

Cross Border Business Law Blog

How Will Proposed Reforms to the Civil Code in Japan Impact Cross Border Business? - Focusing on New Rules for Adhesion Contracts Edit

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Anyone forming contracts with Japanese businesses or consumers beware: The Civil Code in Japan is likely to face the largest reforms since it became effective in 1898. On April 14, 2017, sweeping reforms to the Civil Code were approved by the Japanese Parliament's Lower House. Although they must still be approved by the Upper House, and they might change in the process, pundits expect approval without change.

Amendments are wide-ranging. For example, the proposed amendments contemplate changes to statutes of limitation, guaranties, contracts, and assignments of credit. One of the most important topics covered by the proposed amendments relates to form contracts.

By way of background, form contracts are popular in many kinds of businesses. For instance, they are frequently used by financial institutions, insurance companies, travel agencies, and online businesses. Form contracts are prepared by one party and intended to be used without a lot of changes in entering into multiple business transactions. Form contracts are often presented to a customer in a way that requires the customer to acknowledge and accept the agreement just to proceed with a transaction. Such contracts allow thousands, perhaps millions, of transactions each day to occur quickly and easily.

At the same time, form contracts often include provisions that unilaterally benefit the business proposing them. Furthermore, customers, especially consumers, usually do not carefully read and examine form contracts. As a result, customers sometimes suffer unexpected loss or damage.

Of course, Japan already has regulations on form contracts in specific industries such as certain kinds of travel agencies, but there are no general laws or regulations governing form contracts. The proposed reforms aim to fill this gap – at least in part.

1. Definition of “Typical Form Contracts”

The proposed law starts by limiting its application to “Typical Form Contracts”. This will be defined by laws that have yet to be adopted, but the proposed law implies that it will apply to contracts of adhesion. Contracts of adhesion are non-negotiable contracts offered to a customer as a “take it or leave it” deal.

2. Requirements for Typical Form Contracts to be Effective

The proposed law requires that either (a) the parties both agree to assume the rights and duties in the contract or (b) the business warns the customer *in advance* that terms and conditions will be binding if the customer elects to proceed with the transaction. Furthermore, terms and conditions under Typical Form Contracts that restrict the rights or expand the duties of a customer shall not bind the parties if they (i) breach the parties’ obligation of good faith and (ii) unilaterally violate the customer’s interests. To determine whether the terms and conditions fail under these limitations will require case-specific analysis.

3. Disclosure

The proposed law also requires a business to disclose its Typical Form Contract prior to or within a certain period of time after a transaction, if requested by a customer, unless it has already been provided in writing or electronically. If a business fails to do so, despite a request, the Typical Form Contract will not, as a rule, be binding on the customer.

4. Requirements to amend without both parties’ consent

Under the proposed law, a business may also not unilaterally change or amend a Typical Form Contract unless it is legally reasonable and conforms to the general interest of both parties and the purpose of the transaction. The business operator must inform customers of any such amendment in a manner provided by the Civil Code.

Given that these Typical Form Contracts (or so-called adhesion contracts) are also frequently employed across borders, U.S. businesses selling to Japan will need to monitor for news of final adoption of the reforms by the Upper House and make sure that their agreements meet the new standards.

Tags: adhesion contracts, Civil Code, form contracts, Japanese Parliament’s Lower House, Typical Form Contracts