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Update - A New Class Action System in Japan (Effective from 1 October 2016)

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- The bill for a new Japanese Class Action System enabling consumers to recover damages collectively in a simple and prompt manner has been enacted, and is scheduled to come into force on 1 October 2016.
- An Enforcement Order, Enforcement Ordinance and Guidelines on Certification and Supervision of Specified Qualified Consumer Organizations, published in respect of the aforementioned bill, are also scheduled to come into force on 1 October 2016.
- A bill to amend the Consumer Contract Act to enhance consumer protection was passed in May 2016. As consumer organizations view the amendment as insufficient to enhance consumer protection, however, there may be further amendments to the Consumer Contract Act.

1. Introduction

As part of various measures to enhance consumer protection, the Japanese government has been working on legislation to introduce a new Japanese Class Action System (“**New System**”), which enables consumers to recover damages collectively in a simple and prompt manner. The bill for the New System was enacted as the Act on Special Provisions of Civil Court Procedures for Collective Recovery of Property Damage of Consumers (Act No. 96 of 2013; the “**New Act**”) on 4 December 2013, and the New Act is scheduled to come into force on 1 October 2016 (the “**Effective Date**”). Details of the New Act are set forth in our legal update dated January 2014, which can be found at in the following URL:

http://www.amt-law.com/pdf/bulletins3_pdf/140114.pdf

2. Meaning of the Effective Date

The New Act is applicable only to monetary claims under contracts concluded between consumers and business operators ("**Consumer Contracts**") on or after the Effective Date. In principle, therefore, the New Act is not applicable to claims in connection with Consumer Contracts concluded on or before 30 September 2016. Additionally, the New Act is applicable to tort liabilities under the Civil Code (Act No. 89 of 1896, as amended), where such liabilities arise under Consumer Contracts. Specifically, the New Act is applicable to damage compensation claims arising from tortious act committed under Consumer Contracts on or after the Effective Date, even if the relevant Consumer Contracts were concluded on or before 30 September 2016.

3. Enforcement Order, Enforcement Ordinance and Guidelines in respect of the New Act

In November 2015, after completion of the public comments process conducted by the Consumer Affairs Agency of Japan between June and July 2015 regarding the New Act, the Enforcement Order, Enforcement Ordinance and Guidelines on Certification and Supervision of Specified Qualified Consumer Organizations ("**SQCOs**")* were published in respect of the New Act (collectively, the "**Order, Etc.**"). The Order, Etc., like the New Act, will come into effect on 1 October 2016.

The Order, Etc., by their nature, contain technical and detailed subordinate regulations on the application of the New Act, but do not amend the basic structure of the New Act. Examples of such regulations include:

- details of the items required to be completed in an application form in order for a Qualified Consumer Organization ("**QCO**")* to be certified by the Prime Minister as a SQCO, and the documents required to be attached to the application form (Articles 9 and 10 of the Enforcement Ordinance); and
- details on how the SQCO gives individual notices to aggrieved consumers in order for them to delegate powers to the SQCO at the Second Stage* of the New System (being a stage initiated by way of a petition filed by an SQCO and at which the amount to be paid to each aggrieved consumer will be determined) (the "**Second Stage**"), and the information required to be included in such notices (Articles 2 and 3 of the Ordinance for Enforcement).

* For further details on the "QCO", "Second Stage" and "SQCO", please refer to our legal update dated January 2014, referred to in the introduction section above.

Similarly, responses by the relevant authorities to public comments regarding the Order, Etc. contain no significant issue that would affect the basic structure of the New Act.

4. SQCOs

There is currently no SQCO in existence. This is due to the design of the New System, which requires a QCO to apply to the Prime Minister under the New Act on or after the Effective Date before it can be certified as an SQCO.

As of 4 July 2016, there are 14 QCOs in Japan.

5. Movement to amend the Consumer Contract Act

On a related note, the Japanese Diet passed a bill to amend the Consumer Contract Act (Act No. 61 of 2000, as amended) ("**Amendment**") in May 2016. The Consumer Contract Act regulates Consumer Contracts (that is, the contractual relationship underlying the monetary liabilities to which the New Act is applicable).

The Amendment is intended to enhance consumer protection through several measures, such as: (i) making it easier for consumers to rescind Consumer Contracts by extending the applicable statute of limitation in respect of the right of consumers to rescind Consumer Contracts under the Consumer Contract Act from the current six months to one year (Proposed Paragraph 1 of Article 7 of the Consumer Contract Act, post-Amendment); and (ii) making it easier for consumers to invalidate Consumer Contract provisions that are disadvantageous to consumers, such as provisions stipulating consumers' consent to the non-exercise of their rights to cancel the relevant Consumer Contracts even if business operators fail to perform their obligations (Proposed Article 8-2 of the Consumer Contract Act, post-Amendment).

The Amendment is proposed to take effect one year from the date of its promulgation on 3 June 2016. The Amendment, upon coming into effect, will expand cases in which consumers may claim against business operators directly and/or through the New System.

Consumer organizations, however, view the Amendment as insufficient to enhance consumer protection. This points to the possibility of further amendments to the Consumer Contract Act or other legislation for the enhancement of consumer protection in the future.

End

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- This law bulletin is published as a general service to clients and friends and does not constitute legal advice. Should you wish to receive further information or advice, please contact the authors as follows.

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