

useful to give some stability to the position of *ne-hosho* guarantor.

However, some uncertain points occur in the new provisions. In the first, a document is necessary for the formation of a guarantee, but the content of the document is uncertain. What matters in the document are necessary? And how does it relate to the coexistent undertaking of a debt similar to a guaranty, for which a document seems to be not necessary?

Further, in this amendment the restatement of usual case law is insufficient; many problems for the protection of a guarantor are left to case law still. And some insist on the need for a cancellation of guaranty from the point of view of the protection of a guarantor, but it is not provided in this amendment. In consideration of the idea that provisions from the point of view of consumer protection are unsuitable for the civil code, the coming enactment of a special law is expected; but until then the continuative formation of law by case law and theory will play an important role. It can be said that this amendment is not thorough from the point of view of the protection of a guarantor.

4. Family Law

Law Concerning Special Cases in Dealing with the Sex of an Individual with Gender Identity Disorder

Law No.111, July 16, 2003 (Effective on July 16, 2004).

Background:

Gender identity disorder (hereinafter referred to “GID”) also known as “gender dysphoria” among psychiatrists, is generally defined as a condition where an individual identifies with the opposite sex from the one assigned at birth, in other words, it is a conflict between gender identity and biological sex, a cross-gender identity. Individuals with GID often feel discomfort in playing socially expected roles based on their biological sex. GID is classified as a medical disease under WHO’s ICD-10, International Classification of Diseases. In Japan, it is said that the number of individuals with GID is approximately 2,200 through 7,000,

although there are no official or accurate statistics.

In Japan, a surgeon who performed a sex reassignment surgery (hereinafter referred to “SRS”) on a male prostitute was convicted for violation of Art. 28 of the Eugenic Protection Law (currently “Maternal Health Protection Law”) in 1964 (the so-called “Blue-Boy” case). After that, it can be said that GID and SRS became a taboo subject in society. In 1996, the Saitama Medical School Ethics Committee submitted a report in which GID was acknowledged as a disease; it was proper for doctors to help individuals with GID to relieve their discomfort arising out of cross-gender identity; SRS could be regarded as one of the treatments. On the other hand, the Japanese Society of Psychiatry and Neurology’s Special Committee on GID put together the Guidelines for the Diagnosis and Treatment for GID (hereinafter referred to “Guidelines”) in 1997, and published a second edition of the Guidelines in 2002. At present, diagnosis and treatment based on the Guidelines are being performed, and treatment for an individual with GID including SRS has been acknowledged as proper medical conduct. The Guidelines-based SRS has been performed at Saitama Medical School since October 1998, and also at Okayama University Medical School, and it is said that a considerable number of operations have been performed.

An individual’s legal sex is determined by the biological sex assigned at birth. In practice, while applications for a change of name by individuals with GID pursuant to Article 107 (2) of Family Register (*koseki*) Law are being given approval by the Family Court in many cases, most of the applications for the *correction* of the sex entry on one’s family register pursuant to Article 113 of Family Register Law are being dismissed. These facts make things worse for individuals with GID; they are unable, or hardly able, to adapt themselves to public or social lives basically based on legal sex, *i.e.* biological sex. Therefore, there have been loud calls for legislation to cope with this matter.

In addition, some local legislatures have employed an opinion which called for the recognition of the correction of the sex entry on a family register for individuals with GID, or reconsidered whether or not to remove sex entries from administrative documents such as a postcard for entry into a polling station. This movement reflects the rapid expansion and change of social understanding and attitudes toward GID and SRS.

Under these circumstances, on July 1, 2003, the House of Councilors Judicial Affairs Committee decided to submit the bill for a “Law concerning Special Cases in Dealing with the Sex of an Individual with Gender Identity Disorder” drafted by the ruling coalition, and the bill was passed on the plenary session of the House of Councilors held on July 2, 2003. On the plenary session of the House of Representatives held on July 10, 2003, the bill was unanimously approved.

Main Provisions:

1. Purpose:

This law (hereinafter referred to as “GID Law”) consists of five main provisions and four supplementary provisions. The purpose of the GID law is to provide for the procedures for a change of statutory dealing with the sex of an individual with GID (Art. 1.)

2. Definition:

GID law defines “an individual with GID” as “an individual who psychologically identifies with the opposite sex from the biological one with persistence, although it is apparent which sex the individual biologically belongs to, and he or she has the intention to adapt himself or herself to the opposite sex with which the individual psychologically identifies.” GID law also requires that “diagnoses on the discordance between biological sex and gender identity be performed by at least two doctors who have enough knowledge and experience to make an accurate diagnosis on it, pursuant to generally acknowledged medical knowledge, and those diagnoses be in accord with each other (Art. 2).”

3. Requirements:

The Family Court is able to give approval to a change in the handling of a sex of an individual with GID provided in Article 2, on the individual’s application, only if the applicant meets all of the following conditions; the applicant (a) is twenty years and over; (b) is not married at present; (c) has no child; (d) has no gonads, or persistently lacks the function of gonad and; (e) has a genitalia which has a similar appearance to the opposite sex (Art. 3).

4. Effect:

When the applicant is given approval for the application provided in Article 3 by the Family Court, the applicant’s sex is regarded as hav-

ing been changed in application of the Civil Code or other laws except otherwise provided in relevant laws. The Family Court's decision is not retroactive (Art. 4).

Editorial Note:

1. Legal indifference to GID and SRS, together with traditionally conservative values in society, has long prevented individuals with GID from enjoying legal protection in Japan. GID law, however, makes it possible to change the sex entry on the family register of an individual with GID under specific conditions, and is expected to get rid of disadvantages from which they have suffered to some extent. It should be noted that the GID law is to *change* the statutory handling of the sex of an individual with GID, not to *correct* it in nature. Specifically speaking, the GID law is to change one sex listed on family register to the other psychologically identified; an individual is regarded as one who belongs to the other sex only in application of the Civil Code or relevant laws.

2. GID law defines “an individual with GID” as “an individual who psychologically identifies with the opposite sex from the biological sex with persistence, although it is apparent which sex the individual biologically belongs to, and that he or she has the intention to adapt himself or herself to the opposite sex with which the individual psychologically identifies,” and also requires that “diagnoses be performed by at least two doctors who have enough knowledge and experience to make an accurate diagnosis on it, pursuant to generally acknowledged medical knowledge, and those diagnoses be in accord with each other (Art. 2).” The requirement of doctors' diagnoses is placed so that the Family Court can find properly and rapidly that an applicant is one with GID. Here the doctor is thought to be a psychiatrist who has enough knowledge and experience to make an accurate diagnosis on GID.

3. The Family Court is able to give approval to a change in the statutory handling of the sex of an individual with GID who meets all of following conditions.

(1) the applicant is twenty years and over; this requirement is placed in consideration of the fact that (a) the age where an individual becomes mentally competent is thought to be twenty years under the Civil Code;

(b) sex is such a significant matter for one's personality that one should be given an opportunity to make a careful decision.

(2) the applicant is not married at present; if a married applicant were eligible for the application pursuant to GID law, a same-sex marriage might happen. This requirement is placed in order to prevent that situation. The term "at present" indicates "at the time of the procedure." So, even though an applicant had been married, if he or she dissolved his or her former marriage, he or she is eligible for making an application pursuant to GID law. The applicant given approval under GID law is able to get married with the sex as changed. However, "a marriage" does not include a *de-facto* marriage.

(3) the applicant has no child; this requirement is placed in consideration of the "the welfare or interests of a child." During the process of enactment, there was discussion that if an applicant with any child were eligible for an application pursuant to GID law, the traditional family order would collapse as a female father or male mother might appear, and this would give the child a harmful influence. The "no child" requirement reflects this discussion. This requirement, however, provokes a criticism; to be sure, in case an applicant has a child, it is important to consider the welfare or interests of the child. Considering the diversity of modern family life, however, in deciding whether or not the approval to change the handling of the sex infringes the welfare of the child, the substantial relationship between the applicant and the child—for instance, the age of the child, whether or not the applicant has parental or custodial rights over the child, the understanding or attitudes of the relatives including the child toward that, and so on—should be carefully examined. It would hardly be appropriate to say that all cases which involved children are contrary to the welfare of the child. Therefore, the critics claim that the requirement of "no child" should be modified to the clause that "if an applicant has any child, the decision to change sex should not be contrary to the welfare or interests of the child." The Diet, however, took the position of the gender-based traditional structure of family, and the "no child" requirement was placed.

(4) the applicant has no gonads, or persistently lacks gonadal function; this requirement is placed under the decision that it is not appropriate to retain the gonad or gonadal function of the former sex.

(5) the applicant has a genitalia which has a similar appearance to the opposite sex; this requirement is placed under the decision that without such an appearance, there might be a disturbance in public or social lives.

4. If the Family Register of the applicant given approval contains any other individual(s), a new family register for the applicant shall be made.

5. As noted above, GID law goes no further than regarding the biological sex of an individual with GID as having been changed in the application of the Civil Code or relevant laws. In this sense, some criticize that GID law does not give full protection to individuals with GID. Of course this kind of criticism includes the social attitude toward GID with prejudice as well as legal measures, and in fact, it is impossible for a single law to cut this Gordian knot. However, it is true that the GID law hews a path for individuals with GID to join society. Furthermore, it is reported that a prisoner who had undertaken SRS male to female prior to conviction made an application pursuant to GID law to Osaka Family Court, the Court gave approval, and the prison moved the prisoner to a female cell.

The provisions of GID law shall be reviewed three years after the law takes effect in consideration of the circumstances of the implementation of the law, and the social environment surrounding individuals with GID, and if necessary, suitable measures shall be taken.

5. Law of Civil Procedure and Bankruptcy

Bankruptcy Act

Law No.75, June 2, 2004 (effective on January 1, 2005), including 277 articles.

Background:

The previous Bankruptcy Act, which was first enacted in 1922 and partially amended to introduce a system of discharge in 1952, had not been revised as a whole. For this reason, it was criticized that its proceedings as a whole were not speedy and that its rules for the adjustment