreement between the worker and the employer on an equal footing;
2) The employer shall cause the worker to understand well the working conditions and the contents of the labor contract offered to the worker; and
3) The worker and the employer shall confirm the terms of a labor contract in writing to the extent possible.

(2) Execution and revision of a labor contract (Articles 6 to 13)

1) A labor contract shall be executed based on an agreement between the worker and the employer on an equal footing;
2) The employer shall not revise the office regulations to the disadvantage of the worker without an agreement with the worker to change the working conditions, which are contents of the labor contract; but
3) In the event that the employer changes the working conditions by revising the office regulations, the working conditions, which are contents of the labor contract, shall be as provided in the revised office regulations if the employer causes the worker to understand well the office regulations after the

revision and if the contents of the revision are reasonable.

(3) Continuation and termination of labor contract (Articles 14 to 16)

It is specifically provided that transfer orders, punishment and dismissals constituting abuse of the right by the employer are null and void.

(4) Labor contract with definite term (Article 17)

The employer shall not dismiss a worker without an unavoidable cause before the expiration of a labor contract if the labor contract sets forth a definite term. The employer also shall consider not giving the labor contract an unnecessarily short term according to the purpose for which the worker will be used and then repeatedly renewing the labor contract.

2. Concerning Chapter I General Provisions (Articles 1 to 5)

The General Provisions provide (1) the Objective of the Law (Article 1), (2) the Definition of "Worker" and "Employer" (Article 2), (3) the Principle of a labor contract, (4) the Promotion of understanding of the contents of a labor contract and (5) Consideration for the safety of workers.

Article 2 of the Law provides, "the 'Worker' shall mean a person used by an employer who works and is paid wages." This definition of "Worker" does not change the definition set by judicial precedents and includes a person practically evaluated to constitute a "Worker" regardless of the form of contract.

Article 4, paragraph 1 of the Law provides, "The employer shall cause the worker to understand well the working conditions and contents of the labor contract (including matters related to a labor contract with a definite term) offered to the worker." This provision obligates the employer to ensure that a worker understands his or her contract not only at the time of the execution of a labor contract; the employer must also explain any substantial change in the working environment or conditions, by transfer to another office, etc., and must resolve any doubts about the working conditions. Article 4 is not limited to a single occasion when the employer fully explains the working conditions to the worker, or sincerely answers when the worker requests an explanation, but also provides that it is a basic obligation of the employer, who knows well the contents of the labor contract, to cause the worker to fully understand or deepen the understanding of the contents.

Article 4, paragraph 2 of the Law provides, "The worker and the employer shall confirm the contents of the labor contract in writing to the extent possible." This is different from the obligation to deliver a document to a worker describing important working conditions, including wages and working hours, upon execution of a labor contract, as provided by Article 15 of the Labor Standards Law, and does not limit the application or scope of working conditions like Article 4 paragraph 1 of the Law. For example, in the event of a substantial change in the working environment or conditions by transfer to another office, etc., the employer may indicate in writing the provisions of the labor contract applicable to the worker if the worker wishes to confirm them.

Article 5 of the Law provides for the so-called obligation to consider the safety of workers in an expression different from the "obligation to consider the protection of workers from dangers to life, body, health, etc." (judgment of the Third Petty Bench of the Supreme Court dated February 25, 1975). This provision does not exclude the standards established so far by the accumulated precedents. It merely uses a different expression because it is necessary to broadly and also briefly write a provision into the law describing such an obligation. I believe that this provision only aims to confirm the existence of this already well-established obligation.

3. Concerning Chapter II Execution and Revision of a Labor Contract (Articles 6 to 13)

The Law provides, in relation to the execution and revision of a labor contract: (1) that the labor contract shall be executed and revised upon agreement between the worker and the employer (Articles 6 and 8); (2) the relationship between the labor contract and the office regulations (Article 7); (3) revision of the contents of the labor contract by changing the office regulations (Articles 9 and 10); (4) procedure for revising the office regulations (Article 11); and (5) invalidity of a labor contract setting forth working conditions inferior to the standards set forth in the office regulations.

The text of Article 7 of the Law provides, "In the event that the worker and the employer execute a labor contract and the employer causes the worker to understand well office regulations that set forth reasonable working conditions, the contents of the labor contract shall be in accordance with the working conditions set forth in the office regulations", and that reasonable office regulations well known to the worker may be used as the contents of the labor contract. The requirement that "the employer causes the worker to understand well office regulations" may be interpreted to mean that such office regulations must already exist before the execution of the labor contract in order to be incorporated into its terms. The provision is not necessarily limited to such a case; rather, it is interpreted that the office regulations may be established after the execution of the labor contract. However, the labor contract shall in principle govern, according to a proviso of Article 7, if the newly established office regulations set forth working conditions inferior to those provided by the labor contract.

Article 9 of the Law provides that the employer shall not in principle revise the office regulations to change the working conditions to the disadvantage of the worker. Article 10 provides several exceptions to this principle. "The working conditions shall be as provided for in the revised office regulations if the employer causes the worker to understand well the revised office regulations and if the revision to the office regulations is reasonable considering the (1) level of disadvantage suffered by the worker, (2) the need to change the working conditions, (3) reasonableness of the contents of the revised office regulations, (4) circumstances of negotiations with the labor union, etc., and (5) other matters related to the revision of the office regulations" (numbers and underlines were added by the author). Thus, the office regulations may in fact be revised to the disadvantage of the worker if certain requirements are met. In relation to this, the judgment of the Second Petty Bench of the Supreme Court in the Fourth Bank case, dated February 28, 1997, states, "It should be judged by generally considering the (1) level of disadvantage suffered by the worker arising out of the revision of the office regulations, (2) contents and level of the employer's need to change the working conditions, (3) reasonableness of the contents per se of the revised office regulations, (4) compensatory measures and circumstances of improvement in other related working conditions, (5) circumstances of negotiations with the labor union, etc., (6) responses of other labor unions or employees, and (7) general situations, etc., related to similar matters in our society." It is interpreted that Article 10 does not change the elements listed by the above judgment of the Supreme Court, and that "(5) other matters related to the revision of the office regulations," include elements that should be considered, but which are not specifically written into Article 10.

4. Concerning Chapter III Continuation and Termination of a Labor Contract (Articles 14 to 16)

Provisions related to the continuation and termination of a labor contract specifically provide that orders of transfer to another company, punishment and dismissals constituting abuse of employer rights by the employer are null and void.

The general principles of the Civil Code also apply to

a labor contract and naturally nullify any act which constitutes an abuse of employer rights under a labor contract. Thus, the provisions of Chapter III merely confirm this principle.

The bill which ultimately became the Law initially included a definition of "transfer to another company". However, as a worker may be transferred to another company under various contract terms, the Law does not specifically define the term and requires judgment based on the actual circumstances.

5. Concerning Chapter IV Labor contract with a definite term (Article 17)

The employer shall not refuse to renew a labor contract without unavoidable cause if the labor contract sets forth a definite term (Article 17, paragraph 1). The employer also shall consider not setting an unnecessarily short term for the labor contract and repeatedly renewing it, given the purposes for which the worker will be used (paragraph 2).

Article 17, paragraph 1 of the Law restricts the refusal by an employer to renew a labor contract with a definite term to the event that there is any unavoidable cause, but does not specify the effect of refusing to renew a contract in violation of this provision. However, Article 16 of the Law does not allow a dismissal that constitutes an abuse of employer rights. Precedents analogize the refusal to renew a labor contract with a definite term to the legal principle related to dismissal: that the refusal to renew is invalid if it lacks objectively rational grounds and is unreasonable according to the common sense view of society, in the event that it is reasonable to equate a labor contract with a definite term to a labor contract without a definite term according to the common sense view of society, or if it is recognized to be reasonable for the worker to expect the employment relationship to continue after the expiration of the term of the labor contract. Thus, a refusal to renew may be held invalid because it constitutes an abuse of employer rights in the event that the employer unreasonably and unlawfully refuses to renew a labor contract and if there are reasons to equate a labor contract with a definite term to a labor contract without a definite term in a particular case.

Article 17, paragraph 2 of the Law does not specifically bind the employer because it merely provides that the employer "shall consider" not setting an unnecessarily short term for the labor contract and repeatedly renewing it. Thus, the provision does not have the effect of immediately changing the term of a labor contract in the event that an employer eventually offers a labor contract with a short term to a worker whether such consideration is undertaken or not. However, the court may consider whether the employer engaged in such consideration when judging whether the refusal to renew a labor contract constitutes abuse of employee rights in a lawsuit arising from a dispute over a labor contract which sets a short term without reasonable cause, and in which the employer refuses to renew the contract.

6. Others

Accordingly, it is held that the Law should be viewed as not overturning, but rather codifying, legal principles related to labor contracts heretofore developed by the courts, , and reinforces the provisions of other laws for the purpose of confirmation. Also, as the Law does not provide any punishment for violation of its provisions, the employer is not punishable unless he/she violates other laws such as the Labor Standards Law. Further, the Law includes many provisions which oblige an employer to do no more than make "efforts" (e.g. Article 2, paragraphs 2 and 3, and Article 17, paragraph 2), and which therefore do not legally bind an employer. For this reason, the Law does not necessarily contribute to the solution of the problems related to labor contracts that have arisen. Therefore, I do not think that the Law requires any substantial change in the existing operation of a labor contract. However, the Law seems significant in that it specifies criteria for judgment and elements for consideration not hitherto specified in other laws and

enables clear arguments based on the Law in labor disputes.

Shigeru Ohira(Mr.);
Attorney-at-law of the Law Division

Concerning Rules Regarding the Verification of Clients' Identities and Record-Keeping Applied to Attorney's Duties

1. Introduction

Japan Federation of Bar Associations ("JFBA") established the Rules Regarding the Verification of Clients' Identities and Record-Keeping ("Rules") on March 1, 2007, and the Rules entered into force on July 1, 2007. Their purpose is to secure the adequacy and appropriateness of the duties of attorneys while practicing and to prevent the transfer of proceeds from crimes by compelling attorneys to verify the identities of their clients and to maintain records of such identities (Article 1). The Rules were established by the JFBA and apply to all attorneys. Due to these Rules, Japanese attorneys must request information and materials necessary to verify their clients' identities before providing legal services. This article aims to explain the need for these requests to potential clients, and will explain the outline and major provisions of the Rules.

2. Obligation to verify client's identity (Article 2 of the Rules)*1

The attorney is required to verify the client's identity in any of the following events:

(1) The attorney administers a client's account in a financial institution;
(2) The attorney takes custody of money, securities or other assets (if the sum is JPY 1,000,000 or more); or
(3) The attorney prepares for or executes transactions including (a) selling or purchasing real estate; (b) making capital contributions for the purpose of forming or managing a company; (c) forming a corporation; (d) entering into a trust agreement; or (e) acquiring or selling a company.

Practical means of identification include, if the client

is an individual, a driver's license, health insurance certificate, annuity notebook, passport, alien registration certificate or other form of identification issued by a reliable public or private entity. If the client is a corporation, the attorney is required to confirm the existence of the corporation from the certificate of matters in the commercial register, a seal registration certificate, etc. The identity (name and title) of the representative, agent or employee who is in charge of giving instructions to and doing other business with the attorney must also be confirmed and verified for corporate clients. The attorney must reconfirm the client's identity within five years after the first identification.

*1 (Verification of Clients)
Article 2

1. In the event that Attorneys are to administer a client's account in a financial institution, or to take custody of or administer money (including cash and remittances through financial institutions; the same shall apply hereinafter), securities and/or other assets (which will only apply to such if the sum is one million yen or more) (hereinafter referred to as "Asset Administrative Actions") in connection with handling legal matters (excluding those engaged by governmental agencies), such Attorneys shall verify the identity of such client using documents prepared by the government or other authorities, including the name, address and birth date of the client in the case of a natural person, and including the name and location of the principal office or primary place of business in the case of a corporation; unless
   (1) The Attorney is entrusted with money for the purpose of making a payment to a court, legal affairs bureau, financial institution or other institution as prepayment (*yonou-kin*), deposit (*kyotaku-kin*), bond (*hosho-kin*), or the like on behalf of a client;
   (2) The Attorney is entrusted with money in order to perform the obligations of its client or another party;
   (3) The Attorney receives money from the counter party or another party on behalf of the client as tender, settlement, or the like on behalf of a client; or
   (4) The Attorney receives money as an advance for attorney's fees or expenses.

2. Attorneys shall, excluding cases in which they are engaged by governmental agencies, verify the identities of their clients in accordance with the procedures set forth above when preparing for or executing the following transactions or other actions (hereinafter referred to as "Transactions") for such clients:
   (1) Selling or purchasing real estate;
   (2) Making capital contributions for the purpose of forming or managing a company, or other acts of equity participation
   (3) Forming a corporation or establishing a similar entity;
   (4) Entering into a trust agreement; and
   (5) Acquiring or selling a company.

3. When an Attorney verifies the identities of its corporate clients pursuant to the preceding two paragraphs, the Attorney shall confirm and verify the name and title of the representative, agent or the employee who is in charge of transmitting instructions or other matters.

4. An Attorney may dispense with the verification procedure when it newly commences Asset Administrative Actions or prepares or executes Transactions for a client whose identity was already confirmed and verified pursuant to the preceding three paragraphs within the past five years.

3. Concerning the obligation to maintain records (Article 3 of the Rules)*2

The attorney shall maintain copies of documents that were submitted to him/her for the purpose of verifying a client, as well as documents describing the outline of Asset Administrative Actions or Transactions, for five years after the completion of an Asset Administrative Action or Transaction.

*2 (Record-keeping)
Article 3

1. Attorneys shall keep copies of documents that were submitted to them for the purpose of verifying clients set forth in the previous article for five years after the completion of an Asset Administrative Action or Transaction.

2. When an Attorney has conducted Asset Administrative Actions or prepared or executed Transactions (to the extent that the client's identity was required to be verified in accordance with the preceding Article), the Attorney shall keep documents describing such Asset Administrative Actions or Transactions for five years after their completion.

3. In cases where an Attorney has dispensed with verification pursuant to Paragraph 4 of Article 2, the period during which the documents should be maintained under the preceding two paragraphs shall be commenced from date of the completion of the final Asset Administrative Action or Transaction.

4. Proper responses to requests from clients (Articles 4 and 5 of the Rules)

Article 4 of the Rules provides that, when the attorney intends to accept a request for legal services, the attorney shall carefully consider whether or not the

purpose of the request relates to a transfer of proceeds from crimes (paragraph 1), and that, if the attorney believes that the purpose of the request relates to a transfer of proceeds from crimes, the attorney shall not accept such request (paragraph 2).

Also, Article 5 of the Rules provides that, if the attorney finds out that the purpose of a request relates to a transfer of proceeds from crimes after he/she has accepted the request, the attorney shall explain to the client that it is illegal and try to persuade the client to abandon the achievement of such purpose (paragraph 1), and that the attorney shall withdraw from the matter if the attorney fails to persuade the client (paragraph 2).

The "transfer of proceeds from crimes" in the above means "proceeds from crimes, etc., provided for in Article 2, paragraph 4 of the Law for the Punishment of Organized Crimes or proceeds from drug-related crimes, etc., provided for in Article 2, paragraph 5 of the Narcotics Exceptional Law" as provided for in Article 2, paragraph 1 of the Law for Prevention of Transfer of Proceeds from Crimes, and currently includes more than 200 types of crimes.

5. Conclusion

The Rules also provide proper measures that must be taken by an attorney when he/she takes custody of money, etc., from the client for any purpose other than legal matters in addition to the foregoing.

As I wrote in the introduction, we attorneys would be much obliged if clients would understand our obligations and cooperate with us to the greatest possible extent in providing information identifying themselves, especially in the event of a request for legal services in a new case.

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Sincerely,
Shigeru Ohira, Editor-in-Chief

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