

# Outline of the Act on Preventing Unjust Solicitation of Donations by Corporations

In conjunction with the Consumer Contract Act, this Act prohibits unjust solicitation of donations by corporations and other entities, and provides for administrative measures and other means against corporations and other entities that make such solicitations, and protects those who receive solicitations for donations from corporations and other entities.

## Main Contents of the Act

Corporation and other entity: a corporation or an unincorporated association or foundation that has designated a representative or administrator

[Effective date] This Act comes into effect on January 5, 2023 (the day on which 20 days have elapsed from the date of promulgation).

The provisions of Article 4, items (iii) and (iv) and Article 8 (limited to the parts pertaining to Article 4, items (iii) and (iv)) come into effect on June 1, 2023. Articles 5 through 7 and 16 through 18 come into effect on April 1, 2023 (the day specified by Cabinet Order within a period not exceeding one year from the date of promulgation). To be reviewed approximately two years after the enforcement of this Act.

## 1. Regulations on the Solicitation of Donations

• Donations based on contracts and also donations that are not contracts (unilateral juridical acts) are covered. [Article 2]

• Obligation of consideration to donors when soliciting donations [Article 3]

➔ Sufficient consideration must be given to (1) through (3).

- (1) Ensure that the solicitation of donations does not suppress the donor's free will of individuals, and that individuals do not find it difficult to make appropriate decisions.
- (2) Ensure that the donation does not make it difficult for the individual, the individual's spouse, or the individual's relatives to maintain their standard of living.
- (3) Provide the individual with sufficient information to identify the corporation and other entities making the solicitation, and ensure that there is no risk of misunderstanding about the usage of the donated property.

• Prohibition against misleading donors through unjust solicitation when soliciting donations [Article 4]

(1) Failing to leave, (2) Preventing the individual from leaving, (3) Accompanying an individual to a place that it is difficult to leave and soliciting them to contract without first informing the individual beforehand that a donation will be solicited to contract, (4) Using intimidating words or behavior, interfering with an individual's attempts to consult with a third party, (5) Conveying to an individual that a relationship will break down by taking advantage of this situation that the individual who has little social life experience develops romantic feelings or other favorable feelings, (6) Soliciting an individual of the donation by referencing supernatural senses or other special abilities.

• Prohibition of requests for financing by borrowing [Article 5]

A corporation or another entity must not request to procure funds therefor through borrowing or disposing of real property used for residence of a person and buildings or any other depreciable assets which are indispensable for the maintenance of the life and for the continuation of the business.

## 3. Rescinding the Manifestation of Intent to Donate

\* If it falls under the category of consumer contract, it can be rescinded in accordance with the Consumer Contract Act.

- Rescission when the manifestation of intent to donate was made by an individual who was distressed as a result of unjust solicitations [Article 8].
- Period for exercising the rescission right (from the time it can be ratified/from the time of donation, 1 year/5 years for (1) through (5), 3 years/10 years for (6)) [Article 9]

## 4. Special Provisions Concerning Exercise of Obligee's Right of Subrogation

• Special provisions for children and spouses to protect marriage expenses, child care, and other expenses [Article 10]

If the protected claim is a claim for periodic payments related to the duty to support (marriage expenses, child support, and other expenses), the obligee's right of subrogation, with regard to the right to rescind donations (only monetary donations) and the right to claim the return of donated money based on this Act and the Consumer Contract Act, is made exercisable **even if the due date for performance has not yet arrived**. (\*under the Civil Code, only the amount for which the due date for performance has arrived is exercisable).

## 2. Administrative Measures Against Violations and Penalties

• Recommendations and requests to report pertaining to compliance with the obligation of consideration (Article 3) [Article 6]

• When it is clearly recognized that significant impediments have arisen in safeguarding individual rights and there is a significant risk of similar impediments occurring, a recommendation will be made to the corporation and other entities, indicating the matters to be complied with.

➔ In cases of non-compliance, the name of the corporation and other entities may be made public.

• To the extent necessary to make the recommendation, corporations and other entities will be requested to report.

• Recommendations, orders, and requests to report pertaining to prohibited acts (Articles 4 and 5) [Article 7]

• To the extent deemed specifically necessary for enforcement, corporations, and other entities will be requested to report.

• If a violation against unspecified or numerous individuals is discovered and there is a significant likelihood that the violation will continue, a recommendation will be made to take the necessary measures.

➔ If no action is taken, an order to take action may be issued and the name of the corporation or other entity may be made public.

• Penalties for violation of Article 7 [Articles 16 through 18] \*Dual liability may apply.

False report and other violation: a fine not more than 500,000 yen.

Violation of order: imprisonment for not more than one year or a fine not more than 1,000,000 yen or both.

## 5. Assistance and Support Provided by Relevant Organizations

• Support for persons who have made donations through unjust solicitation [Article 11]

In order to ensure that recovery of damages can be achieved through the appropriate exercise of the right to rescind and the obligee's right of subrogation, the national government is to endeavor to strengthen coordination between the Japan Legal Support Center and relevant organizations and groups, and to take measures for necessary support.

In implementing this Act, sufficient consideration must be given to **the freedom of religion** and others, while bearing in mind **the importance of the role that donations** play in the activities of corporations and other entities. [Article 12].

# 法人等による寄附の不当な勧誘の防止等に関する法律(概要)

法人等による不当な寄附の勧誘を禁止するとともに、当該勧誘を行う法人等に対する行政上の措置等を定めることにより、消費者契約法とあいまって、法人等からの寄附の勧誘を受ける者の保護を図る。

## 新法の主な内容

<法人等> 法人又は法人でない社団若しくは財団で代表者若しくは管理人の定めがあるもの

[施行期日] 令和5年1月5日(公布の日から起算して20日を経過した日)施行。

なお、第4条第3号・第4号及び第8条(第4条第3号及び第4号に係る部分に限る。)の規定は令和5年6月1日施行。

第5~7条、第16~18条は、公布の日(令和4年12月16日)から起算して1年以内の政令で定める日(令和5年4月1日施行)。施行後2年目処見直し。

## 1. 寄附の勧誘に関する規制等

■ 契約による寄附に加え、契約ではない寄附(単独行為)も対象とする【第2条】

■ 寄附の勧誘を行うに当たっての寄附者への配慮義務【第3条】

➡ ①~③に十分に配慮しなければならない

- ① 自由な意思を抑圧し、適切な判断をすることが困難な状況に陥ることがないようにする
- ② 寄附者やその配偶者・親族の生活の維持に困難にすることがないようにする
- ③ 勧誘する法人等を明らかにし、寄附される財産の用途を誤認させるおそれがないようにする

■ 寄附の勧誘に際し、不当勧誘行為で寄附者を困惑させることの禁止【第4条】

- ① 不退去、② 退去妨害、③ 勧誘をすることを告げず退去困難な場所へ同行、④ 威迫する言動を交え相談の連絡を妨害、⑤ 恋愛感情等に乗じ関係の破綻を告知、⑥ 靈感等による知見を用いた告知

■ 借入れ等による資金調達の要求の禁止【第5条】

借入れ、又は居住用の建物等若しくは生活の維持に欠くことのできない事業用の資産で事業の継続に欠くことのできないものの処分により、寄附のための資金を調達することを要求してはならない

## 3. 寄附の意思表示の取消し ※消費者契約に該当する場合は消費者契約法によって取消し

■ 不当な勧誘により困惑して寄附の意思表示をした場合の取消し【第8条】

■ 取消権の行使期間(追認できるときから・寄附時から、①~⑤は1年・5年、⑥は3年・10年)【第9条】

## 4. 債権者代位権の行使に関する特例

■ 子や配偶者が婚姻費用・養育費等を保全するための特例【第10条】

被保全債権が扶養義務等に係る定期金債権(婚姻費用、養育費等)である場合、本法・消費者契約法に基づく寄附(金銭の寄附のみ)の取消権、寄附した金銭の返還請求権について、**履行期が到来していなくても債権者代位権を行使可能にする**(※民法上は、履行期が到来した分のみ)

## 2. 違反に対する行政措置・罰則

■ 配慮義務(第3条)の遵守に係る勧告等【第6条】

- ・ 個人の権利の保護に著しい支障が生じていると明らかに認められ、同様の支障が生ずるおそれがある場合、法人等に遵守すべき事項を示して勧告 ➡ 従わなかったときは、公表可能
- ・ 勧告に必要な限度で、法人等に対し報告を求める

■ 禁止行為(第4条・5条)に係る勧告・命令等【第7条】

- ・ 施行に特に必要な限度で、法人等に対し報告を求める
- ・ 不特定・多数の個人への違反行為が認められ、引き続きするおそれが著しい場合、必要な措置をとるよう勧告 ➡ 措置をとらなかったときは、命令・公表

■ 第7条違反への罰則【第16条~18条】 ※両罰規定あり

虚偽報告等: 50万円以下の罰金

命令違反: 1年以下の拘禁刑・100万円以下の罰金

## 5. 関係機関による支援等

■ 不当な勧誘による寄附者等への支援【第11条】

取消権や債権者代位権の適切な行使により被害回復等を図ることができるようにするため、法テラスと関係機関・関係団体等の連携強化による利用しやすい相談体制の整備等、必要な支援に努める

法律の運用に当たり法人等の活動に寄附が果たす役割の重要性に留意し、**信教の自由等**に十分配慮しなければならない【第12条】