

Wholesale amendments to the Claims Law of the Civil Code of Japan

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Committee publishes "Basic Principles" to serve as the basis for amending the Claims Law of the Civil Code. The Principles aim to make Japan's civil law rules more competitive with other countries and to bring them into line with globally accepted trade practice.

In March 2009, the Committee for the Amendment of the Claims Law of the Civil Code (comprising authoritative scholars in the areas of civil and commercial law in Japan), prepared its "Basic Principles for Amendment of the Claims Law" (Principles).

The Principles are a major milestone in a project initiated by the Ministry of Justice of Japan aimed at keeping Japanese civil law rules competitive with other countries (especially developed European countries) and to amend and harmonise their civil law rules. It is hoped that the Legislative Council of the Ministry of Justice will publish an amendment outline (similar to draft amendments), using the Principles as its basis for discussion, within the next two or three years.

The scope of the amendments proposed by the Principles is wide ranging.

One of the more important proposals regards the change from "liability for negligence" to "contractual liability". Under the current principle of liability for negligence, an obligor's liability for failure to perform depends on whether it was negligent for such failure (although it is rare in practice that courts uphold obligors' assertions of lack of negligence).

The relevant proposal provides that liability should be determined as a matter of risk allocation between the parties to the contract – an obligor should be liable for a failure to perform unless the realised risk has not been undertaken by the obligor under the contract (that is, the risk was not and could not have been anticipated).

The Principles also aim to change the rules regarding termination of contract for breach. It is proposed that subjective elements, such as negligence, no longer be required and that **material** breach be the relevant test. This proposed change accords with globally accepted trade practice.

One of the more innovative proposals is to make registration the only method to perfect transfer of monetary claims against third parties. Current Japanese law allows perfection of such transfers by either:

Notification to, or acknowledgement by, the obligors, with a date certificate.

Registration.

It is proposed to abolish the former method. Requiring registration of transfers of monetary claims should make checking who has an interest in monetary claims more efficient and easier. Improvements in the registration system to make the registration process more accessible and less costly are required.

In addition to these, the Principles are aimed generally at amending the Civil Code to reflect case precedents so far developed in the Japanese courts and prevailing views held by academics.

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