Chapter XVII

Legal Concerns Against Auctions and Securities Conventions: A Japanese Perspective

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Abstract

This chapter introduces the two newly emerging issues in the C2C and B2B area in the Japanese IT laws: (a) anti-fraud measures in Internet auctions and (b) treatment of the Hague Securities Convention. An auction provider’s liability for a tenant’s fraud beyond the freedom of contracts is not clear. If consumers bear risk, adequate disclosure should be promoted. In addition, as this issue is complex, several measures including advertisement regulations against the small business consumers and development of escrow payment techniques, should be promoted. Regarding the Hague Securities Convention, the United States pushes other countries to ratify it but the EU questions to ratify it. This chapter considers that the ratification of the Hague Convention for unifying the conflict of laws and the UNIDROIT Convention for unifying the substantive laws should be done at the same time, in order to avoid some side effects.
Introduction to the Issues

Some laws do not change so often, but information technology (IT) laws change very often with the IT development. In the Japanese IT business markets, the business-to-business (B2B) market developed first, the business-to-consumer (B2C) market boomed second, and the consumer-to-consumer (C2C) market has started growing third within several years. Corresponding to this move, Japan has taken necessary legal measures (guidelines, laws, etc.) both in global and domestic contexts. Let me introduce two of new issues in the Japanese law debates.

Newly Emerged Issue in the C2C Market

In the B2C market, such as cyber-shopping malls, some laws for consumer protection have been already implemented and global policy harmonization has been discussed for several years.

However, legal discussion about the C2C markets, such as online auction, has just started in some countries including Japan because the market has just started growing rapidly. In this market, there are many varieties of consumers. Some consumers are small businesses that sell products and earn much profit regularly, but others are still normal consumers who buy products without caring much about risks. Therefore existing B2C legal framework, dichotomy of consumer and business, does not fit properly to the various consumers in the C2C market. As a result, more fraud cases can be observed in the C2C auctions where the auction providers do not control of the exhibitors (fraudulent consumers and consumers like small businesses) than in the B2C cybermalls where the mall providers control their tenant shops (fraudulent businesses), although the control is not enough compared with the B2C supermarkets or department stores in the real space.

In addition, the responsibility of intermediary, not only the cybermalls in the B2C market but also the auction providers in the C2C market, is not clear against the victim consumers in the fraud cases. Suppose that you buy a camera at a new shop “A” in a famous supermarket “B” in the real space. When you find some defects, you can ask B and B will compensate you instead of A, or B will help you to contact A. It is because B’s famous brand is identified with B’s credibility and service quality. However, in cyber space, things go differently. Suppose that you buy a camera at a new shop “C” in a famous auction site “D”. When you find some defects, according to the contracts, you cannot ask D and D will not compensate you or D will not help you to contact C. Should we ask cyber D to take the same responsibility as real B, or should we ask you, the consumers, to recognize that the real B and the cyber D are different? If we choose the latter, consumers need to be protected by receiving adequate risk information for starting business with the shop C.

Newly Emerged Issue in the B2B Market

On the other hand in the B2B market, global law harmonization has been sought in cross-border securities transactions. As in other advanced countries, many securities trans-
The Analysis on the Assimilation of the Model of Corporate Governance
www.igi-global.com/article/analysis-assimilation-model-corporate-governance/78164?camid=4v1a

Innovative Retailing: Uplifting the Lives of Basic Ecclesial Community in Camarines Sur, Philippines
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