

Proposed Amendments to the Consumer Contract Act and the Act on Special Measures for Consumer Court Proceedings(Outline)

(The Proposed Act to Partially Amend the Consumer Contract Act and the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers)

Consumer Contract Act

- Prescribes **civil rules** for consumer contracts (as a special Act taking precedence over the Civil Code [regarding the right to rescind a contract and contract clauses that are void])
- Addresses **the Supplementary Resolution connected with the 2018 amendment and other issues**
Among other things, the proposed Act expands the right to rescind a contract and adds provisions on inappropriate cancellation fees (reducing the burden of proof for the consumer) and inappropriate contract clauses

Act on Special Measures for Consumer Court Proceedings

- Prescribes **court proceedings** for collective redress for damage incurred by consumers (as a special Act taking precedence over the Code of Civil Procedure [regarding pursuit of legal proceedings by specified qualified consumer organizations])
- Addresses **issues identified in light of the operative status of the Act following its entry into force in 2016**
Although the system can be regarded as part of the social infrastructure, the extent to which it is being used still lacks breadth (four lawsuits in five years).

Main Amendments

- 1 Establishment of additional actions conferring the right to rescind a contract** (Article 4, paragraph (3))
 - Accompanying a consumer to a place that it is difficult to leave and soliciting them to contract without first informing them that they will be solicited to contract
 - Using intimidating words or behavior, interfering with a consumer's attempts to consult with a third party
 - Altering the state of the subject matter before the contract is formed, making it exceedingly difficult to restore it to its original state
 - 2 Creation of a duty to endeavor to explain cancellation fees**
 - Obliges companies to endeavor to give consumers an outline of the basis for calculation (Article 9, paragraph (2))
 - Obliges companies to endeavor to explain the basis for calculation to qualified consumer organizations (Article 12-4)
 - 3 Voidance of clauses poorly defining the scope of indemnification** (Article 8, paragraph (3))
 - 4 Expansion of the "companies' duty to endeavor"**
 - Obliges companies to endeavor to provide consumers with the information they need to cancel contracts (Article 3, paragraph (1) , others)
 - Obliges companies to endeavor to disclose the relevant contractual provisions or the measures they have taken after having an injunctive claim filed against them, at the request of a qualified consumer organization (Article 12-3 and Article 12-5)
- * These amendments come into effect 1 year after the date of promulgation.
(The effective date of provisions related to the administrative affairs of qualified consumer organizations is the same as that of the amendment to the Act on Special Measures for Consumer Court Proceedings.)

Main Amendments

- 1 Expansion of the scope of coverage** (Article 3)
 - Adds provisions on seeking a solatium if:
 - (The underlying facts are consistent among the consumers, and:
 - i) the claim is filed alongside the claim for pecuniary damages; or
 - ii) the distress is the result of an intentional act)
 - Adds provisions on naming an individual other than the company (a person that was involved in the tortious business practices) as the defendant
- 2 Greater flexibility in the early stages of settlement proceedings** (Article 11)
 - Makes it possible to reach a variety of settlements at the first stage
- 3 Enhancement of the ways companies provide information to consumers**
 - Gives companies the obligation to provide notice to each consumer individually (Article 28)
 - Enables disclosure of consumers' names and other such information at the early stages (Article 9)
 - Makes the notices provided by specified qualified consumer organizations more concise (Article 27, paragraph (2))
 - Also expands the scope of information published by administrative authorities (Article 95)
- 4 Introduction of a system for certifying corporations that support specified qualified consumer organizations** (Articles 98 through 113)
 - * These amendments come into effect on the date specified by Cabinet Order, within one-and-a-half years after the date of promulgation.

Strengthens Prevention of Damage to Consumers, Enhances Relief

Proposed Amendments to the Consumer Contract Act (Outline)

These amendments address the Supplementary Resolution that was made at the time of the 2018 amendment and establish a safety net that enables consumers to conduct transactions safely and securely, in keeping with changes in the environment surrounding consumer contracts.

The Current Act (A special Act taking precedence over the Civil Code, prescribing civil rules for consumer contracts and other matters)

- 【Right to Rescind Contracts】 (the right of the consumer to rescind a contract [the manifestation of their intention to be bound by the contract] in the event of wrongful solicitation to contract.)
 - If the solicitation to contract involves misrepresentations or non-disclosure of adverse facts
 - If the solicitation to contract involves a person's refusing to leave, preventing the consumer from leaving, making representations that prompt alarm, or implementing contractual obligations before the conclusion of the contract
- 【Contract Clauses That Are Void】
 - Those providing for full or partial indemnity against intentional acts or gross negligence or for full indemnity against slight negligence
 - Those providing for cancellation fees that exceed the average amount of damages
- 【Companies' Duty to Endeavor】
 - Companies have a duty to endeavor to provide information that takes into account the knowledge and experience of the consumer (when soliciting the consumer to enter into a contract).
- 【Injunctive Claims by Qualified Consumer Organizations】 (Qualified consumer organizations [consumer organizations that have been granted official certification] are permitted to demand that companies cease solicitation activities that give the consumer the right to rescind the contract, and that they stop including void clauses in their contracts.)

Supplementary Resolution Connected with the 2018 Amendment

- Establishes that the consumer has a right of rescission if the company has unfairly taken advantage of circumstances in which the consumer was unable to exercise reasonable judgment
- Reduces the burden of proof for consumers as it relates to unreasonable cancellation fees (cancellation fees that exceed the average amount of damages that the company would incur)
- Prescribes additional categories of inappropriate contract clauses

Proposed Amendments

Establishment of Additional Actions Conferring the Right to Rescind a Contract

- (Article 4, paragraph (3))
- **Accompanying a consumer to a place that it is difficult to leave** and soliciting them to contract, without first informing them that they will be solicited to contract
 - Using intimidating words or behavior, **interfering with a consumer's attempts to consult with a third party**
 - **Altering the state of the subject matter** before the contract is formed, making it exceedingly difficult to restore it to its original state

Voidance of Clauses Poorly Defining the Scope of Indemnification

- (Article 8, paragraph (3))
- **Vague partial indemnification clauses** that complicate liability claims (i.e., those that do not make it clear that they apply only to acts of slight negligence) are void.
- (Example of a void clause) To the extent permitted by law, compensation is limited to 10,000 yen.
 (Example of a valid clause) In the event of slight negligence, compensation is limited to 10,000 yen.

Creation of a Duty to Endeavor to Explain Cancellation Fees

- Obliges companies to endeavor to give consumers **an outline of the basis for calculation** (Article 9, paragraph (2))
- Obliges companies to endeavor to explain **the basis for calculation (other than those involving trade secrets)** to qualified consumer organizations (Article 12-4)

Expansion of the "Companies' Duty to Endeavor"

- **Introduction of a duty to endeavor** that applies not only at the time of entering into the contract, but also **at the time of contract cancellation** (Article 3, paragraph (1), item (iv), others)
 - ⇒Obliges the company to endeavor to provide the consumer with the information they need to exercise the right to cancel the contract and to endeavor to give an outline of the basis for calculating cancellation fees (reaffirmed)
- **Expansion of the duty to endeavor to provide information at the time of the solicitation to contract** (Article 3, paragraph (1), item (ii))
 - ⇒Obliges the company to endeavor to provide information that comprehensively takes into account the consumer's **age and physical and mental condition** (limited to information that the company could have learned), **in addition to the consumer's knowledge and experience**
- **Expansion of the duty to endeavor to provide information on the right to request the company to show the standard terms of contract** (Article 3, paragraph (1), item (iii))
- **Expansion of the duty to respond to requests by qualified consumer organizations** (Articles 12-3 through 12-5)
 - ⇒Obliges the company to endeavor to respond to requests to disclose contractual provisions that include inappropriate clauses and to disclose measures the company has taken in connection with injunction claims, and to endeavor to respond to requests to explain the basis for the calculation of cancellation fees (reaffirmed)

Other Amendments

- Amendment of provisions concerning qualified consumer organizations' documents (Article 14, paragraph (2))
- Discontinuation of reviews by persons with relevant expertise each fiscal year. (Article 31)

and other amendments

Proposed Amendments to the Act on Special Measures for Consumer Court Proceedings (Outline)

The proposed amendments allow for evolution towards a system that makes it easy to provide relief for damage to consumers and that is easy for consumers to use, as well as making environmental arrangements that facilitate activities by organizations that are integral to the system.

The Current Act

(Provides for a system under which specific qualified consumer organizations act on consumers' behalf to bring about collective redress for damage they have incurred.)

First Stage (Litigation Seeking Declaratory Judgment on Common Obligations)

- Legal proceedings to determine whether a company is liable to consumers (i.e., whether it bears a "common obligation" to them)
- The recoverable damages are those from pecuniary losses.
- The person named as the defendant is the company in question.
- It is possible to reach a settlement regarding whether or not there is a common obligation.

(Determination, Settlement, etc.)

If the company is found to be liable

Proposed Amendments

Second Stage (Simple Determination Proceedings and Other Proceedings)

- Proceedings to determine how much the company will pay to whom (Flow of Proceedings)
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 graph LR
 A[Consumers join the proceedings] --> B[Proofs of claim are filed]
 B --> C[Amounts are determined]

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## Expansion of the Scope of Proceedings

### (Article 3)

- Adds a solatium of a certain scope to the recoverable damages (paragraph 2)
  - If the underlying facts are consistent among the consumers, and:
    - i) the claim is filed alongside the claim for pecuniary damages; or
    - ii) the distress is the result of an intentional act
- Adds individuals other than the company in question as persons that may be named as the defendant (paragraph (1), paragraph (3))
  - Assumes the existence of a business supervisor or employee who was involved in the tortious business practices

## Enhancement of the Ways Companies Provide Information to Consumers

- Gives companies the obligation to provide notice to each consumer individually (Article 28)
- Enables disclosure of consumers' names and other such information at the early stages (Article 9)
- Makes the notices provided by specified qualified consumer organizations more concise (Article 27, paragraph (2))
- Expands the scope of information disclosure by administrative authorities (Article 95)

## Greater Flexibility in the Early Stages of Settlement Proceedings

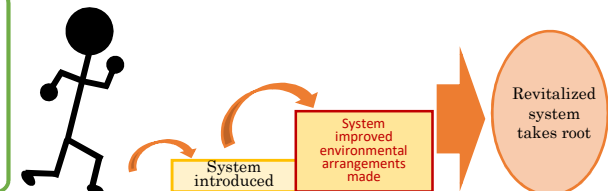
- Makes it possible to reach a variety of settlements at the first stage (Article 11)
  - In addition to settlements on whether the company is liable (whether it bears a common obligation to consumers), it is also possible to reach the following types of settlement:
    - Settlements that involve payment of settlement money, settlements that do not involve monetary payments, settlements of an aggregate amount, settlements that are complete up to and including payment to the consumer, and others

## Reduction of the Burden on Specified Qualified Consumer Organizations

- Introduces a system for certifying corporations that support specified qualified consumer organizations (corporations supporting litigation and other operations by consumer organizations) (Article 98 through Article 113)
  - Business Content: (Becoming entrusted with giving notices for specified qualified consumer organizations, with disclosing information for administrative authorities, and with other operations)

## Other Amendments

- **Reduced burden for specified qualified consumer organizations**
    - Greater flexibility in procedural petitions for the second stage (Article 15, Article 16)
    - Extends the term of validity for certification as a specified organization (from three years to six years) (Article 75)
    - Establishes provisions on cooperation between specified qualified consumer organizations and qualified consumer organizations (Article 81)
  - **Enhanced Consumer Protections**
    - Makes arrangements for special measures involving the extinctive prescription (Article 68)
    - Places restrictions on which entities may inspect the relevant records (Article 54)
- and other amendments



# 消費者契約法・消費者裁判手続特例法の改正案(概要)

(消費者契約法及び消費者の財産的被害の集団的な回復のための民事の裁判手続の特例に関する法律の一部を改正する法律案)

## 消費者契約法

- 消費者契約に関する民事ルールを規定  
(民法の特別法(契約の取消権・無効な条項))
- 平成30年改正の附帯決議等に対応  
契約の取消権の拡充、不当な解約料(消費者の立証負担軽減)、不当条項の追加 等

## 主な改正事項

- 1 契約の取消権を追加(第4条第3項)
    - ・ 勧誘することを告げずに退去困難な場所へ同行し勧誘
    - ・ 威迫する言動を交え、相談の連絡を妨害
    - ・ 契約前に目的物の現状を変更し、原状回復を著しく困難に
  - 2 解約料の説明の努力義務
    - ・ 消費者に対し算定根拠の概要(第9条第2項)
    - ・ 適格消費者団体に対し算定根拠(第12条の4)
  - 3 免責の範囲が不明確な条項の無効(第8条第3項)
  - 4 事業者の努力義務の拡充
    - ・ 契約の解除に必要な情報提供等(第3条第1項等)
    - ・ 適格消費者団体の要請に応じて、契約条項・差止請求を受けて講じた措置の開示(第12条の3及び5)
- ※ 公布の日から1年を経過した日の施行  
(適格消費者団体の事務関係規定は消費者裁判手続特例法と同じ)

## 消費者裁判手続特例法

- 消費者被害を集団的に回復する裁判手続を規定  
(民事訴訟法の特別法(特定適格消費者団体による手続追行))
- 施行(平成28年)後の運用状況を踏まえ、明らかに  
なった課題に対応  
制度は社会的インフラと評価すべきも活用範囲に未だ広がり欠いている(5年間で訴訟4件)

## 主な改正事項

- 1 対象範囲の拡大(第3条)
    - ・ 慰謝料を追加 (基礎的事実関係が共通 +  
i) 財産的損害と併せて請求 or ii) 故意による場合)
    - ・ 事業者以外の個人(悪質商法関係者)を被告に追加
  - 2 和解の早期柔軟化(第11条)
    - ・ 一段階目で様々な和解を可能に
  - 3 消費者に対する情報提供方法の充実
    - ・ 事業者は消費者への個別通知を義務付け(第28条)
    - ・ 消費者の氏名等の情報開示を早期に可能に(第9条)
    - ・ 特定適格消費者団体からの通知を簡潔に(第27条第2項)
    - ・ 行政の公表も拡充(第95条)
  - 4 特定適格消費者団体を支援する法人を認定する制度の導入(第98条から第113条まで)
- ※ 公布の日から1年半を超えない範囲で政令で定める日の施行

消費者被害の防止・救済の強化

# 消費者契約法の改正案(概要)

消費者契約を取り巻く環境の変化を踏まえつつ、平成30年改正時の附帯決議に対応し、消費者が安全・安心に取引できるセーフティネットを整備

## 現行法(消費者契約に関する民事ルール等を規定する民法の特別法)

- 【契約の取消権】(不当な勧誘行為があった場合に契約(意思表示)を取り消すことができる権利)  
不実告知、不利益事実の不告知  
不退去、退去妨害、不安をあおる告知、契約締結前の義務実施 等
- 【無効となる契約条項】  
故意・重過失の賠償責任の全部又は一部免責、軽過失の賠償責任の全部免責  
平均的な損害の額を超える解約料 等
- 【事業者の努力義務】  
(契約締結について勧誘をするに際し)消費者の知識・経験を考慮した情報提供 等
- 【適格消費者団体による差止請求】(適格消費者団体(認定された消費者団体)が契約の取消権の対象となる勧誘行為や無効となる契約条項の停止を請求できる)

## H30年改正附帯決議

- 消費者が合理的な判断をすることができない事情を不当に利用した場合の取消権の創設
- 不当な解約料(事業者が生ずべき平均的な損害の額を超える解約料)に係る消費者の立証責任の負担軽減
- 不当条項の類型の追加 等

## 改正案

### 契約の取消権を追加

(第4条第3項)

- ・ 勧誘をすることを告げずに、退去困難な場所へ同行し勧誘
- ・ 威迫する言動を交え、相談の連絡を妨害
- ・ 契約前に目的物の現状を変更し、原状回復を著しく困難に

### 解約料の説明の努力義務

- ・ 消費者に対し算定根拠の概要(第9条第2項)
- ・ 適格消費者団体に対し算定根拠(営業秘密を除く)(第12条の4)

### その他

- ・ 適格消費者団体関係の書類の見直し(第14条第2項)
- ・ 毎事業年度の学識経験者の調査の廃止(第31条) 等

### 免責の範囲が不明確な条項の無効

(第8条第3項)

- ・ 賠償請求を困難にする不明確な一部免責条項(軽過失による行為のみ適用されることを明らかにしていないもの)は無効  
(無効となる例) 法令に反しない限り、1万円を上限として賠償します  
(有効となる例) 軽過失の場合は1万円を上限として賠償します

### 事業者の努力義務の拡充

- ・ 契約締結時だけでなく解除時に努力義務を導入(第3条第1項第4号等)  
⇒解除権行使に必要な情報提供、解約料の算定根拠の概要説明(再掲)
- ・ 勧誘時の情報提供(第3条第1項第2号)  
⇒消費者の知識・経験に加え、年齢・心身の状態も総合的に考慮した情報提供(知ることができたものに限る)
- ・ 定型約款の表示請求権に関する情報提供(第3条第1項第3号)
- ・ 適格消費者団体の要請に対応(第12条の3から5)  
⇒不当条項を含む契約条項・差止請求に係る講じた措置の開示要請、解約料の算定根拠の説明要請に応じる努力義務(再掲)

# 消費者裁判手続特例法の改正案(概要)

消費者の被害を救済しやすく、消費者が利用しやすい制度へと進化させるとともに、  
制度を担う団体が活動しやすくする環境整備を行う

## 現行法

(特定適格消費者団体が消費者に代わって集団的な消費者被害の回復を実現する制度)

### 一段階目(共通義務確認訴訟)

- 事業者が消費者に対して責任(共通義務)を負うか否かを判断する訴訟手続
- 対象となる損害は財産的損害
- 対象となる被告は事業者
- 共通義務の存否に関する和解が可能

(判決・和解等)

責任が認められた場合

### 二段階目(簡易確定手続等)

- 事業者が誰にいくらを支払うかを確定する手続  
(手続の流れ)

消費者の  
手続加入

債権届出

額の確定

## 改正案

### 対象範囲の拡大

(第3条)

- 対象となる損害に一定の慰謝料を追加(第2項)  
・基礎的事実関係が共通で、i) 財産的損害と併せて請求の場合  
ii) 故意による場合
- 対象となる被告に事業者以外の個人を追加(第1項、第3項)・悪質商法に関与した事業監督者・被用者を想定

### 消費者への情報提供方法の充実

- 事業者に消費者への個別通知を義務付け(第28条)
- 消費者の氏名等の情報開示を早期に可能に(第9条)
- 特定適格消費者団体からの通知を簡潔に(第27条第2項)
- 行政が公表する情報を拡充(第95条)

### 和解の早期柔軟化

- 一段階目で様々な和解を可能に(第11条)  
・事業者の責任(共通義務)の有無以外にも以下の和解が可能に  
解決金を支払う和解、金銭を支払う以外の和解、総額和解、消費者への支払まで完結する和解 等

### 特定適格消費者団体の負担軽減

- 特定適格消費者団体を支援する法人(消費者団体訴訟等支援法人)を認定する制度の導入(第98条から第113条まで)

業務内容:(特定適格消費者団体の通知、行政の公表等を受託)

### その他

- 特定適格消費者団体の負担軽減等
  - ・二段階目の手続の申立ての柔軟化(第15条、第16条)
  - ・特定認定の有効期間の延長(3年→6年)(第75条)
  - ・特定適格消費者団体と適格消費者団体の連携協力規定(第81条)
- 消費者保護の充実
  - ・消滅時効の特例の整備(第68条)
  - ・記録の閲覧主体の制限(第54条)

等

