

# HAYABUSA ASUKA LAW OFFICES NEWS LETTER

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## The Act on the Promotion of Anti-Doping Activities in Sport

by Sunao Tsubakihara (Attorney-at-Law)

### 1. The first Act in Japan concerning Anti-doping promotion

Interest in sport in Japan has increased recently due to the Rugby World Cup 2019 and the Olympic and Paralympic Games Tokyo 2020.

In June of 2018, the Act on the Promotion of Anti-doping Activities in Sport (the “Act”) was enacted. As the Act is the first law in Japan concerning anti-doping, sports lawyers are paying significant attention to it. An introduction to the Act is outlined below.

### 2. Characteristics of sport organizations and their involvement

#### (a) General provisions

Article 4 of the Act prohibits doping in sport. However, while doping in sport has been declared illegal, there are no penalties for violations. During the law-making process, discussions were held regarding the need for legislation concerning anti-doping as well as the legal elements of an anti-doping offence and the punishments for violations under the

Act. Ultimately, as discussed below, instead of establishing penalties for violations under the Act, the Act empowered the Japan Anti-Doping Agency (JADA) to share information with national administrative bodies.

(b) Basic policy

Article 11 of the Act explicitly states that the Minister of Education, Culture, Sports, Science and Technology (Minister) should formulate a basic policy for comprehensively promoting related measures to anti-doping.

(c) Basic measures

The three pillars of the basic measures of the Act include (1) facilitation of education, (2) sharing of information, and (3) development of international cooperation.

First, measures shall be taken assemble individuals having a strong knowledge of the issues concerning anti-doping activities (and to help individuals develop such knowledge), promote research and development, and facilitate education and awareness efforts, etc. under Articles 12 – 14 of the Act.

Second, all necessary measures shall be taken by the Japanese Government to ensure the sharing of information regarding doping in sport among national administrative bodies, the Japan Sport Council, the Japan Anti-Doping Agency (JADA) and related international organizations. For such purposes, the Minister may request the heads of relevant national administrative bodies to provide materials, information, or any other necessary cooperation, as appropriate under Article 15.

Finally, international cooperation in anti-doping activities shall be developed by the Japanese Government, specifically in ensuring coordination between the Japan Sport Council and international sports federations under Article 16.

In regard to Articles 15 and 16, the Japanese Government is required to share information gained by national administrative bodies, to obtain the appropriate cooperation from administrative bodies, and to develop international coordination in order to effectively expose incidents of doping in sport. These requirements are intended to address concerns of potential violations through the taking of various necessary measures, such as the measures to be taken in the event of doping prior to entry or admittance into Japan, etc. In essence, the inherent “exposure quality” of the Act should eliminate the need to impose penalties for doping violations.

Despite the enactment of the law, the specific measures referred to above have not yet been determined. Therefore, close attention should be paid to this matter in anticipation of the establishment and implementation of such measures.

## Civil Code (Law of Obligations) Reform

by Ippei Suzuki (Attorney-at-Law)

The "Amendment to the Civil Code" is scheduled to come into force on April 1, 2020. A summary of the pertinent revisions applicable to Contracts for Work is set out below.

1. Current Articles 634 and 635- the special provisions in relation to a contractor's warranty are to be eliminated

The following provisions applicable to sales contracts are to apply equally to Contracts for Work in respect of the right to demand repair and compensation for damages and the right to cancel a contract:

- (1) Article 562 (Right to Demand Supplementary Claim)
- (2) Article 563 (Right to Claim Reduction in Proceeds)
- (3) Article 564 (Right to Claim Damages and Right to Cancel for Default of Obligation)

2. Article 634 - to be amended so as to include remuneration rights of a contractor

If (1) the completion of a work becomes impossible or a contract is terminated prior to the completion of a work and (2) the result of a work already performed is "divisible" and the party ordering the work receives profits as a result of the performance of the work, it shall be deemed that such performance has been partially rendered. Consequently, a contractor may claim **remuneration in proportion to the profit** received by the party ordering the work.

3. Article 637 - the starting point of the warranty period to be amended

The party ordering a work shall lose: the right to (i) make an additional claim, (ii) reduce the subject remuneration, (iii) demand compensation for damages, and (iv) cancel a contract, when it fails to notify the Contractor of the nonconformity within one year **from the time that the party ordering the work becomes aware of such nonconformity**. This "notice of nonconformity" shall be satisfied simply by the act of notifying the contractor of such nonconformity, without the need for the party ordering the work to do anything else such as (1) specify the grounds of damages or (2) make any claims for damages.

4. Article 638 and 639 - specific extensions of warranty periods to be deleted

Since Article 637 stipulates that certain rights of a party ordering a work shall generally be forfeited unless it notifies the contractor within one year of awareness of a contractual

nonconformity, this provision **no longer necessitates extra-long warranty periods for land and building, etc. (e.g. five years for a building or other structure on land, ten years for structure made of stone, earth, bricks, concrete, steel and other similar structures)** as are stipulated in current Articles 638 and 639 (these articles are to be deleted).

5. Article 642 - a restriction is to be imposed on cancellation of a contract in cases where there is a commencement of bankruptcy procedures in respect of the party ordering the work

Although this provision maintains that the contractor or the trustee in bankruptcy may cancel a contract when the party ordering the work is subject to a ruling for the commencement of bankruptcy procedures, such **cancellation shall not be allowed after completion of a work.**

### Explanation of Key Points concerning Regulations on Premiums by Norimasa Kaneko (Attorney-at-Law)

In situations where gifts and prizes are offered as a part of sales promotions and services for customers, such gift and prize items are subject to regulations under the Act against Unjustifiable Premiums and Misleading Representations. More specifically, the aforesaid Act: limits the maximum value of a premium or the total amount of premiums, the type of premiums or means of offering a premium; and/or prohibits the offering of a premium, etc.

The scope of the regulated premiums covers (1) the means of attracting customers, (2) the means used in connection with the transactions of goods and services provided by a business operator, and (3) the means of providing goods, money, or other economic benefits. Moreover, premiums are categorized as prizes and gross or pecuniary premiums. While “prizes” refer to premiums provided in connection to or as the rewards for lotteries, competitions, etc., “gross or pecuniary premiums” refer to the provisions of monies and/or goods not considered as “prizes.”

The applications of premiums are further regulated based on the types of commercial activities, i.e., the maximum amount of the premium and the total amount of premiums. In “joint lotteries or prize competitions,” where a significant number of local retailers or service providers (or shopping district cooperatives) jointly offer premiums to their customers, the regulations on both the highest value and the total value are allowed to exceed those of “general lotteries and prize competitions” (which are smaller-scaled commercial activities and therefore have lower premium thresholds).

Our law office has several lawyers who have developed comprehensive expertise so as to be able to provide accurate legal advice on the law on premiums. We welcome any inquires you may have relating to gifts, prizes, and other incentives.

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