

## 5. Criminal Law and Procedure

### **The Act on the Partial Revision of the Penal Code, etc. in Order to Deal with the Advancement of Information Processing, etc.**

Law No. 74, June 24, 2011 (Effective on July 14, 2011 (partly, by June 23, 2012)).

#### **Background:**

In recent years, with the development of information technology, many cybercrimes, such as attacks by computer viruses and crimes wrongfully using computer networks, have been occurring. And also, it has been necessary to prepare the criminal procedures, like the collection of evidence, responding to the attributes of computer and electromagnetic records.

In addition, there has still been no end to the cases in which compulsory execution is obstructed by use of tricks, such as serious asset concealment and unwarranted occupancy. Prompt and appropriate disposal of claims and obligations remains an important issue for our society.

In the light of these actual situations of cybercrimes and the other crimes associated with the advances in information processing, and the crimes of obstructing compulsory execution in recent years, the development of both penal provisions and procedural law was carried out in the said Act in order to deal properly with the crimes associated with the advances in information processing and to ratify the Convention on Cybercrime of the Council of Europe, and the development of penal provisions was also carried out in order to deal properly with the crimes of obstructing compulsory execution.

#### **Main Provisions:**

1. The Development of Penal Provisions and Procedural Law in Order to Deal with the Crimes Associated with the Advances in Information

## Processing and to Ratify the Convention on Cybercrime

### (1) The Development of Penal Provisions

In the said Act, the development of penal provisions in order to deal with the crimes associated with the advances in information processing and to ratify the Convention on Cybercrime was conducted as follows:

(a) The provisions of the crimes related to electromagnetic records giving unauthorized commands were newly established (the revised Penal Code, Articles 168-2 and 168-3 (Chapter 19-2)).

(b) The constituent elements of the crimes of distribution of obscene objects were improved and expanded (Article 175).

(c) The provision for punishing an attempt to commit crimes of obstruction of business by damaging a computer was newly established (Article 234-2, Paragraph 2).

### (2) The Development of Procedural Law

In the said Act, the development of procedural law in order to deal with the crimes associated with the advances in information processing and to ratify the Convention on Cybercrime was conducted as follows:

(a) The measure to copy electromagnetic records from the recording medium connected by way of telecommunication lines to a computer which is an object of seizure, into this computer was introduced (the revised Code of Criminal Procedure, Article 99, Paragraph 2, and Article 218, Paragraph 2).

(b) The provisions of the seizure with a record order were newly established (Article 99-2, and Article 218, Paragraph 1). Under the provision of Article 99-2, if necessary, a court can order a person authorized to access electromagnetic records, such as the one who maintains them, to record or print necessary ones on a recording medium, and then seize it. And also, under that of Article 218, Paragraph 1, if necessary for the investigation of a crime, a public prosecutor, a public prosecutor's assistant officer, or a judicial police official can do so upon a warrant issued by a judge.

(c) The methods for executing the seizure of the recording medium containing electromagnetic records were developed (Article 110-2, and Article 222, Paragraph 1).

(d) The provisions concerning the request to preserve the electromagnetic records of telecommunications history were developed

(Article 197, Paragraphs 3 to 5).

## 2. The Development of Penal Provisions in Order to Deal with the Crimes of Obstructing Compulsory Execution

In the said Act, the development of penal provisions in order to deal with the crimes of obstructing compulsory execution was conducted as follows:

(a) The constituent elements of the crimes of obstructing compulsory execution were improved and expanded (the revised Penal Code, Articles 96 to 96-4, and 96-6).

(b) The statutory penalties for the crimes of obstructing compulsory execution were raised (Articles 96 to 96-4, and 96-6).

(c) The provisions for the aggravation of punishment for the crimes of obstructing compulsory execution were newly established (Article 96-5, and the revised Act on Punishment of Organized Crimes, Control of Crime Proceeds, etc., Article 3, Paragraph 1, Items 1 to 4). When these crimes are committed with the objective of remuneration or in an organized way, punishment for them is aggravated.

### **Editorial Note:**

In recent years, Japanese legislators appear to have been led to active criminal legislation by three factors: modernization, internationalization, and penalty toughening. Firstly, the system of criminal law and procedure has been transformed to the one which fits in well with modern Japanese society. Above all, the Penal Code is the fundamental law enacted about a hundred and ten years ago, and the Code of Criminal Procedure is also the one created about seventy years ago. Japanese society has been drastically changing in a way that was unexpected at the times of these enactments. Secondly, the international trends in crime control also have greatly influenced the system of criminal law and procedure. Especially, foreign pressures have urged legislators into criminal legislation. Thirdly, the government officials in charge of criminal policies have depended upon the deterrent effects of getting tough on crime. Meanwhile, public opinion, as well as crime victims and their families, have demanded that the government introduce tougher penalties. Politicians have shrewdly responded to their demands. We can consider the said Act also to have been affected by these three factors. The penal provisions and procedural

law were developed in this Act so that penal law and procedure became adapted to contemporary advanced information society. And, another aim in this revision was to ratify an international convention. Moreover, the scope of punishable acts in penal law was broadened out, and the statutory penalties for certain crimes were raised. The effects of these three factors seem to still remain powerful in criminal legislative policies in Japan.

## 6. Commercial Law

### **Publication of the “Interim Draft on the Review of Company Law” on December 7, 2011.**

#### **Background :**

On December 7, 2011, the "Interim Draft on the Review of Company Law" was determined by the Company Law Subcommittee of the Legislative Council, and the draft was subjected to public comment with the deadline of January 31, 2012. The subcommittee was established on February 24, 2010, by the Advisory No. 91 which states the demand of the Minister of Justice as follows: “We have to review the Company Law in light of its important role in society and the economy. Especially, to ensure the further reliability of the stakeholders of the company, further review of the disciplines on the corporate governance and that of the parent-subsidiary company have to be established. Also, indicate these guidelines.” The submission time of the bill has not yet been decided.

#### **Summary of the Interim Draft :**

The Interim Draft is composed of the three parts: “The way of corporate governance”, “Discipline of parent company”, and “Others”. The former two parts have become the pillars of this draft.

In the first part: “The way of corporate governance”, the strengthening the supervisory function of the board of directors by demanding the appointment of outside directors and reconsidering the qualifications of outside directors is required. Also, introducing auditing and a supervisory committee system has been proposed.