

## Security Transfer Agreements and Title Retention Agreements to be Recognized by New Legislation



Yoshihito Kuramochi  
Partner  
[yoshihito.kuramochi@morihamada.com](mailto:yoshihito.kuramochi@morihamada.com)



Yusuke Matsui  
Partner  
[yusuke.matsui@morihamada.com](mailto:yusuke.matsui@morihamada.com)

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### I . Introduction

The Act on Security Transfer Agreements and Title Retention Agreements (the “**Act**”) and the Act on Arrangement of Related Laws Incidental to Enforcement of the Act on Security Transfer Agreements and Title Retention Agreements (the “**Arrangement Act**”, collectively the “**New Legislation**”) were promulgated on June 6, 2025. The New Legislation stems from nearly four years of discussions by the Security Legislation Subcommittee under the Legislative Council of the Ministry of Justice.

Security transfer agreements (*jouto-tampo keiyaku*), where a debtor transfers property title to a creditor to secure a debt, and title retention agreements (*shoyuiken-ryuuho keiyaku*), where a creditor retains the title to a property to secure a debt owed by the property’s acquirer, are commonly used in practice based on case law. However, there has been no statutory law explicitly governing the legal rights and duties under these agreements. The New Legislation aims to establish new statutory laws defining the scope and priority of rights set by security transfer agreements (“**Title Transfer Security**”) concerning movable properties, claims and other non-real estate properties, as well as rights set by title retention agreements (“**Title Retention Security**”). It also aims to regulate the methods of exercising these security interests and to harmonize related laws, including the Act on Special Provisions for the Civil Code Concerning the Perfection Requirements for the Assignment of Movable and Claims (the “**Special Perfection Act**”).

This newsletter highlights key points of the New Legislation that are particularly important in practice.

## **II. Effect of Security Transfer Agreements**

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### **1. Definition of Security Transfer Agreement**

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The Act defines a security transfer agreement as a contract with the following elements.<sup>1</sup> Security transfer agreements not meeting this definition (e.g., those targeting properties excluded under item (1) below) will not be subject to the Act and will continue to be interpreted under the existing legal framework and case law:

(1) The debtor or a third party transfers any of the following properties to the creditor:

- Movable properties;
- Claims (limited to those transferable under the provisions of Part 3, Chapter 1, Section 4 of the Civil Code); or
- Other types of properties ("**Miscellaneous Properties**").

Please note, however, that the following properties are excluded:

- (a) Properties that can be subject to a mortgage, excluding agricultural movable properties and registered automobiles (other than large special construction machinery); and
- (b) Patent rights, utility model rights, design rights and their implementation rights, trademark rights and their utilization rights, breeder's rights and their utilization rights, rights to obtain patents, utility model registrations or design registrations, rights arising from trademark registration applications, and rights based on protective mark registrations.

(2) The transfer is made to secure a monetary debt.

(3) It does not fall under a title retention agreement as defined in Article 2, Item 16(b) of the Act.

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### **2. Overlapping Title Transfer Security**

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Under existing case law, while there are cases implying the possibility of establishing subordinate Title Transfer Security, it is not possible to publicize such establishment through the movables transfer registration system, and the rights exercisable by holders of subordinate Title Transfer Security remain unclear. The Act explicitly recognizes the establishment of overlapping Title Transfer Security.<sup>2</sup> Additionally, for out-of-court enforcement by holders of subordinate Title Transfer Security in movable properties, the consent of all

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<sup>1</sup> Article 2, Item 1 of the Act.

<sup>2</sup> Article 7 of the Act.

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holders of Title Transfer Security in those properties with higher priority is required.<sup>3</sup>

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### **3. Revolving Title Transfer Security**

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Title Transfer Security can also secure “indefinite claims within a certain range” arising between the debtor and the creditor.<sup>4</sup> This recognizes revolving Title Transfer Security, and the Act provides rules similar to the provisions on revolving mortgages in the Civil Code.<sup>5</sup>

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### **4. Perfection and Priority of Title Transfer Security in Movables**

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The requirement for perfection of the transfer of a movable property under a security transfer agreement is delivery of the property to the secured party,<sup>6</sup> which delivery is deemed to be made when a movables transfer is registered in accordance with the Special Perfection Act.<sup>7</sup> “Delivery” includes constructive delivery (*sen-yuu kaitei*),<sup>8</sup> and this remains the case under the Act. Constructive delivery is concluded if a transferor who possesses the transferred property manifests the intention to henceforth possess the property on behalf of the transferee. The existence of constructive delivery is known only between the transferor and the transferee and does not result in any external change in the actual possession of the property. This lack of publicity has raised questions about the legitimacy of granting the same effect of perfection as that provided by movables transfer registration. To address this issue, the Act adopts a rule of subordination of constructive delivery – Title Transfer Security in a movable property perfected through constructive delivery will be subordinate to another Title Transfer Security, pledge or enterprise value mortgage (*kigyou-kachi tampoken*) perfected through methods other than constructive delivery.<sup>9</sup> Additionally, to prevent evasion of the subordination rule through methods such as returning the transferred movable property to the transferor after the transferee has received actual delivery, perfection is deemed to be established through constructive delivery from the beginning in such cases.<sup>10</sup>

Furthermore, Title Transfer Security established to secure only monetary debts related to the purchase price of the transferred movable property or reimbursement obligations to a third-party payer of the purchase price (the “**Subject Movable-Related Monetary Debts**”) is subject to special provisions and can be automatically perfected without delivery.<sup>11</sup> In terms of priority, it is deemed that delivery other than

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<sup>3</sup> Articles 62 and 67 of the Act.

<sup>4</sup> Article 13 of the Act.

<sup>5</sup> Articles 14 to 26 of the Act.

<sup>6</sup> Article 178 of the Civil Code.

<sup>7</sup> Article 3, Paragraph 1 of the Special Perfection Act.

<sup>8</sup> Article 183 of the Civil Code.

<sup>9</sup> Article 36, Paragraph 1 of the Act.

<sup>10</sup> Article 36, Paragraph 2 of the Act.

<sup>11</sup> Article 31, Paragraph 1 of the Act.

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constructive delivery occurs when the movable property is transferred.<sup>12</sup> Additionally, to the extent that the Title Transfer Security secures the Subject Movable-Related Monetary Debts, it will have priority over competing Title Transfer Security, pledges or enterprise value mortgages (*kigyō-kachi tampoken*) as long as the movable property has been (or is deemed to have been) delivered to the transferee by a certain point in time.<sup>13</sup> If the movable property subject to Title Transfer Security in favor of party A enters within the range of collective movables subject to the Title Transfer Security in favor of party B, party A will be entitled to priority over party B as long as party A's Title Transfer Security has been perfected by the time this occurs (the so-called "entering-time rule").<sup>14</sup>

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## **5. Title Transfer Security in Collective Movables**

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The creation of Title Transfer Security in collective movables (i.e., movable properties within a certain range) that include those entering within that range in the future is widely used in current practice. The Act clarifies and refines the rules applicable to such Title Transfer Security; Article 40 specifies that movable properties within a certain range may be the object of Title Transfer Security if the security transfer agreement designates the following:

- (1) Type of transferred movable properties
- (2) Other details such as the location of the transferred movable properties

The "type" in item (1) is a mandatory element to specify the range. On the other hand, the "location" in item (2) is not mandatory as long as a reasonable specification is made by designating any details other than the type.

When delivery of all movable properties within the specified range is conducted, the effect of perfection will cover movable properties that will enter within that range in the future,<sup>15</sup> codifying the existing case law.

Additionally, in certain cases, the entering-time rule is adopted to prioritize the security rights of party D as follows:<sup>16</sup>

- (i) Party A creates Title Transfer Security in collective machinery at a certain factory X in favor of party B. Such Title Transfer Security is perfected through the movables transfer registration.
- (ii) Party C creates Title Transfer Security in a certain machine Y in favor of party D. Such Title Transfer

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<sup>12</sup> Article 31, Paragraph 2 of the Act.

<sup>13</sup> Article 37 of the Act.

<sup>14</sup> Article 37, Item 2 of the Act.

<sup>15</sup> Article 41, Paragraph 1 of the Act.

<sup>16</sup> Article 41, Paragraph 2 of the Act.

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Security is perfected through the movables transfer registration.

- (iii) Party C sells machine Y to party A on a true-sale basis.
- (iv) Party A transports machine Y into factory X.

The transferor under a security transfer agreement with respect to collective movables generally retains the authority to dispose of individual movable properties within the specified range,<sup>17</sup> but exceptions apply if (a) the transferor knew that such disposal would harm the holder of the Title Transfer Security,<sup>18</sup> or (b) there are special provisions in the security transfer agreement.<sup>19</sup> If an individual movable property is disposed of in violation of exception (a) or (b), the counterparty to the transaction will acquire rights free of the Title Transfer Security if it was in good faith regarding the transferor's authority to dispose of that property.<sup>20</sup> A *bona fide* purchaser will be protected even if it questions the transferor's authority, thereby providing stronger protection than Article 192 of the Civil Code.

Furthermore, the transferor under a security transfer agreement regarding collective movables has a duty to appropriately maintain the value of the secured assets by, for example, replenishing individual properties.<sup>21</sup>

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## 6. Perfection of Title Transfer Security in Claims

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The Act recognizes the current requirements for perfection of transfer of claims (including claims that arise in the future) under a security transfer agreement. Notification to the debtor of the transferred claims (the **"third-party debtor"**) or the third-party debtor's consent is required for the transferee to assert the transfer against the third-party debtor,<sup>22</sup> and such notification or consent must be in writing with a fixed date for perfection against third parties.<sup>23</sup> For claims subject to the Special Perfection Act, claims transfer registration is deemed as notification with a fixed date *vis-a-vis* third parties,<sup>24</sup> and delivering a certificate of the registration to the third-party debtor establishes perfection against it.<sup>25</sup>

After the Title Transfer Security in a claim has been perfected, any payments or similar actions made by the third-party debtor to the transferee may be asserted against the transferor and other third parties.<sup>26</sup> The authority to receive payments and the authority to collect on the transferred claims will be addressed again

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<sup>17</sup> Article 42, Paragraph 1 of the Act.

<sup>18</sup> Article 42, Paragraph 1, proviso of the Act.

<sup>19</sup> Article 42, Paragraph 2 of the Act.

<sup>20</sup> Article 42, Paragraph 3 of the Act.

<sup>21</sup> Article 43 of the Act.

<sup>22</sup> Article 467, Paragraph 1 of the Civil Code.

<sup>23</sup> Article 467, Paragraph 2 of the Civil Code.

<sup>24</sup> Article 4, Paragraph 1 of the Special Perfection Act.

<sup>25</sup> Article 4, Paragraph 2 of the Special Perfection Act.

<sup>26</sup> Article 48, Paragraph 1, first sentence of the Act.

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in Section III.2.(1) below.

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## **7. Title Transfer Security in Collective Claims**

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Title Transfer Security in collective claims is created by specifying the start and end dates of the period during which the transferred claims accrue, and the cause of accrual, among other details, thereby specifying the range of claims including those arising in the future.<sup>27</sup>

The transferor under a security transfer agreement regarding collective claims may collect individual claims within the specified range if the agreement allows for it.<sup>28</sup>

The rules on maintaining the value of secured assets referred to in Section II.5. above apply *mutatis mutandis* to security transfer agreements regarding collective claims.<sup>29</sup>

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## **8. Title Transfer Security in Miscellaneous Properties**

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For Title Transfer Security in Miscellaneous Properties, the general provisions in Chapter 2, Section 1, Subsection 1 of the Act apply, as well as the provisions in Subsection 4 of the same section. Additionally, the provisions on the effect of security transfer agreements regarding claims also apply *mutatis mutandis* to the extent that they are not inconsistent with the nature of that property.<sup>30</sup>

# **III. Enforcement of Title Transfer Security**

A holder of Title Transfer Security can only enforce it (i.e., complete the transfer of the subject asset) through the procedures specified in Chapter 2, Section 2 of the Act.<sup>31</sup> The enforcement methods are summarized as follows.

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## **1. Enforcement of Title Transfer Security in Movables**

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### **(1) Methods of Enforcing Title Transfer Security in Movables**

The Act recognizes out-of-court enforcement by either settlement by appropriation<sup>32</sup> or settlement by

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<sup>27</sup> Article 53, Paragraph 1 of the Act.

<sup>28</sup> Article 53, Paragraph 1 of the Act.

<sup>29</sup> Article 54, Paragraph 1 of the Act.

<sup>30</sup> Article 58 of the Act.

<sup>31</sup> Article 5 of the Act.

<sup>32</sup> Article 60 of the Act.

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disposition,<sup>33</sup> as well as judicial auction of movable properties in accordance with Article 190 of the Civil Execution Act.<sup>34</sup> For out-of-court enforcement procedures, the Act requires the holder of the Title Transfer Security to notify the transferor of certain details such as the estimated value of the movable properties. The out-of-court enforcement becomes effective (i.e., extinguishing the secured obligations and definitively acquiring ownership of the transferred movable property) when (i) two weeks have passed since the notification (the **"Two-Week Grace Period"**) or (ii) the transferred movable property is actually delivered to the holder of the Title Transfer Security (or a designated third-party purchaser), whichever is earlier (the **"Time of Settlement"**).

The Time of Settlement functions as a reference point for various rules related to the enforcement of Title Transfer Security. For example, if the value of the transferred movable property at the Time of Settlement exceeds the amount of secured obligations at that time, the holder of the Title Transfer Security must pay the difference as a settlement amount to the transferor.<sup>35</sup> The transferee's obligation to pay the settlement amount must be performed simultaneously with the delivery of the transferred movable property by the transferor.<sup>36</sup> Additionally, the transferee may file a petition for an order of delivery under Article 78 of the Act (please see Section III.1.(3) below) after the Time of Settlement.

### (2) Enforcement of Title Transfer Security in Collective Movables

Title Transfer Security in collective movables extends to movable properties that enter within the specified range in the future, but if the holder of such Title Transfer Security initiates enforcement procedures or if a third party initiates a seizure of property within that range, the Title Transfer Security will no longer extend to movable properties that enter within the range afterward. The Act establishes rules on the requirements and scope of such functions.<sup>37</sup>

Additionally, a new rule in the Act requires the holder of Title Transfer Security in collective movables, who collects secured obligations through enforcement of the Title Transferred Security, to pay a portion of the collected funds (as per the following formula) to the transferor's bankruptcy estate if in-court insolvency proceedings for the transferor begin within one year after the collection:<sup>38</sup>

*Amount to be paid to the transferor's bankruptcy estate = X - Y*

*X = Amount collected through the transferee's enforcement of its Title Transfer Security in collective movables*

<sup>33</sup> Article 61 of the Act.

<sup>34</sup> Article 72, Paragraph 2 of the Act.

<sup>35</sup> Article 60, Paragraph 4 and Article 61, Paragraph 5 of the Act.

<sup>36</sup> Article 60, Paragraph 5 and Article 61, Paragraph 6 of the Act.

<sup>37</sup> Articles 66, 69 and 70 of the Act.

<sup>38</sup> Article 71 of the Act.

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$Y = A \text{ or } B, \text{ whichever is larger}$

$A = \text{Nine-tenths of the total value of the movable properties subject to the Title Transfer Security}$

$B = \text{Total amount of principal of the secured obligations (if there are multiple Title Transfer Securities in the same collective movables, the one with the highest priority) plus the enforcement costs}$

This rule ensures that funds are available for general creditors during the transferor's insolvency proceedings, considering that Title Transfer Security in collective movables may encompass a wide range of business assets.

### (3) Judicial Procedures for Enforcement

To enhance the effectiveness and efficiency of the enforcement procedures for Title Transfer Security in movables, the Act introduces the following three judicial procedures:

- (i) Provisional remedy for enforcement<sup>39</sup>
- (ii) Delivery order for enforcement<sup>40</sup>
- (iii) Delivery order after enforcement<sup>41</sup>

If a holder of subordinate Title Transfer Security in movables applies for procedure (i) or (ii), the consent of all holders of prior Title Transfer Securities is required.<sup>42</sup>

## 2. Enforcement of Title Transfer Security in Claims

### (1) Authority to Receive Payment and Collect Claims

If there is a default on the secured obligations, the transferee under the security transfer agreement may directly collect the transferred claims.<sup>43</sup> Here is a summary of provisions in the Act regarding the authority to receive payment and collect claims:

	Security transfer of individual claims	Security transfer of collective claims
<b>Before default on secured obligations</b>	- After the transfer is perfected, payments made by the third-party debtor to the transferee may be asserted against the transferor and	- After the transfer is perfected, payments made by the third-party debtor to the transferee may be asserted against the transferor and

<sup>39</sup> Article 75 of the Act.

<sup>40</sup> Article 76 of the Act.

<sup>41</sup> Article 78 of the Act.

<sup>42</sup> Article 77 of the Act.

<sup>43</sup> Article 92, Paragraph 1, first sentence of the Act.

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	<p>other third parties.<sup>44</sup></p> <ul style="list-style-type: none"> <li>- Until the secured obligations become due, the transferee is not required to pay the amount received from the third-party debtor to the transferor.<sup>45</sup></li> <li>- If the secured obligations become due, the transferee must pay to the transferor the remaining amount after deducting the amount of secured obligations from the amount received from the third-party debtor.<sup>46</sup></li> <li>- If the transferred claims become due before the secured obligations are in default, the transferee may demand that the third-party debtor place the funds on deposit.<sup>47</sup></li> </ul>	<p>other third parties.</p> <ul style="list-style-type: none"> <li>- If the security transfer agreement allows the transferor to collect claims within the specified range, the transferor has the authority to do so.<sup>48</sup> In such case, the second sentence of Article 48, Paragraph 1 of the Act does not apply, and the transferee must pay the amount received from the third-party debtor to the transferor.<sup>49</sup></li> </ul>
<b>After default on secured obligations</b>	<ul style="list-style-type: none"> <li>- The transferee acquires the authority to collect the transferred claims.<sup>50</sup></li> </ul>	<ul style="list-style-type: none"> <li>- The transferee acquires the authority to collect the transferred claims.<sup>51</sup></li> <li>- If the transferee directly collects the transferred claims or issues a notification of out-of-court enforcement, the transferor's authority to collect is terminated.<sup>52</sup></li> </ul>

## (2) Settlement by Appropriation or Disposition

Similar to Title Transfer Security in movable properties, holders of Title Transfer Security in claims are also allowed to conduct out-of-court enforcement through settlement by appropriation or disposition. The provisions on out-of-court enforcement with respect to Title Transfer Security in movable properties apply *mutatis mutandis*.<sup>53</sup>

<sup>44</sup> Article 48, Paragraph 1, first sentence of the Act.

<sup>45</sup> Article 48, Paragraph 1, second sentence of the Act.

<sup>46</sup> Article 48, Paragraph 2 of the Act.

<sup>47</sup> Article 48, Paragraph 4 of the Act.

<sup>48</sup> Article 53, Paragraph 1 of the Act.

<sup>49</sup> Article 53, Paragraph 2 of the Act.

<sup>50</sup> Article 92, Paragraph 1, first sentence of the Act.

<sup>51</sup> Article 92, Paragraph 1, first sentence of the Act.

<sup>52</sup> Article 94 of the Act.

<sup>53</sup> Article 93 of the Act.

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### (3) Enforcement of Title Transfer Security in Collective Claims

For Title Transfer Security in collective claims, a new rule on the transferee's payment obligation to the transferor's bankruptcy estate is introduced, similar to Title Transfer Security in collective movables.<sup>54</sup>

### (4) Enforcement of Title Transfer Security in Miscellaneous Properties

For the enforcement of Title Transfer Security in Miscellaneous Properties, the provisions on the enforcement of Title Transfer Security in claims apply *mutatis mutandis* to the extent that they are not inconsistent with the nature of that property.<sup>55</sup> For commodities with market prices (such as listed stocks), the Two-Week Grace Period after notification for out-of-court enforcement is not required due to the high volatility in commodity prices.<sup>56</sup>

## IV. Treatment of Title Transfer Security in In-Court Insolvency Proceedings

### 1. Position of Holder of Title Transfer Security in In-Court Insolvency Proceedings

In each type of in-court insolvency proceeding, the holder of Title Transfer Security is treated as follows:

<b>Bankruptcy Proceedings</b>	<ul style="list-style-type: none"><li>- Holder of a right of separate satisfaction (if the bankrupt's rights to the property belong to the bankruptcy estate)<sup>57</sup></li><li>- Holder of a right of quasi-separate satisfaction (if the bankrupt's rights to the property do not belong to the bankruptcy estate)<sup>58</sup></li></ul>
<b>Civil Rehabilitation Proceedings</b>	<ul style="list-style-type: none"><li>- Holder of a right of separate satisfaction<sup>59</sup></li></ul>
<b>Corporate Reorganization Proceedings</b>	<ul style="list-style-type: none"><li>- Holder of a reorganization security right<sup>60</sup></li></ul>
<b>Special Liquidation Proceedings</b>	<ul style="list-style-type: none"><li>- Holder of a security right<sup>61</sup></li></ul>

<sup>54</sup> Article 95 of the Act.

<sup>55</sup> Article 96, Paragraph 1 of the Act.

<sup>56</sup> Article 96, Paragraph 2 of the Act.

<sup>57</sup> Article 97, Paragraph 1 of the Act.

<sup>58</sup> Article 97, Paragraph 2 of the Act.

<sup>59</sup> Article 97, Paragraph 3 of the Act.

<sup>60</sup> Article 97, Paragraph 4 of the Act.

<sup>61</sup> Article 97, Paragraph 5 of the Act.

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<p><b>Proceedings for Recognition of and Assistance for Foreign Insolvency Proceedings</b></p>	<p>- Holder of a security right<sup>62</sup></p>
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## 2. Order to Cancel Security Rights Enforcement Procedures

When enforcement procedures of Title Transfer Security in collective movables or claims commence (i.e., when notification under Article 66, Paragraph 1 of the Act for collective movable properties or under Article 94 of the same for collective claims is made), the transferor loses the authority to dispose of the movable properties or collect the claims that are within the specified range in the secured transfer agreement. Even if a court issues an order to suspend the security rights enforcement procedures<sup>63</sup> after the transferor loses such authority, the suspension order only prevents further progress of the enforcement procedures and does not restore the transferor's authority. This could make it practically difficult for the transferor to continue business, potentially undermining the purpose of the suspension order to provide a grace period until a settlement agreement is executed between the transferee and the transferor or its trustee.

To address this difficulty and enable the transferor to continue business in rehabilitation-type insolvency proceedings, the Act establishes a court order to cancel the effects already caused by the security rights enforcement procedures, such as the loss of the transferor's authority to dispose of the movable properties or collect the claims.<sup>64</sup>

The Act also clarifies that any provisions in a security transfer agreement stipulating that the transferor of collective movables or claims automatically loses the authority to dispose of the subject movables or collect the subject claims when a petition for the commencement of rehabilitation or reorganization proceedings is filed with respect to the transferor (or when circumstances arise that would lead to such a petition) are invalid.<sup>65</sup> This is because if such provisions are validly included, there would be no subject to cancel even with the above court order established by the Act. Please also refer to Section V.2. below regarding retention of title.

Additionally, the Arrangement Act adjusts the provisions in the existing insolvency laws regarding court orders to suspend or comprehensively prohibit security rights enforcement procedures.

<sup>62</sup> Article 97, Paragraph 6 of the Act.

<sup>63</sup> E.g., Article 31 of the Civil Rehabilitation Act

<sup>64</sup> Articles 99 to 104 of the Act.

<sup>65</sup> Article 105 of the Act.

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### **3. Title Transfer Security in Collective Movables or Claims after Commencement of Insolvency Proceedings**

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There have been differing opinions on whether Title Transfer Security extends to the property acquired by the trustee or the rehabilitating debtor after the commencement of insolvency proceedings with respect to the transferor under a security transfer agreement for collective movables or claims. The Act adopts a rule that Title Transfer Security does not extend to newly acquired property after the commencement of insolvency proceedings.<sup>66</sup> This rule aims to prevent issues where the increase in movable properties or claims contributable to the insolvency estate, rehabilitating debtor, etc. would be used to repay the holder of Title Transfer Security and to clarify the rights and obligations after the commencement of insolvency proceedings.

As for claims, however, an exception is made particularly for rehabilitation and reorganization proceedings – Title Transfer Security will extend to claims arising after the commencement of these proceedings as long as there is a special provision to that effect in the security transfer agreement for collective claims.<sup>67</sup>

### **4. Right to Avoid Acts Adding Movable Properties to or Generating Claims within the Specified Range**

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Under the existing law, there has been an issue of whether acts that add movable properties to or generate claims within the specified range of Title Transfer Security after the transferor becomes unable to pay its debts or after the commencement of insolvency proceedings can be subject to avoidance under insolvency law. The Act deems these acts as “provision of security” as long as they are done for the purpose of allowing the transferee to collect the secured obligations exclusively, in which case the provisions on avoidance under insolvency law will be applicable.<sup>68</sup> The Act also establishes a similar deeming provision for fraudulent conveyance under Article 424-3 of the Civil Code.<sup>69</sup>

## **V. Regulations on Title Retention Agreements**

Various provisions on security transfer agreements in the Act also generally apply to title retention agreements.<sup>70</sup>

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<sup>66</sup> Article 106 of the Act for movable properties, and Article 107, Paragraph 1 and Paragraph 2, main text of the Act for claims.

<sup>67</sup> Article 107, Paragraph 2, proviso of the Act.

<sup>68</sup> Article 108 of the Act.

<sup>69</sup> Article 45 and Article 54, Paragraph 2 of the Act.

<sup>70</sup> Article 111, Paragraph 1 of the Act.

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## 1. Perfection of Title Retention Security in Movable Properties

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There have been discussions on whether Title Retention Security can theoretically compete with other security rights. The Act assumes that such competition can occur and establishes regulations on the requirements for Title Retention Security to be perfected. Specifically, Title Retention Security in movable properties cannot be asserted against third parties unless the properties are delivered from the buyer, who creates the Title Retention Security, to the seller, who holds it (or for movable properties that require registration to assert changes in their rights against third parties, such rights are registered).<sup>71</sup> However, Title Retention Security securing only Subject Movable-Related Monetary Debts may be automatically perfected without delivery.<sup>72</sup>

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## 2. Effectiveness of Provisions Making the Filing of Rehabilitation or Reorganization Proceedings as Grounds for Termination

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Provisions in title retention agreements that make the filing of rehabilitation or reorganization proceedings with respect to the buyer (or circumstances leading to such filings) as grounds for termination of the agreement have been widely construed in practice as invalid because they contradict the purpose of rehabilitation-type insolvency proceedings. The Act explicitly codifies this principle.<sup>73</sup>

## VI. Arrangement of Related Laws

In connection with the establishment of regulations on security transfer agreements and title retention agreements in the Act, related laws, such as the Civil Code, the Civil Execution Act, the Civil Provisional Remedies Act, the Special Perfection Act, the Civil Rehabilitation Act, the Corporate Reorganization Act, and the Companies Act, are also reviewed and adjusted in the Arrangement Act.

For example, amendments to the Special Perfection Act include: (i) organizing the items to be recorded for movables transfer registration; (ii) establishing new registration for re-hypothecation of Title Transfer Security; (iii) establishing new registration for transfer and change of priority of Title Transfer Security; (iv) establishing a competing security registration inventory system; and (v) establishing new registration for Title Retention Security.

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<sup>71</sup> Article 109, Paragraph 1 of the Act.

<sup>72</sup> Article 109, Paragraph 2 of the Act.

<sup>73</sup> Article 110 of the Act.

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## VII. Matters Not Included in the New Legislation

Among finance leases, there are transactions that should be characterized as security interests in the form of assignment of claims to utilize movable properties. There were discussions on whether to propose new regulations on finance leases establishing special provisions for the methods of perfection and the methods of out-of-court enforcement for such transactions. However, due to divided opinions on this issue, explicit provisions were not included in the Act.

There were also discussions on regulations concerning security interests in deposits in ordinary bank accounts, but these were not included in the Act as well. Consequently, the legal structure, requirements and treatment in insolvency proceedings of security interests in such deposits will continue to be subject to interpretation.

A new legal framework to create security interests in all business assets held by debtor companies has been separately legislated as enterprise value mortgages (*kigyō-kachi tampokēn*). Please see our [Finance, Restructuring & Insolvency Newsletter \(July 2024 issue\)](#) for this topic.

## VIII. Outlook

The New Legislation will come into effect within 30 months after the date of promulgation.<sup>74</sup>

The New Legislation will significantly impact secured finance transactions, requiring an accurate understanding of the new legal framework and its background. In addition, except for certain provisions, the regulations in the New Legislation will also apply to security transfer agreements and title retention agreements executed before the date on which the legislation comes into effect.<sup>75</sup> Therefore, it is important to review the current practices of security transfer agreements and title retention agreements without waiting for the effective date.

Mori Hamada will continue to monitor the progress of discussions of the New Legislation and relevant regulations and provide further information as needed.

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<sup>74</sup> Article 1, main text of the Supplementary Provisions of the Act, and main text of the Supplementary Provision of the Arrangement Act.

<sup>75</sup> Article 2 of the Supplementary Provisions of the Act.

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