

prevent such acts, the disposal of or the removal of materials used for such acts or other necessary measures to stop or to prevent such acts:

- (a) unfair solicitations such as misrepresentation, intentional failure to disclose facts, or intimidating or harassing people, etc.,
- (b) extremely false or misleading advertising,
- (c) conclusion of contracts which include special provisions that make a nonsense of cooling-off or overclaim the amount of damages, etc. pertaining to rescission or default of contract.

(Art. 58-4 to Art. 58-9).

**Editorial Note:**

By introducing the consumer organization litigation system also into the Act against Unjustifiable Premiums and Misleading Representations and the Act on Specified Commercial Transactions, we can expect to prevent the same type of damages from spreading to many unspecified general consumers and to exclude acts which violate these laws by providing information closer to consumer lifestyles. And to give qualified consumer organizations the right to demand an injunction as a civil rule apart from the government dispositions enables us to work for a flexible and quick resolution depending on the case. In addition, this can concentrate the resources of the Fair Trade Commission or the Ministry of Economy, Trade and Industry on important matters which call for a more immediate response.

## **6. Criminal Law and Procedure**

**Law for the Amendment of a part of the Law of measures accompanying criminal procedure for the protection of criminal victims' right and profit and the Law for comprehensive legal assistance.**

Law No. 30, April 16, 2008

**Background:**

Modern criminal justice strictly distinguishes civil from criminal pro-

cedure and a basic framework has been established in which by the former the recovery of victims' harm is carried out, while perpetrators are brought to account during both proceedings. This has completed a criminal procedure which applies the protection of human rights as one of its basic ideas. At the same time, this system promotes only the protection of human rights belonging to perpetrators and, on the contrary, leads to victims' human rights and interests being left as they are. In other words, the ironical aspect of the protection of human rights, "to protect the security of perpetrators' human rights warmly and security of victims' human rights coldly", has come about.

But our society has not continued to ignore these odd situations for long. The trend has arisen that, as well as perpetrators' human rights and interests, victims' human rights and interests should be given good protection and, at the same time, in order to popularize the privileged criminal procedure again, discussion has begun about increasing the number of players who appear in the drama of criminal procedure. As a result, it has been recognized that laymen *saibanin* should take part in criminal trials, while victims of crime should participate in criminal procedures.

The comprehensive assistance to crime victims and their participation in criminal lawsuits itself is far from new. This is because in 2000 two so-called laws to protect crime victims were already passed. But it is still difficult for many crime victims to recover from harm and return to a safe and quiet life by means of these laws.

In 2004 the so-called basic law of crime victims was created. Moreover, the system of crime victims' participation in criminal trials was introduced by amending a part of the criminal procedure code in 2007. This means that a definite crime victim is present at a public court day as a victim participant under fixed requirements and by himself directly performs the lawsuit activity such as the interpellation of the accused. But it is indispensable to enjoy legal assistance by professional lawyers for more effective lawsuit activities and it is very hard for economically deprived victims to hire professional lawyers because of the high charge. So the object of this legal amendment is to prepare a law attempting to establish a system of court-appointed lawyers for victims<sup>1</sup> participation in lawsuit activities.

### **Main Provisions:**

#### **1) Claim of selection of victim-participation lawyer**

**(Law of measures accompanying criminal procedure for the protection of criminal victims' right and profit: Article 5 para. 1 )**

Victim participants can claim the selection of a victim-participation lawyer to the court which is connected to a criminal case the participants can take part in under the fixed requirements, in order to entrust lawyers to be present on the court day, to offer statements to prosecutors, to question witnesses about circumstances, to carry out interpellation of the accused, and to make statements about the facts and application of the law. The "fixed requirements" means the deductive funds apart from recuperation charges do not satisfy the standard level. The "funds" mean gross liquid estate like cash and deposit. The "standard level" means the general charge sufficient to pay rewards and costs for lawyers which are calculated on the basis of a three-month standard living charge. If, after deducting the amount of the recuperation charge, or the medical expense, which is recognized as a three-month-range payment after the claim of the day of crime case, the excess amount does not reach the standard level, victim participants can claim the selection of a victim-participation lawyer.

In comparison with crime victims' actual situation, where they are often economically deprived owing to undergoing enormous damage from a crime, it is extremely necessary to secure an essential estate for fixed-period living costs in order to sustain their life and try to recover the harm of the crime. So under this system, the "standard level" was established by taking into consideration standard and necessary living costs. The aim is that victim participants can keep the funds essential to a fixed-period of living even if they request a lawyer at their own expense. And then victim participants can use this system as long as victim participants' funds do not exceed the "standard level".

#### **2) Selection by courts**

**(Law of measures accompanying criminal procedure for the protection of criminal victims' right and profit: Article 7 para. 1 )**

When there is a claim for the selection of a victim-participation lawyer, courts select lawyers for victims' participation, unless there are some fixed cases like unlawful claims.

**Editorial Notes:**

Traditional criminal trials leave laymen and victims out in the cold, while today the participation of both in criminal trials leads to the reinforcement of democratic requests of trial and the expansion of victims' rights. This law contributes to the latter. Of course, since such participation is at the experimental stage, now it is worth reviewing. In connection with this, finding means for lawyers' activities is necessary. In other words, the opinion should be noted concerning the restriction of victims' participation itself and the expansion of lawyers' activities outside the court.

## 7. Commercial Law

**Insurance Law**

Law No. 56, June 6, 2008 (Effective on April, 1, 2010)

**Background:**

In Japan, general provisions concerning insurance contracts belonged to the Part 2 - "commercial transaction", Chapter 10 - "insurance" of the Commercial Law (Art. 629–683 of the commercial law). These provisions were first enacted in 1889 and have not been changed until today except for the amendments of a few provisions from the "*Meiji-era*" to the "*Taisho-era*". The insurance markets in Japan have remarkably developed and the contents of insurance contracts have greatly changed. The provisions regarding insurance in the commercial law, however, have remained unchanged. As a part of the modernization of some basic laws, corporation law was separated from commercial law and became an independent law, while the Legislative Council of the Ministry of Justice undertook to modernize the provisions for insurance.

The 150th Legislative Council of the Ministry of Justice held in June 2006 focused on the following aspects in order to review the provisions regarding insurance contracts: (1) the review of the types of insurance stipulated by the commercial law and the creation of regulations for typical