

Lagislations

The Law Concerning Punishments for Organized Crimes and Forfeitures of Profits by Crimes (1)

(Law No. 136, August 18, 1999) [Soshikitekina Hanzai no Shobatsu oyobi Hanzaishueki no Kisei-tou ni kansuru Horitsu]

This act was enacted because of international and domestic demands for measures to be taken against organized crimes. The purposes of this act are as follows: (1) to allow for more severe punishment of organized crimes which seriously cause harm to our society (murders committed by organized offenders, in particular); (2) to strengthen measures against money-laundering; and, (3) to punish those who influence management of companies to profit on a criminal act (Article 1).

The important words in this act, 'organization', 'profit on criminal act', and 'profit on selling drugs', etc. are defined in Article 2. At No. (2) and (3), the contents of this act will be explained in detail.

(K. ADACHI)

The Law Concerning Punishments for Organized Crimes and Forfeitures of Profits by Crimes (2)

The crimes by the organization, those attempts and those preparations are explained in sections three and six.

This paper concerns persons who commit the following crimes: (1) habitual gambling; (2) opening places of gambling with a view to interest; (3) murder; (4) apprehension; (5) compelling crimes; (6) kidnapping for ransom; (7) destruction of credibility and interfering with other business; (8) interfering with other's business by threatening others; (9) fraud; (10) extortion; and, (11) destruction of property. Persons who commit said crimes will receive sentences (in the concerned paragraphs) when the act which was concerned in each paragraph is done by the organization with a view to committing the concerned crime as the action of groups. (Note: the term "action of groups" is defined as that action which is based on the volition of groups when the operation or profits by the action belong to the concerned organization).

Persons who commit the aforementioned crimes receive equal sentences as noted in the paragraphs below with the view to giving a group illicit interests, to maintaining illicit interests of a group, and to enlarging illicit interests. Attempts to commit murder, compelling crimes, fraud and extortion will be punished. Preparing to commit murder, to

kidnap for profit and to abduct are also punished. Besides the preparations of the aforementioned crimes with a view to giving a group illicit interests, to maintaining illicit interest, and to enlarging illicit interests are also punished.

Persons who commit crimes outlined as follows are punished according to the terms outlined in Section 7 when the act which applies to the crimes are determined to require punishments more severe than imprisonment (e. g., imprisonment with labor).

- A) A person who harbors a person who commits a crime or who enables a person to escape.
- B) A person who hides, destroys or falsifies the evidence concerned with other criminal cases which applies to crimes that are determined to require punishments more severe than imprisonment without labor, or who uses falsified or forged evidence.
- C) A person who is recognized as having information that is demanded in an investigation and who is met with a forceful inquiry with regards to his own hearing, or one who is threatened about the concerned crimes without legitimate reason. This may also include other criminal cases concerned with crimes that are determined to warrant punishments more severe than imprisonment without labor.

(S. Hyon)

The Law Concerning Punishments for Organized Crimes and Forfeitures of Profits by Crimes (3)

This manuscript explains, in part, controlling profit made from crimes. The “mayaku tokurei” law, which has already been in effect, concerns special provisions for the narcotics and psychotropics control law, etc. It also includes matters for the prevention of activities encouraging illicit conduct and other activities involving controlled substances through international cooperation.

The logic regarding the issue of control is that gains acquired by participation in drug crimes would promote further involvement in drug crimes. This act has been extended to include “preconditions” related to crime in such a way that profit gained from drug crimes qualifies as a serious crime and it expands the range of controlling the profit gained from said crimes.

As to the meaning of controlling, the “mayaku tokurei” law had punished money laundering (e.g., accepting and concealing). It also provided special provisions for forfeiture and the collection and confiscation of the corresponding value. The same goes for this law, too. In addition to this, there are two distinctive features for this law. In the first place, this law addresses the rules for people newly undertaking such crimes. To put it concretely, people who acquire shares by profiting from crimes, abuse the status of shareholders, etc. are punished. This indicates a step toward criminalization. Secondly,

because the “preconditions” crime was extended, the above provisions that have been relaxed are a distinctive feature. This is different from the “mayaku tokurei” law. To begin with, the existing criminal law had provisions that the object of forfeiture and the collection is restricted property [e.g., movable property] without profit [e.g., money claim]. (Sec. 19, Subsec. 1, Sec. 19, 2)

Regarding the above special provisions, the so-called “corporeality”, were relaxed. This law has now become even more relaxed and this point is a subject of discussion. Besides, we pay attention to many points, but for certain reason of space, they can not help abandoning these points. Since vicious crimes are met with punitive responses and with great emotion, relative to the theory of existing law it is suspicious that this law was established without strict examination about how it will influence the future of our society. We must take crimes seriously.

(H. ESUMI)

Act for Partially Revising the Wildlife Preservation and Game Act

(Law No. 74, June 16, 1999) [Chojuhogo oyobi Shuryo ni Kansuru Horitsu no Ichibu wo Kaisei suru Horitsu]

The purpose of this Act is to plan the protection and reproduction of birds and beasts from the long-term viewpoint, and to prevent the decrease of hunters. The main points of the revision are following:

- (1) Each prefectural governor may make the plan on protection and management of birds and beasts in order to protect and reproduce birds and beasts, considering inhabiting situation of birds and beasts and other circumstances.
- (2) Each prefectural governor may prohibit or restrict the capture of specific birds and beasts in order to achieve the purpose of the plan on protection and management of birds and beasts.
- (3) Those who were issued the second-grade hunting license are regarded as those who were issued the third-grade hunting license.

When decided by Cabinet order, this article shall be enforced within 3 months from the day of promulgation (Some of this article shall be enforced at April 16, 2000).

(S. IDE)

Act Concerning the National Flag and the National Anthem

(Law No. 127, Aug. 13, 1999) [Kokki oyobi Kokka ni Kansuru Houritsu]

This act concerns two important Japanese National symbols: (1) “Hinomaru”, the

National Flag of Japan commonly known as “The Flag of the Rising Sun”; and, (2) “Kimigayo”, the Japanese National Anthem. This act aims to codify a custom to the written law, and to unite the nation for national identity.

Many people strongly opposed this legislation, since the Japanese National Flag and the Japanese National Anthem were symbols that were once used by the Japanese during times of aggression by foreign countries. If officials and others force the people to raise the national flag and to sing the national anthem in unison, they shall violate the nineteenth article of the Constitution of Japan which states that people have the right to the freedom of thought and conscience.

(K. UNO)

The Act for Partially Revising the Civil Code

(Law No. 149; April 1, 2000) [Minpo no ichibu o kaisei suru horitsu]

On December 1, 1999, the Act for Partially Revising the Civil Code was approved unanimously by the whole assembly of the 145th National Diet. This act was enforced from April 1, 2000. The meaning and contents of this act are as follows:

- (1) While the system of incompetence and quasi-incompetence has been changed into the system of guardianship and curator. Additionally, the person's actions in daily life are exempted from the object of the right of withdrawal in the system. This is the case with the majority guardian or someone who is newly given curatorship. Such a person has the right of withdrawal and the right of representation.
- (2) The newly established auxiliary system for the slightly disabled person requires a statement or consent from the disabled person. The right of consent, withdrawal or representation about the specific juristic acts, which the party stated, can be given to the auxiliary person.
- (3) While the regulation that Family Court designates a well-qualified person the majority guardian is omitted, it enables it to assign them to plural persons or corporations. The manner in which the Family Court should take this situation into consideration is specified in the election.
- (4) In case the majority guardian conducts the business, he has to respect his intention and has to consider the person's state of the mind and body as well as the situation of that person's life.
- (5) In addition to the supervisor of the majority guardianship, the system of the supervisor of curatorship and that of the auxiliary is newly established.
- (6) The person who has a hearing or language handicap can make a notarized will with the help of a sign-language interpreter or he can express it in writing. He can make

an undisclosed will of testament by secret documents, a dying person, and a victim in distress by an interpreter of sign-language. Only this point was enforced from January 8, 2000.

(K. KIMURA)

Act for Partially Revising the Employment Security Law

(Law No. 85, July 7, 1999) [Shokugyou Antei Ho no Itibu o Kaisei-suru Horitu]

The Employment Security Law was revised in order to strengthen the powers of authority which control the labor force and which make the rule of labor market that protects labor. The main points of the revision are as follows:

- 1) The duty to cooperate between public employment security service and other employment security organizations is provided by law.
- 2) The Fee-charging employment exchange project is recognized in principle and the Negative-list-system which gives inapplicable scope of job is adopted.
- 3) Concerning the protection for labor, the employment security organization is required to make labor conditions clear in writing. Additionally, information about private individuals collected by the government can be collected, used and disclosed within the scope of the law's purpose.

(A. NAKAGAWA)

Act for Partially Revising the Commercial Code

(Law No. 90, May 31, 2000) [Shouhou tou no Ichibu o Kaiseisuru Houritsu]

This act provides for the division of a company by the formation of a new company [Shinsetsu Bunkatsu] and by acquisition [Kyushu Bunkatsu] in the Commercial Code.

Shinsetsu Bunkatsu is an operation whereby a company transfers to more than one newly-formed company all or any part of its business assets and liabilities. Kyushu Bunkatsu is an operation whereby a company transfers to more than one already-formed company all or any part of its business assets and liabilities.

The revision points of this act are as follows:

- 1) The shares of the companies receiving contributions as a result of the division shall be allotted to the company being divided [Butteki Bunkatsu] or to the shareholders of that company [Jinteki Bunkatsu].
- 2) The administrative or management bodies of the companies involved in a division shall, in the case of Shinsetsu Bunkatsu, draw up a draft regarding the terms of the division in writing [Bunkatsu Keikaku Sho]. In the case of Kyushu Bunkatsu, the

administrative or management bodies of the companies involved in a division shall draw up a draft of an agreement of the terms of such a division in writing [Bunkatsu Keiyaku Sho].

- 3) Based on the aforementioned terms, the division shall be authorized by meetings held by the shareholders of the companies involved in such a division.
- 4) If business assets and liabilities to be transferred are small, it shall not need to be authorized by the shareholders' meeting [Kan'i Bunkatsu].
- 5) The information regarding the division must be disclosed to the creditors of the companies involved in a division.

(Y. NAKAMURA)