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ЮРИСТ АХБОРОТНОМАСИ ВЕСТНИК ЮРИСТА LAWYER HERALD

ҲУҚУҚИЙ АМАЛИЁТ ВА ХОРИЖИЙ ТАЖРИБА

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OVERVIEW OF DRAFTING LEGISLATIVE BILLS IN JAPAN—FOCUSING ON AVOIDING INCONSISTENCY IN LAWS

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ANNOTATION

Today's society has become incredibly complex and internationalized; science and technology are advancing remarkably; the people's awareness and understanding of their rights is also changing. According to these changes, a large number of laws are being enacted in each country, with their contents becoming more and more complicated. Consequently, inconsistency in laws has become a realistic risk and has a negative impact on the rule of law. This paper provides an overview of drafting legislative bills in Japan, in particular the legislative measures to avoid inconsistency in laws.

Keywords: Legislative bills in Japan, inconsistency in laws, legislation in Japan, legislative measures, judicial review of unconstitutional legislation, interpretation of laws, hierarchy of laws, lex posterior derogat priori, general law, special law, lex specialis derogat generali, mutatis mutandis, delegation provision, interpretative provision, effective date, retroactive application, transitional measures.

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1 Introduction

A law includes content which imposes obligations or restricts rights of the people; therefore, it should be accurate as well as comprehensible to those of an average educational level. However, today's society has become incredibly complex and internationalized; science and technology are advancing remarkably; the people's awareness and understanding of their rights is also changing.

In order to respond to these changes, more laws are needed, and their contents are becoming more complex and more difficult to understand. Consequently, inconsistency in laws has become a realistic risk. Inconsistency in laws makes the application and enforcement of laws difficult, harms society's trust in the law, and has a negative impact on the rule of law. It is precisely for this reason that inconsistency in laws has been recognized as a social problem in some developing countries, and the appropriate drafting of bills has become an important issue. The International Cooperation Department (ICD), Research and Training Institute (RTI) of the Ministry of Justice (MOJ) of Japan has been supporting Southeast Asian countries in drafting basic laws and regulations.

This paper provides an overview of drafting legislative bills in Japan from the perspective of avoiding inconsistency in laws, focusing on five key areas: an overview of legislation in Japan, the process of drafting legislative bills, the basic principles of interpretation of laws, and various legal measures and techniques used in drafting legislative bills to avoid inconsistency. The following description is based on the author's knowledge and experiences gained while working in the MOJ, the Legislative Bureau of the House of Representatives, etc. The opinions expressed in this paper are the personal views of the author [1].

2 Overview of Legislation in Japan

(1) Types of Laws and Regulations

In Japan, the Constitution is the supreme law of the nation, and various types of laws and regulations are arranged in a hierarchical manner. Laws and regulations are adopted at the national and local levels. This paper will focus mainly on laws and regulations adopted at the national level.

- A "law" is a statute enacted by the Diet, which is the sole law-making organ of the state.
- An "order" is a regulation established by the administrative organs of the State; it is subordinate to a law. Orders include Cabinet Orders [2, Art. 73, Item 6] issued by the Cabinet, Cabinet Office Orders [3, Art. 7, Para. 3] issued by the Prime Minister, Ministerial Orders [4, Art. 12, Para. 1] issued by the Ministers, and Rules [4, Art. 13, Paras. 1 and 2] issued by a commission or the director-general of an agency within the administration, such as the Board of Audit and the National Personnel Authority. The independence of these administrative organs from the Cabinet is guaranteed or highly respected, and administrative organs are empowered to adopt their own rules, e.g., the Regulations of the Board of Audit [5, Art. 38] and the Rules of the National Personnel Authority [6, Art. 16]. The Regulations of the Board of Audit and the Rules of the National Personnel Authority are characterized as orders.

Also, there are Instructions and Circular Notices issued by a minister, a commission or the director-general of an agency [4, Art. 14, Para. 2]. They play an important role in ensuring uniformity and clarity in administrative practice; however, they have no binding effect on the courts.

In addition, the House of Representatives and the House of Councillors of the Diet may establish the rules of their respective houses [2, Art. 58, Para. 2], and the Supreme Court may also establish the Rules of the Supreme Court [2, Art. 77, Para. 1]. Like orders issued by administrative organs, the rules of both houses and the Rules of the Supreme Court are understood to be inferior to laws.

At the local level, the Constitution authorizes local governments to enact "ordinances" within the scope prescribed by law [2, Art. 94; 7, Art. 14]. The head of a local government may issue "regulations" [6, Art. 15] in order to implement the ordinances.

(2) Position of the Diet

The Diet of Japan is the highest organ of state power and the sole law-making organ of the state [7, Art. 41]. The Diet is bicameral, consisting of the House of Representatives and the House of Councillors [7, Art. 42].

There are two types of bills that form the basis of laws: bills introduced by the Cabinet and

those introduced by Diet members. Unless otherwise provided for in the Constitution, a bill becomes a law when it is passed by both Houses [7, Art. 59, Paras. 1 and 2].

When a law is enacted and promulgated as an act of state by the Emperor [7, Art. 7, Item 1], it is given a serial number and signed by both the state minister responsible for the law and the Prime Minister [7, Art. 74]. The law shall come into effect 20 days after promulgation or at any other effective date as stipulated by law [8, Art. 2].

(3) Status of Review after Enforcement of Laws

In Japan, after a law is enacted or amended and comes into effect, the government – composed of the Cabinet and its subsequent administrative authorities – which enforces the law, and the Diet, which supervises the activities of the government, constantly check the status of law enforcement, and if necessary, the law shall be revised.

When a new system is established by enactment or amendment of a law, a “Review Clause” may be established in the supplementary provisions of the law. The supplementary provisions stipulate that the government should review the status of enforcement of the law after a certain period has elapsed. When a “Review Clause” is included in a law, the government reports to the Diet on the status of implementation of the law, and verification is conducted.

[Provision Example No. 1]

-The government shall, within approximately X years after the enforcement of this Act, review the revised Act and take necessary measures based on the results thereof, when it finds it necessary, taking into consideration the status of enforcement of the revised Act by this Act.

(4) Judicial Review of Unconstitutional Legislation

In Japan, the courts have the power to determine whether or not a law conforms to the Constitution [2, Art. 81], and this is called judicial review. It is customary for any law that has been judged unconstitutional by the court to be amended as necessary.

[Reference Article No. 1] The Constitution of Japan

Article 81 The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

In Japan, the Constitution adopts the separation of powers in the relationship between the legislature, the executive, and the judiciary; the right to review unconstitutional legislation is one manifestation of the separation of powers.

There are two types of unconstitutional legislative review systems: abstract unconstitutional review and incidental unconstitutional review. The abstract unconstitutional review system is one in which a specially established court, such as the Constitutional Court, conducts judicial review in an abstract manner, irrespective of specific cases, whereas the incidental unconstitutional review system means that when an ordinary court tries a specific case, it reviews the constitutionality of the applicable articles to the extent necessary to resolve the case. Japan has adopted an incidental unconstitutional review system. In other words, the Supreme Court of Japan is not authorized to judge the constitutionality of a particular law separately from a specific, individual case. In other words, it is only allowed to make a judgment on a specific dispute as an appellate court.

The criteria for the Court’s review of unconstitutional legislation vary depending on the nature of the rights restricted by the law. However, in general, the judgment is made by comprehensively considering the necessity of the legislative purpose and the adequacy of the legislative means.

Upon drafting a legislative bill, it is essential to make it consistent with the Constitution; it is also necessary for drafters to fully understand the criteria for the Court’s review of unconstitutional legislation in advance.

3 Process of Drafting Legislative Bills and Other Related Issues

(1) Legislative Bills Introduced by the Cabinet and Those Introduced by the Diet Members

In Japan, both the Cabinet and the Diet members have the right to submit legislative bills. Japan has adopted a parliamentary cabinet system, and most of the enacted laws are based on the legislative bills introduced by the Cabinet. Therefore, they will be explained first.

If a minister finds it necessary to enact, amend, or repeal a law concerning the minister’s area

of administrative responsibility – the minister will prepare a draft bill, submit it to the Prime Minister, and request a Cabinet meeting [4, Art. 11]. Legislative bills introduced by the Cabinet require prior legal examination by the Cabinet Legislation Bureau [9, Art. 3, Item 1], and the Prime Minister submits the bill to the Diet on behalf of the Cabinet [10, Art. 5.].

In Japan, the authority of the Cabinet Legislative Bureau within the administrative body is highly recognized; its prior legal examination of legislative bills is detailed and thorough, and the Director-General of the Cabinet Legislative Bureau also participates in Cabinet meetings. Thus, through experience, the Cabinet Legislation Bureau has established the existing rules and techniques of drafting legislative bills.

The Diet members are also granted the right to introduce legislative bills in Japan [11, Art. 56, Para. 1]. The Legislative Bureau of the House of Representatives and the Legislative Bureau of the House of Councillors contribute to the legislative planning by Diet members in each House [11, Art. 131, Para. 1; 12, Art. 1-10]. It is customary for the legislative bureaus of each house to review legislative bills introduced by Diet members. Furthermore, in order to assist the legislative activities of both houses, the National Diet Library has the Research and Legislative Reference Bureau [13, Art. 15], and a research bureau is established in the secretariats of both houses.

There are some cases in which an urgent legislative bill introduced by Diet members needs to be enacted expeditiously, but the government has not fully prepared legislation to address the matter. If a consensus is reached between the ruling and opposition parties, then the legislative bill can be enacted.

(2) Process of Drafting Legislative Bills

Since the law contains contents which impose obligations or restrict rights of the people, the purpose of the law and the means to achieve it must be reasonable when enacting, amending, or repealing it.

The social and economic facts that support the necessity of enacting a law are called “legislative facts”. After the research and confirmation of the legislative facts by the department in charge of the bill, the main contents of the bill are compiled as the Outline of the Legislative Bill, and the bill is prepared based on this outline.

In the process of drafting legislative bills introduced by the Cabinet, an advisory council consisting of academic experts and professionals is set up in each ministry. The advisory council deliberates on the contents of the bill in consultation with the Minister, and it is often the case that the outline is prepared based on the deliberations. For example, in Japan, the MOJ is in charge of basic laws such as the Civil Code and the Penal Code, and the Legislative Council, established by Legislative Council Order, conducts research and deliberations on these basic laws and other basic matters related to legal affairs in response to consultations with the Justice Minister. Therefore, upon preparing to submit a legislative bill to enact, amend or repeal these basic laws, the bill should, in practice, be researched and deliberated by the Legislative Council.

The density of contents stipulated in laws varies from country to country. Some countries have a low-context culture in which laws and contracts contain detailed matters, while other countries have a high-context culture in which only important matters are included [14]. It is said that Japan has traditionally been considered a high-context culture; however, recently, the content to be included in laws tends to be more detailed than before, responding to the change of the society and the effect of the globalization.

In Japan, the typical matters to be stipulated in laws are: (1) matters that impose obligations or restrict the rights of the people, and (2) basic matters concerning administrative organizations. Other matters to be stipulated in the law include provisions concerning the purport and purpose of the law (“purport provisions”, “purpose provisions”), provisions for definitions of legal terms (“definition provisions”), provisions for guidelines for interpretation when applying laws (“interpretative provisions”), and provisions imposing certain obligations on the government to take action (“instruction provisions”).

(3) Division of Roles between Laws and Orders

Laws must be deliberated and approved by the Diet and, in general, they require a great deal of time and efforts to enact. Today, society is changing so rapidly and complexly that it is not realistic

to regulate all procedural, technical and detailed matters by law; there are some matters that should be left to administrative agencies. On the other hand, if the content that should be stipulated by law is left entirely to orders, there is a risk that the legislative body's inherent legislative power will be substantially infringed. That is why the division of roles between laws and orders is important, and it is necessary to draft legislative bills with an awareness of that distinction between the two.

There are two types of orders: "delegation orders" and "execution orders". A delegation order is an order based on the delegation of authority to an administrative agency to determine the matters under the jurisdiction of the law and within the scope of the delegation, while an execution order is an order to enforce the provisions of the Constitution or laws. An execution order is an order that prescribes procedural, technical, or detailed matters in relation to what is already provided for by the law and does not require delegation by a law. However, because the administrative agency does not have authorization by law, it is not allowed to make provisions that impose obligations on or restrict rights of the people.

In Japan, there are provisions in the Constitution and laws regarding the delegation of laws, and it is clearly stated that without delegation, it is not possible for an administrative agency to establish penalties, impose obligations, or make provisions that restrict the rights of the people [2, Art. 73, Item 6; 10, Art. 11; 3, Art. 7, Paras. 3 and 4; 4, Art. 12, Paras. 1 and 3 and Art. 13, Para. 2].

[Reference Article No. 2] The Constitution of Japan

Article 73 The Cabinet, in addition to other general administrative functions, shall perform the following functions:
(vi) Enact cabinet orders in order to execute the provisions of this Constitution and of the law. However, it cannot include penal provisions in such cabinet orders unless authorized by such law.

[Reference Article No. 3] Cabinet Act (Act No. 5 of 1947)

Article 11 No provisions imposing obligations or restricting rights can be made in a Cabinet Order unless authorized by law.

**[Reference Article No. 4] National Government Organization Act (Act No. 120 of 1948)
(Authority of the Head of the Administrative Agencies)**

Article 12 <Omitted>

(3) Without delegation by laws, no penal provisions or any provisions that impose obligations on or restrict the rights of citizens may be established in Ministerial Orders.

(4) "Coordination" and "Arrangement" of Laws

Upon preparing a legislative bill, it is necessary to formally delete unnecessary provisions of other laws and change the wording in accordance with amendments. This is referred to as "Coordination", and if adjustments to the content are involved, it is referred to as "Arrangement".

For example, when amending a specific law, if the term "A" was used before the amendment and it is changed to the term "B", it is necessary to change all the terms "A" cited in other laws to "B". In order to research all laws under the jurisdiction of other ministries, it is necessary to conduct a comprehensive search of laws on the statutes at large and on the Internet, and to make inquiries to other ministries. Once all necessary amendments to other laws have been identified and added to the legislative bill as supplementary provisions, and after obtaining the approval of all relevant ministries, the legislative bill is submitted to the Prime Minister for consideration at a Cabinet meeting.

In general, "Coordination" and "Arrangement" are provided for in the supplementary provisions of the legislative bill; however, if they make up the majority, another law may be enacted. A legislative bill with a name "Legislative bill concerning the arrangement of related laws in connection with the enforcement of the Act for Partial Amendment of the Civil Code" is one such example.

(5) Key Points for Drafting Legislative Bills

The basic points to remember when drafting legislative bills are: (1) determine and establish the purpose of enactment of the law, (2) make the expressions of the provisions in the legislative bill as accurate and comprehensible as possible in order to achieve the purpose of the law, (3) ensure the effectiveness of the law, (4) maintain a coherent order between the legislative bill and the existing legal system, and (5) coordinate and arrange the related laws. Also, in order to ensure consistency between the legislative bill and the existing legal system, it is important to ensure (1) conformity with the Constitution, (2) consistency with other laws and the appropriateness of

delegation to administrative agencies, and (3) consistency between the new law (after the revision) and the old law (before the revision).

4 Basic Principles of Interpretation of Laws

(1) Introduction

Interpretation of laws and regulations needs to be systematic and reasonable; there are some basic principles that are generally agreed upon among legal experts. For those who draft legislative bills, it is necessary to consider in what cases legislative measures are necessary while taking into account the principles of statutory interpretation.

(2) The Principle of the Hierarchy of Laws

The first of the principles of interpretation is the principle of the hierarchy of laws and regulations. Among the various legal forms, the Constitution has the strongest legal effectiveness in the national legal order, followed by laws and orders [2, Art. 98].

(3) The Principle of the Jurisdictional Scope of Laws and Regulations

The second is the principle of the jurisdictional scope of laws and regulations. Under the Japanese legal system, the scope of jurisdiction is determined by the type of form of the legal instrument, and any laws and regulations that exceed their scope are invalid. For example, an order may not impose obligations or restrictions on the people unless authority to do so is expressly delegated by law because it would cause inconsistency in laws.

Also, in the case of a legislative bill introduced by the Cabinet, it is also important to consider each minister's responsibility for administrative work. Ministers are to prepare legislative bills within the scope of the administrative affairs of which they are responsible. The administrative duties of each minister are specified in separate laws that define the scope of the ministry's jurisdiction [10, Art. 3; 4, Art. 4]. For example, the administrative duties of the Justice Minister are governed by the Act for Establishment of the Ministry of Justice, which defines the affairs under the jurisdiction of the MOJ.

If there is any question regarding the authority among ministers, the Prime Minister is to make a decision in a Cabinet meeting [10, Art. 7]. In order to avoid inconsistency in laws, it is important to have a clear division of duties among administrative departments.

(4) The Principle of the Superiority of Subsequent Laws

The third is the principle of the superiority of subsequent laws, which means that between laws of equivalent legal form, the subsequent law will defeat the former law (*lex posterior derogat priori*). In principle, the standard for judging which law is prior and subsequent, depends on which law has been established before the other.

(5) The Principle of Priority of Special Laws

The fourth is the principle of priority of special laws (*lex specialis derogat generali*). It means that among laws of equivalent legal form, special laws have priority over general laws. Principles of superiority of subsequent laws and priority of special laws are both methods of interpretation for resolving inconsistency in laws and regulations of equivalent legal form. When these principles overlap, in principle, the principle of priority of special laws prevails.

5 Legislative Measures to Avoid Inconsistency in Laws

(1) Introduction

Various legislative measures are taken to avoid inconsistency in laws, and these measures will be explained using Japanese laws as examples.

(2) Application of and Exclusion from Laws

The scope of application of a law must be clearly defined. "Application" here means "the provision of the laws and regulations actually takes effect and acts on specific persons, specific areas, and specific matters in an individual and specific manner."

For example, [Reference Article No. 5] shows the scope of application of the Penal Code to a person who commits a crime in Japan, and the Penal Code also has other provisions to clarify the scope of its application to crimes, such as "Crimes committed by Japanese nationals outside Japan", [15, Art. 3] "Crimes committed by non-Japanese nationals outside Japan", [15, Art. 3-2]

“Crimes committed by public officials outside Japan”[15, Art. 4] and “Crimes committed outside Japan governed by treaty.” [15, Art. 5].

**[Reference Article No. 5] Penal Code (Act No. 45 of 1907)
(Crimes Committed within Japan)**

Article 1 This Code applies to anyone who commits a crime within the territory of Japan.
(2) <Omitted>

It is necessary to clarify the scope of application of the law; however, at the same time, it is also important to exclude the application of a specific law in order to prevent possible question or doubt regarding the interpretation. For example, when “Act A” is being applied, and there is a possibility that “Act B” can also be applied from a formal and textual point of view, inconsistency in laws can be avoided by providing a provision to exclude the application of “Act B” in advance.

[Reference Articles No. 6 and No. 7] below stipulate that the labor-related laws that govern the relationship between employers and employees do not apply to national public officials. The exclusion is provided for precaution, since the National Public Service Act is applied to national public officials.

[Reference Article No. 6] National Public Service Act Act No. 120 of 1947

Article 16 of the Supplementary Provisions The Labor Union Act (Act No. 174 of 1949), the Labor Relations Adjustment Act (Act No. 25 of 1946), the Labor Standards Act (Act No. 49 of 1947), ...) ... and orders issued under these Acts shall not apply to officials belonging to the regular service of Article 2.

**[Reference Article No. 7] Labor Contracts Act (Act No. 128 of 2007)
(Exclusion from Application)**

Article 21 This Act does not apply to national public officers or local public officers.
(3) **Priority between Laws and Customs**

In Japan, the priority between law and custom is also coordinated by law. With respect to custom, Japan has provisions in the Act on General Rules for Application of Laws, the Commercial Code, and the Civil Code. With regard to matters relating to commerce, the provisions of the Commercial Code clarify that where there are provisions of the Commercial Code, the provisions of the Commercial Code shall apply; where there are no provisions of the Commercial Code but there are commercial customs, the commercial customs shall apply; and where there are no commercial customs, the provisions of the Civil Code shall apply.

In the area of private law, such as the Commercial Code and the Civil Code, the intention of the parties is respected, except in cases where there are mandatory provisions concerning public order. Therefore, as a judicial norm, unless mandatory provisions are applied, contractual clauses, commercial practices that differ from voluntary provisions, and voluntary provisions of the Commercial Code and the Civil Code are applied in this order.

[Reference Article No. 8] Act on General Rules for Application of Laws (Act No. 78 of 2006)

(Customs Having the Same Effect as Laws)

Article 3 Customs which are not against public policy have the same effect as laws, to the extent that they are authorized by the provisions of laws and regulations, or they relate to matters not provided for in laws and regulations.

**[Reference Article No. 9] Civil Code (Act No. 89 of 1896)
(Customs Inconsistent with Default Rules)**

Article 92 If a custom is inconsistent with the provisions of laws and regulations that are not related to public policy and it is found that the party to the juridical act has the intention to abide by that custom, that custom prevails.

**[Reference Article No. 10] Commercial Code (Act No. 48 of 1899)
(Purpose, etc.)**

Article 1 <Omitted>

(2) A commercial matter not provided for in this Code is governed by commercial custom, and if there is no commercial custom, it is governed by the provisions of the Civil Code (Act No. 89 of 1896).

(4) General Laws and Special Laws

There are many examples of articles governing the relationship between general laws and special laws. In Japan, it has already been explained that there is a principle of legal interpretation that prioritizes special laws over general laws. When enacting a new law, it is important to clarify the priority between the new law and the existing law to ensure the consistency of the law.

First, I will explain about the laws concerning criminal penalties. In Japan, penalties are provided in the Penal Code and other laws; however, the General Provisions of the Penal Code also apply to penalties provided in other laws. In other words, the Penal Code is positioned as the general law for all laws and regulations that deal with criminal penalties. In order to exclude the General Provisions of the Penal Code, it is necessary to state the exclusion in a special law.

[Reference Article No. 11] Penal Code (Act No. 45 of 1907) (Application of General Provisions)

Article 8 The general provisions of this Part also apply to crimes for which punishments are provided by other laws and regulations, except when special provisions are provided in such laws and regulations.

Next, with regard to the relationship between the Code of Civil Procedure and the Code of Administrative Procedure, [Reference Article No. 12] indicates that the Code of Civil Procedure is a general law on procedures related to civil litigation, and [Reference Article No. 13] indicates that the Administrative Case Litigation Act is a special provision to the Code of Civil Procedure and other laws related to civil litigation.

[Reference Article No. 12] Code of Civil Procedure (Act No. 109 of 1996) (Purpose)

Article 1 Beyond what is provided for in other laws and regulations, procedure in civil litigation is governed by the provisions of this Code.

[Reference Article No. 13] Administrative Case Litigation Act (Act No. 139 of 1962) (Matters Not Provided for in This Act)

Article 7 Any matters concerning administrative case litigation which are not provided for in this Act are governed by the provisions on civil actions.

In some cases, one law clarifies the relationship between different laws by placing provisions that apply *mutatis mutandis* to the provisions of another law. The term “apply *mutatis mutandis*” means “to apply, with the necessary changes, the provisions on a certain matter to a similar but different matter”. For instance, in Japan, the Code of Civil Procedure governs procedures related to civil litigation, and the Civil Execution Act governs procedures related to civil execution. Although the two laws govern different areas of law, there are similarities between them, so the Civil Execution Act “applies *mutatis mutandis*” to the provisions of the Code of Civil Procedure.

[Reference Article No. 14] Civil Execution Act (Act No. 4 of 1979) (Application Mutatis Mutandis of the Code of Civil Procedure)

Article 20 Except as otherwise provided for, the provisions of the Code of Civil Procedure shall apply *mutatis mutandis* to civil execution procedures.

In Japan, with regard to contracts, the Civil Code provides for typical contracts, but there are many special laws as well. The Consumer Contract Act is one of them. It regulates contractual relationships from the perspective of protecting “consumers”, taking into account the information gap between “consumers” (individuals (excluding those who become a party to a contract as a business or for a business purposes)) and “traders” (corporations or associations, or individuals who become parties to a contract as a business or for business purposes).

According to Article 11, Paragraph 1 of the Consumer Contract Act in [Reference Article No. 15], the “rescission of the manifestation of intention to offer or accept a consumer contract and the validity of the terms of the consumer contract” are areas regulated by the Civil Code and the Commercial Code; however, it indicates that the Consumer Contract Act is applied. Article 11, Paragraph 2 of the Consumer Contract Act provides that if there is any inconsistency between the Consumer Contract Act and any other provisions of laws other than the Civil Code and the

Commercial Code, the separate provisions of other laws shall be prioritized in application over the Consumer Contract Act.

**[Reference Article No. 15] Consumer Contract Act (Act No. 61 of 2000)
(Application of Other Laws)**

Article 11 Beyond what is provided for in this Act, the rescission of the manifestation of an intention to be bound by the offer of a consumer contract or by the acceptance of such an offer and the validity of the clauses in a consumer contract are governed by the Civil Code and the Commercial Code (Act No. 48 of 1899).

(2) If a law or regulation other than the Civil Code and the Commercial Code specifically provides for the rescission of the manifestation of an intention to be bound by the offer of a consumer contract or by the acceptance of such an offer and the validity of the clauses in a consumer contract, that law or regulation supersedes this Act.

In Japan, the Civil Code serves as the general law of torts, but there are many special laws of torts. Article 709 of the Civil Code of [Reference Article No. 16] is a basic provision on civil torts. It is understood that Article 709 of the Civil Code stipulates that the intention and negligence of the perpetrator are the requirements for the establishment of liability in tort, and that the burden of proof and assertion of such liability is on the plaintiff. On the other hand, Article 103 of the Patent Act in [Reference Article No. 17] provides that a person who infringes a patent is presumed to be negligent in the act of infringement. Under this provision, the patent holder does not bear the burden of proof for the negligence of the alleged infringer, and the alleged infringer bears the burden of proof for his/her own no-fault claim. Article 103 of the Patent Act shifts the burden of proof for negligence, which is a special provision of Article 709 of the Civil Code.

**[Reference Article No. 16] Civil Code (Act No. 89 of 1896)
(Compensation for Loss or Damage in Torts)**

Article 709 A person that has intentionally or negligently infringed the rights or legally protected interests of another person is liable to compensate for damage resulting in consequence.

**[Reference Article No. 17] Patent Act (Act No. 121 of 1959)
(Presumption of Negligence)**

Article 103 A person that infringes another person's patent or violates another person's exclusive license is presumed to be negligent in having infringed or violated it.

The State Redress Act stipulates that if a public employee exercising public authority of the State or a public entity unlawfully causes damage to another person by willful misconduct or negligence in the performance of his or her duties, the State or a public entity is directly liable [16, Art. 1]. This is also a special provision [16, Art. 4] against torts of the Civil Code [17, Arts. 709, 715]. With regard to the liability of the State or a public entity for damages, in addition to the provisions of the State Redress Act, if there are provisions in other laws other than the Civil Code, such other provisions are to be applied [16, Art. 5].

**[Reference Article No. 18] Civil Code (Act No. 89 of 1896)
(Liability of Employers)**

Article 715 (1) A person that employs another person for a business undertaking is liable to compensate for damage inflicted on a third party by that person's employees with respect to the execution of that business; provided, however, that this does not apply if the employer exercised reasonable care in appointing the employee or in supervising the business, or if the damage could not have been avoided even if the employer had exercised reasonable care.

(2), (3) <Omitted>

[Reference Article No. 19] State Redress Act (Act No. 125 of 1947)

Article 1 (1) When a public employee who exercises the public authority of the State or of a public entity has, in the course of their duties, unlawfully caused loss or damage to another person intentionally or negligently, the State or public entity assumes the responsibility to compensate therefor.

(2) In the case referred to in the preceding paragraph, when there was intent or gross negligence on the part of the public employee, the State or public entity has the right to obtain reimbursement from that public employee.

Article 4 The State's or a public entity's responsibility to compensate for loss or damage is, in addition to being pursuant to the preceding three Articles, pursuant to the provisions of the Civil Code.

Article 5 As to the State's or a public entity's responsibility to compensate for loss or damage, if Acts other than the Civil Code provide otherwise, those Acts take priority.

(5) Interpretative Provisions

When there is a possibility that the application of a law may be questionable, interpretative provisions may be established to provide guidelines for interpreting the law. The Consumer Contract Act is applied preferentially in the areas regulated by the Civil Code and the Commercial Code; however, as shown in [Reference Article No. 21], Article 6 of the Consumer Contract Act is established as an interpretative provision, which stipulates that the application of the provisions of the Civil Code shall not be precluded in spite of the Consumer Contract Act.

[Reference Article No. 20] Civil Code (Act No. 89 of 1896)

(Fraud or Duress)

Article 96 (1) A manifestation of intention based on fraud or duress is Voidable.

(2), (3) <Omitted>

[Reference Article No. 21] Consumer Contract Act (Act No. 61 of 2000)

(Rescinding the Manifestation of an Intention to Be Bound by the Offer of a Consumer Contract or by the Acceptance of Such an Offer)

Article 4 (1) A consumer may rescind the manifestation of an intention to be bound by the offer of a consumer contract or by the acceptance of such an offer if either of the acts set forth in the following items taken by the trader in soliciting the consumer to enter into the consumer contract caused the consumer to be under the mistaken belief prescribed in the items, and manifested the intention to be bound by the offer of that consumer contract or by the acceptance of such an offer:

(i) conveying something that diverges from the truth with regard to an important matter: a mistaken belief that what has been conveyed is true;

(ii) <Omitted>

(Interpretative Provisions)

Article 6 The provisions of Article 4, paragraphs (1) through (4) must not be interpreted as precluding the application of Article 96 of the Civil Code (Act No. 89 of 1896) to the manifestation of an intention to be bound by the offer of a consumer contract or by the acceptance of such an offer falling under these paragraphs.

(6) Adjustments in the Application of Laws Which Regulate the Same or Similar Objects

When two or more different laws regulate the same or similar objects from their respective purposes, it is necessary to provide provisions to adjust the relationship between those laws in order to avoid inconsistency.

The Act on Penal Detention Facilities and the Treatment of Inmates and Detainees and the Code of Criminal Procedure, as shown in Reference Articles No. 22 and No. 23, have provisions on the prohibition of visits to detainees. The Act on Penal Detention Facilities and the Treatment of Inmates and Detainees stipulates the cases in which the warden of the penal institution may prohibit visits, and the Code of Criminal Procedure stipulates the cases in which visits should be prohibited by judicial decision. When the warden of a penal institution allows or prohibits visits based on Japanese law, it can be unclear whether the provisions of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees or those of the Code of Criminal Procedure should be followed.

Accordingly, the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees contains a proviso ("provided, however, . . ."), as shown in [Reference Article No. 22], that adjusts the relationship between the two laws by providing an exception where the warden of the penal institution must prohibit the visit if it is prohibited by the Code of Criminal Procedure, even if the visit is permitted under the provisions of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees.

The expression "provided, however, ..." is a provision where exceptions are provided.

[Reference Article No. 22] Act on Penal Detention Facilities and the Treatment of Inmates and Detainees (Act No. 50 of 2005)

(Visitors)

Article 115 When a person requests to visit a detainee awaiting a judicial decision (except those classified as either a sentenced person or an inmate sentenced to death; hereinafter the same applies in this Division), wardens of penal institutions are to permit the detainee awaiting a judicial decision to receive a visit except for when it is prohibited pursuant to the provisions of Article 148, paragraph (3) or the provisions of the next Section; provided, however, that the foregoing does not apply where receiving a visit is not permitted by the provisions of the Code of Criminal Procedure.

[Reference Article No. 23] Code of Criminal Procedure (Act No. 131 of 1948)

Article 81 The court may, when there is probable cause to suspect that the accused under detention may flee or conceal or destroy evidence, upon the request of a public prosecutor or ex officio, prohibit the accused from having an interview with persons other than those prescribed in Article 39, paragraph (1), or censor the documents or articles sent or received by the accused, prohibit the sending or receiving of said documents or articles, or seize said documents or articles; provided however, that the court may not prohibit the sending or receiving of food, nor seize food.

(7) Dealing with Cases Where the Same Legal Term Has Different Meanings Depending on the Law

When the same legal term has different meanings depending on the law, it is necessary to clearly stipulate and define it. For example, in Japan, it is common to exclude the first day in the calculation of the “period”, when it is determined by a day, week, month or year, in the Civil Code and many other laws. However, the first day is to be included in the calculation of the “period” of punishment in the Penal Code and the “period” of prescription in the Code of Criminal Procedure. In this way, when the same legal term has different meanings depending on the law, it is necessary to clearly describe and define the meaning of the term in the respective law.

[Reference Article No. 24] Civil Code (Act No. 89 of 1896)

Article 140 When a period is provided for in days, weeks, months, or years, the first day of the period is not included in the computation; provided, however, that this does not apply when the period commences at twelve midnight.

[Reference Article No. 25] Penal Code (Act No. 45 of 1907)

(First Day and Last Day of Imprisonment)

Article 24 (1) The first day of imprisonment is calculated as one whole day regardless of the number of hours actually imprisoned. The same applies to the first day of the period of prescription.

(2) <Omitted>

[Reference Article No. 26] Code of Criminal Procedure (Act No. 131 of 1948)

Article 55 (1) In the calculation of time periods, those that are calculated by hours begin to run immediately, and those that are calculated by days, months or years do not include the first day; provided however, that the first day of a period of statute of limitations is included as one day irrespective of the hours of that day.

(2), (3) <Omitted>

(8) Relationship between Laws and Treaties

In Japan, the conclusion of a treaty requires the approval of the Diet; however, the treaty has domestic legal effect upon promulgation, and it is generally recognized that the domestic legal effect of a treaty does not take precedence over the Constitution, but over laws and regulations.

Regarding treaties that regulate the rights and obligations of the people, there are many laws in which provisions are made, such as Article 5 of the Copyright Act, for the purpose of clarifying the domestic legal effect of those treaties.

[Reference Article No. 27] Copyright Act (Act No. 48 of 1970)

(Effect of International Treaties)

Article 5 If an international treaty provides otherwise with respect to the rights of authors and neighboring rights, the provisions thereof prevail.

(9) Delegation Provisions

A provision in which a law delegates authority to an administrative agency is called a

delegation provision. The delegation provision allows the Diet to grant discretion to the administrative agencies responsible for enforcing the law to a reasonable extent; however, an overly abstract or comprehensive delegation is not allowed, and may be illegal in some cases.

The following is an example of the delegation provisions of Japan's Act on Penal Detention Facilities and the Treatment of Inmates and Detainees regarding visits which prisoners receive. In delegating some restrictions on those visits to an Order, as stated in [Reference Article No. 28], one might consider establishing a simple provision as follows, "With regard to the visits a sentenced person receives, wardens of the penal institution may, pursuant to an MOJ Ordinance, impose necessary restrictions." However, under this provision, it is unclear which matters are restricted with regard to visits and from what necessity they are restricted. Therefore, the actual delegation provision, as in [Reference Article No. 28], states that the matters to be stipulated in the Order are "the number of visitors, the visiting site, date and time, duration and frequency of visits, and other conditions of visits". Furthermore, it specifies that necessary restrictions shall be made from the viewpoint of "either maintaining discipline and order or the management and administration of the penal institution", thereby specifically defining the content of delegated provisions and giving consideration to the discretion of administrative agencies.

[Reference Article No. 28] Act on Penal Detention Facilities and the Treatment of Inmates and Detainees (Act No. 50 of 2005)
(Restrictions on Visits)

Article 114 (1) With regard to the visits a sentenced person receives, wardens of penal institutions may, pursuant to an MOJ Order, impose restrictions necessary for either maintaining discipline and order or the management and administration of the penal institution as to the number of visitors, the visiting site, date and time, duration and frequency of visits, and other conditions of visits.

Some delegation provisions have the purpose of identifying a particular rule, regulation or any other type of laws, by which necessary details should be prescribed.

The delegation in this [Reference Article No. 29] is, in effect, implementing the law, that is, the Supreme Court is delegated the authority to prescribe necessary rules related to procedure in civil litigation for the implementation and enforcement of the Code of Civil Procedure.

[Reference Article No. 29] Code of Civil Procedure (Act No. 109 of 1996)
(Rules of the Supreme Court)

Article 3 Beyond what is provided for in this Code, necessary particulars in connection with procedure in civil litigation are prescribed by the Rules of the Supreme Court.

6 Legislative Measures to Avoid Inconsistency in New Laws and Old Laws

(1) Introduction

When a law is enacted, amended, or repealed, it is necessary to avoid inconsistency in laws in the process of transition from the old law to the new law. This is the issue of the provision of the effective date and transitional measures. The effective date and transitional measures are not provided in the main provisions, which are the main body of the law, but in the supplementary provisions, which provide for incidental matters.

(2) Effective Date and Retroactive Application

There are variations in the method of determining the effective date, as shown in the examples. In some cases, the effective date is the date of promulgation. However, it may be undesirable to set the effective date of a law that imposes obligations on or restricts the rights of the people in such a way that the law takes effect immediately after the date of promulgation because there is no grace period for the law to be sufficiently known to the general public. Therefore, in addition to providing a certain grace period between the date of promulgation and the date of enforcement, there are cases where the date of enforcement is delegated to a Cabinet Order or enacted in another law.

[Provision Example No. 2]

- This Act shall come into effect as of the date of promulgation.
- This Act shall come into effect as of MM/DD/YY.
- This Act shall come into effect as of the day on which a period of X months has elapsed

since the day of promulgation.

- This Act shall come into effect as of the date specified by a Cabinet Order within a period not exceeding X months from the date of promulgation.

- This Act shall come into effect as of the date specified separately by law.

In principle, a law has effect as a legal norm on actual events as soon as it comes into effect, and is applied to events as of the effective date, with the exception of “retroactive application”. The term “retroactive application” refers to “the application of the law and regulation to events occurring on or after a certain date prior to its effective date”. However, it is generally avoided as it is detrimental to legal stability, unless it contributes to the benefit of the people. Yet, retroactive application may be appropriate if it is thought that the rights and obligations of the subject to which the law applies will not have negative impact, but rather benefit them. The provision of retroactive application shall stipulate that the revised law shall be applied from the date prior to the effective date.

[Provision Example No. 3]

- This Act shall come into effect as of the date of promulgation; provided, however, that the provisions of Article X as amended by this Act shall come into effect as of MM/DD/YY.

(3) Transitional Measures (Other Than Penalty Provisions)

In principle, a law takes effect on the effective date and applies to events after that. However, when it affects existing rights, it is necessary to ensure legal stability, and when it places a heavy burden on the people, it is necessary to set a certain grace period in consideration of the socially vulnerable. Necessity/non-necessity and content of the transitional measures is the part of the legislative bill that requires the most technical and policy consideration.

[Provision Example No. 4]

- The provisions of the New Act (excluding penal provisions) shall also apply to matters that have arisen prior to the enforcement of the New Act, except as otherwise provided in these Supplementary Provisions. However, this shall not preclude the effect caused by the provisions of the Former Act.

- The provisions of Article X shall not apply to . . . made before this Act came into effect.

- The provisions then in force shall remain applicable to . . . made before this Act came into effect.

In some cases, a private business operator obtains a legal license or approval from a government agency to conduct business. When enacting, amending, or repealing the provisions of laws that serve as the basis for licensing and approval, it is necessary to consider how to provide transitional measures. For example, it may be necessary to treat the effect of a license based on the old law as valid for at least a certain period of time after the new law comes into effect, as losing the effect of a license based on the old law at the same time as the new law becoming effective may cause serious disadvantages to business operators. Provision Example is one example of transitional measures, however, there are many variations of them.

[Provision Example No. 5]

- A person who is engaged in the business of ... may continue to engage in the business of ... for a period of ___ months from the date when this Act comes into effect, notwithstanding the provisions of Article X.

- Permission granted upon enforcement of this Act pursuant to the provisions of Article X of Act X prior to the revision by the provisions of this Act shall be deemed as permission under Article Y of Act Y after the revision.

(4) Transitional Measures (Penalty Provisions)

It is essential to consider the effective date and transitional measures for the enactment, revision, and abolition of penal provisions. First, there are cases where the new law provides new penalties that were not provided for in the old law. However, the Constitution of Japan provides that: “No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.” [2, Art. 39]. Therefore, a provision for retroactive application of penalties would be unconstitutional and invalid.

[Reference Article No. 30] The Constitution of Japan

Article 39 No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Next, questions arise with regard to cases where the statutory penalties of the old law have become stricter under the new law. According to the provisions of the Japanese Penal Code, when the penalty is changed by a law after a crime has been committed, the lighter penalty at the time of the act should be applied [15, Art. 6]. In this case, since the new law raises the statutory penalty to a heavier penalty, the penalties of the old law, which provided for a lighter penalty under the Penal Code, must be applied. It is, therefore, necessary to establish transitional measures in the supplementary provisions of the legislative bill to ensure that the old law will remain in effect after the amendment comes into effect.

[Reference Article No. 31] Penal Code (Act No. 45 of 1907)

(Change in Punishments)

Article 6 When a punishment is changed by law after the commission of a crime, the lesser punishment is applied.

[Provision Example No. 6]

- With regard to the application of penal provisions to acts committed prior to the enforcement of this Act, the provisions then in force shall remain applicable.
- With regard to the application of penal provisions to acts committed prior to the enforcement of this Act, the former Act shall remain in force after the enforcement of this Act.

Finally, there is a case where the penalties of the old law are abolished by the new law or their statutory penalties are lowered. If there is no transitional measure, in Japan, if the penalty at the time of the act is abolished at the time of the trial, the trial Court will render a judgment of dismissal according to the provisions of the Code of Criminal Procedure [18, Art. 337, Item 2], and if the penalty at the time of trial is lighter than the penalty at the time of the act, the lighter penalty at the time of trial will be applied according to the provisions of the Penal Code [15, Art. 6]. However, from the perspective of criminal policy, if an offender is not punished at all or is punished more lightly than other offenders because the penal provisions are revised or repealed, the punishment would be inappropriate because it is disproportionate to the punishment imposed on others for the same act. Therefore, transitional measures, such as Provision Examples No.7, are often taken.

[Reference Article No. 32] Code of Criminal Procedure (Act No. 131 of 1948)

Article 337 The court must bar further prosecution through a judgment if:

- (i) a final and binding judgment has been reached in a case;
- (ii) the punishment is repealed by laws and regulations established after the crime;
- (iii) there is a general pardon;
- (iv) the statute of limitations expires.

[Provision Example No. 7]

- With regard to the application of penal provisions to acts committed prior to the enforcement of this Act, the provisions then in force shall remain applicable.
- With regard to the application of penal provisions to acts committed prior to the enforcement of this Act, the former Act shall remain in force after the enforcement of this Act.

7 Conclusion

This paper has presented an overview of drafting legislative bills in Japan, in particular the legislative measures to avoid inconsistency in laws. The purpose of this paper is not to explain the details of each provision in each law.

Drafting of legislative bills requires mastery of not only the theoretical aspects but also the technical and practical aspects of the law, as well as a sense of overall and political balance, in addition to a certain amount of experience. It is hoped that this paper will be of use for enhancing the capacity of drafting legislative bills.

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Although I have given all possible attention to ensure the accuracy of the contents of this paper, some errors or misunderstandings may remain. The responsibility for those shall entirely lie on me.

References

1. This paper is based on the presentation delivered on Jan. 27, 2022, at the Virtual Seminar organized by the Japan International Cooperation Organization (JICA) and the Director-General of the Ministry of Law and Human Rights of Indonesia.
2. The Constitution of Japan (1946)
3. Act for Establishment of the Cabinet Office
4. National Government Organization Act
5. Board of Audit Act
6. National Public Service Act
7. Local Autonomy Act
8. Act on General Rules for Application of Laws
9. Act for Establishment of the Cabinet Legislation Bureau
10. Cabinet Act
11. Diet Act
12. Legislative Bureau of the House Act
13. National Diet Library Act
14. These concepts “high-context culture” and “low-context culture” are referenced by the American anthropologist Edward T. Hall in his 1976 book *Beyond Culture*.
15. Penal Code
16. State Redress Act
17. Civil Code
18. Code of Criminal Procedure
19. Legislative Affairs Study Group, *Newly Revised Workbook on Legislative Affairs* (2nd Edition) (2018) GYOSEI Co., Ltd.
20. Reijiro Tsunoda and 10 other co-editors, *Dictionary of Legal Terms* (10th revised edition) 2016, Gakuyo Shobo Co., Ltd.
21. Shuzo Hayashi, *Common Sense in Making Laws and Regulations*, 2nd Edition (1975), Nippon Hyoronsha Co., Ltd.
22. Shuzo Hayashi, *Common Sense in Interpretating Laws and Regulations*, 2nd Edition (1975), Nippon Hyoronsha Co., Ltd.
23. Shuzo Hayashi, *Common Sense of Legal Terms*, 3rd Edition (1975), Nippon Hyoronsha Co., Ltd.
24. Tsuneyuki Yamamoto, *Practical Legislative Skills* (2006) Shojihomu Co., Ltd.
25. Tsuneyuki Yamamoto, *Practical Legislative Practice* (2007), Shojihomu Co., Ltd.
26. Nobuyoshi Ashibe, *the Constitution <6th Edition>* (2015) Iwanami Shoten Co., Ltd.
27. Kenjiro Egashira, *Commercial Transactions Law <8th Edition>* (2018) Kobundo Co., Ltd.
28. Akio Takeuchi and two other representative editors, *New Encyclopedia of Jurisprudence*, 3rd edition, (1989), Yuhikaku Co., Ltd.
29. Takashi Kubota, *International Business Law <3th Edition>* (2021) Chuokeizai Co., Ltd.