

## A Bill Regarding the Electronic Declaration of Intention in Japan

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Many legislative initiatives have been recently undertaken in Japan to facilitate and cope with e-commerce. Though a more comprehensive introduction to these initiatives will appear in the next issue of this Journal, this article gives a brief introduction and an unofficial translation of a bill regarding the exceptions to the Civil Code with respect to errors in consumer contracts and notices of acceptance in electronic commerce (March 27, 2001).

According to the Explanatory Memorandum of this Bill, this Bill was introduced because recent developments in the information society have made it necessary to provide exceptions to the Civil Code with respect to both errors in consumer contracts and notices of acceptance in electronic commerce.

This Bill is significant because e-commerce using the Internet has become so popular in Japan that it is necessary to ensure legal stability and consumer protection in this type of transaction. The Consumer Contracts Act (Law No. 61 of 2000) shall apply to e-commerce transactions with consumers as a matter of course, but the possibility of a customer mistaking what is being purchased and the quantity being purchased seems to be higher when the transactions take place over the Internet than in person or when using hard copy order forms<sup>1</sup>.

Thus Art. 3 of this Bill provides a special and clear rule meant to protect the e-commerce consumer. Art. 95 of the Civil Code stipulates that a declaration of intention shall be null and void if it has been the result of an error with regard to any essential elements of the juridical act (*yôso no sakugo*), unless the declarant has acted in gross negligence. However, Art. 95 does not clearly define under what circumstances the courts will find the purchaser grossly negligent.

It is widely accepted that the seller can demonstrate the purchaser's gross negligence when the website was designed so as to prevent the purchaser's likely errors and where the purchaser is given an opportunity to correct the error once it has been made<sup>2</sup>. Art. 3 is in line with this view.

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1 See also Preliminary Report of the Consumer Policy Committee, the Social Policy Council (January 1998). Summary of the report in English is available at <<http://www5.cao.go.jp/98/c/19980121c-chukan-e.html>>.

2 Cf. Report of the Subcommittee on Substantial Law, the Study Group on the Legal System for Electronic Commerce (chaired by Professor Kenjiro Egashira, on behalf of the Director of the Civil Affairs Bureau, Ministry of Justice), December 1999, IV. 2 (1) a.

The definitions of “consumer” and “entrepreneur” in the Bill are the same as those provided in Art. 2 of the Consumer Contracts Act.

Art. 4 provides that Art. 526(1) and Art. 527 Civil Code shall not apply to an electronic notice of acceptance. This means that Art. 97(1) (a declaration of intent made *inter absentes* shall be effective as from the time the notice thereof has reached the other party) shall apply to an electronic notice of acceptance and the contract comes into effect when the electronic notice of acceptance reaches the offeror.

Though there must in principle be an offer made by one party and an acceptance by the other in order to form a contract in Japan as well, the Civil Code has adopted a rule regarding the time of contract formation different from the rules in most European countries. Art. 526(1) Civil Code provides that a contract *inter absentes* comes into existence at the time when the notice of acceptance is dispatched. However, the rule provided in Art. 527 shall apply to those cases where the notice of revocation of offer has arrived after the notice of acceptance was dispatched. Art. 527 stipulates that:

1. Even in cases where notice of the revocation of an offer has arrived after notice of acceptance was dispatched, if the acceptor could have known that it was dispatched at such a time that in normal circumstances it would have arrived before the dispatch of the notice of acceptance, the acceptor should dispatch a notice of the delayed arrival to the offeror without delay.
2. If the acceptor has neglected to give the notice mentioned in the preceding paragraph, the contract shall be deemed not to have come into existence.

These rules are not mandatory and will not apply to cases in which the parties have agreed otherwise. Some scholars have insisted, however, that these rules are no longer persuasive because it seldom takes very long for the notice of acceptance to reach the offeror. In addition, due to the unreliability of the Internet, it is not always reasonable to place the risk of delay of receiving a message on the recipient<sup>3</sup>.

Art. 4 of this Bill shall apply not only to electronic consumer contracts but also to other electronic contracts in which an electronic notice of acceptance has been made.

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3 Cf. Report of the Subcommittee on Substantial Law, the Study Group on the Legal System for Electronic Commerce, IV. 1. (3).

BILL REGARDING THE EXCEPTIONS TO THE CIVIL CODE WITH RESPECT TO ERRORS  
IN ELECTRONIC CONSUMER CONTRACTS AND ELECTRONIC NOTICES OF ACCEPTANCE  
(UNOFFICIAL AND TENTATIVE TRANSLATION)

*Art. 1 (Purpose)*

This Act provides exceptions to the Civil Code (Law No.89 of 1896) with respect to cases of any specified errors in the elements of an electronic consumer contract concluded by a consumer and cases where an electronic notice of acceptance is dispatched in respect to a contract *inter absentes*.

*Art. 2 (Definition)*

1. The term “electronic consumer contract” as used in this Act shall mean a contract concluded between a consumer and a entrepreneur (*jigyôsha*) on the screen of computers by electro-magnetic means, for which the consumer transmits a declaration of his intention to offer or accept via his computer, following the displayed instructions given by the entrepreneur or his mandatary.

2. The term “consumer” as used in this Act shall mean an individual (excluding persons who become a party to a contract as a business or for the purpose of business), and the term “entrepreneur” shall mean a juridical person, association and individual who becomes a party to a contract as a business or for the purpose of business.

3. The term “electro-magnetic means” as used in this Act shall mean any means using an electronic information processing system and other means utilizing information and telecommunication technology.

4. The term “electronic notice of acceptance” as used in this Act shall mean a notice of acceptance to an offer of a contract which is transmitted via an electronic telecommunication line connected between a computer etc. (meaning a computer, facsimile device, telex or telephone; hereinafter the same) used by the person who is going to accept an offer of a contract and a computer etc. used by the offeror of the contract.

*Art. 3 (Exception to the Civil Code in respect to electronic consumer contract)*

The proviso to Art. 95 of the Civil Code shall not apply to cases of errors in the elements of an electronic consumer contract with respect to a consumer’s declaration of intent to offer or accept the contract, if the error is of a type listed below. However, this shall not apply where the entrepreneur (including his mandatary; hereinafter the same), as the other party to the electronic consumer contract, has taken measures on the screen

by electro-magnetic means, to request the consumer to confirm that the consumer is willing to declare his intent to offer or accept when the offer or acceptance is made, or the consumer has declared his intent to the entrepreneur that the entrepreneur will not need to take such measures.

1. Where the consumer was not willing to declare his intent to offer or accept an electronic consumer contract with the entrepreneur when he transmitted a message by the computer used by him;
2. Where the consumer was willing to declare his intent for something different than an offer or acceptance of the electronic consumer contract when he transmitted a message by the computer used by him.

*Art. 4 (Exception to the Civil Code in respect to electronic notice of acceptance)*

Art. 526(1) and Art. 527 Civil Code shall not apply to cases where an electronic notice of acceptance has been dispatched with respect to a contract *inter absentes*.