

Ministry of Labour Announcement No. 127

Guidelines to promote the appropriate implementation of measures that a divisively reorganizing company or a formed company, etc. should take concerning the succession of a labour contract or collective agreement it has entered into have been prescribed based on the provisions of Article 8 of the Law Concerning the Succession of Labour Contracts upon the Divisive Reorganization of Company (Law No. 103 of 2000) as follows and shall apply from April 1, 2001.

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Chikara Sakaguchi, Minister of Labour

Guidelines to Promote the Appropriate Implementation of Measures That a Divisively Reorganizing Company or Formed Company, Etc. Should Take Concerning the Succession of a Labour Contract or Collective Agreement It Has Entered Into

Article 1. Purpose

These guidelines, based on the provisions of Article 8 of the Law Concerning the Succession of Labour Contracts upon the Divisive Reorganization of Company (hereinafter referred to as the "Law"), prescribe matters necessary to promote the appropriate implementation of measures that a company provided for in Article 2, Paragraph 2 of the Law which undertakes the divisive reorganization provided for in Article 2, Paragraph 1 of the Law (hereinafter referred to as "divisive reorganization") (hereinafter referred to as "divisively reorganizing company") or a formed company, etc. provided for in Article 2, Paragraph 1 of the Law (hereinafter referred to as "formed company, etc.") should take concerning the succession of a labour contract or collective agreement entered into.

Article 2. Measures, Etc. That a Divisively Reorganizing Company or Formed Company, Etc. Should Take

1. Matters Concerning Notification to Worker and Trade union

(1) Time of Notification

It is desirable that notification to a worker or trade union provided for in Article 2, Paragraphs 1 and 2 of the Law be made on the same day that either the divisive reorganization plan, etc. based on the provisions of the Commercial Code (Law No. 48 of 1899) or the Limited Liability Company Law (Law No. 74 of 1955) is made available at the headquarters of the company concerned (hereinafter referred to as "headquarters availability date of the divisive reorganization plan, etc."), or the date on which notification to call a general meeting of shareholders, etc.

provided for in Article 2, Paragraph 1 of the Law is issued, whichever occurs sooner.

Further, in a case where the notification provided for in Article 2, Paragraphs 1 and 2 of the Law is made by postal service, etc., because, pursuant to the provisions of Article 97, Paragraph 1 of the Civil Code (Law No. 89 of 1896), notification is effective from the date it reaches the recipient, notification must reach the worker or trade union concerned on or before the day two weeks before the day of the general meeting of shareholders, etc. In this case, the phrase, "the date on which the notification provided for in the preceding paragraph is made" in Article 4, Paragraph 2 of the Law (including cases where it is applied mutatis mutandis in Article 5, Paragraph 2) shall be read as, "the date on which the notification provided for in the preceding paragraph reaches the recipient".

(2) Scope of Worker to be Notified

Among the workers that the divisively reorganizing company concerned employs (not limited to so-called permanent employees, but including temporary workers), the worker that a divisively reorganizing company shall notify pursuant to the provisions of Article 2, Paragraph 4 of the Law shall be a worker primarily engaged in the business that the formed company, etc. will succeed to (hereinafter referred to as "business succeeded to") and a worker other than said worker and with respect to whom there is a statement in the divisive reorganization plan, etc. provided for in Article 2, Paragraph 1 of the Law (hereinafter referred to as "divisive reorganization plan, etc.") concerned to the effect that the formed company, etc. will succeed to the labour contract that the divisively reorganizing company concerned and that worker have entered into.

Further, pursuant to the provisions of Article 4, Paragraph 1 and Article 5, paragraph 1 of the Law, a worker primarily engaged in the business succeeded to and with respect to whom there is no statement in the partition plan, etc. to the effect that the formed company, etc. will succeed to the labour contract that the worker entered into with the divisively reorganizing company, and a worker other than one primarily engaged in the business succeeded to and with respect to whom there is a statement in the partition plan, etc. to the effect that the formed company, etc. will succeed to the labour contract that the worker entered into with the divisively reorganizing company concerned shall have the opportunity to file an objection with the divisively reorganizing company concerned.

(3) Scope of Trade union to be Notified

The trade union that a divisively reorganizing company shall notify pursuant to the provisions of Article 2, Paragraph 2 of the Law shall be one with which the divisively reorganizing company concerned has entered into a collective agreement. In a case where a member of the trade union

has entered into a labour contract with the divisively reorganizing company concerned, it is desirable that the divisively reorganizing company notify the trade union concerned in accordance with the example of the provisions of Article 2, Paragraph 2 of the Law even in a case where the divisively reorganizing company concerned has not entered into a collective agreement with the trade union concerned.

2. Measures That Should Be Taken Concerning the Succession of a Labour Contract

(1) Matters Concerning the Formulation of the Statement Contained in the Divisive Reorganization Plan, Etc.

In a case where the labour contract to which the formed company, etc. will succeed from the divisively reorganizing company based on the provisions of the Commercial Code or the Limited Liability Company Law is stated in the divisive reorganization plan, etc., it is necessary that the names of all workers covered by the said labour contract succeeded to can be specified. At the time when the names of all workers covered by the said labour contract succeeded to can be specified, the divisively reorganizing company may specify a designated workplace and state in its divisive reorganization plan, etc. to the effect that the labour contract that covers all of the workers or all of the worker except designated persons at the workplace concerned shall be the said labour contract succeeded to.

(2) Matters Concerning Notice of Objection by Worker

A. Contents, Etc. of Notice

With respect to the notice of objection provided for in Article 4, Paragraph 1 of the Law, it shall be sufficient for the worker concerned to state in writing his name and that he opposes the formed company, etc. concerned not succeeding to the labour contract that covers him, and send this notice by the deadline date provided for in Article 4, Paragraph 1 of the Law to the place for notice of objection that the divisively reorganizing company concerned designates.

With respect to the notice of objection provided for in Article 5, Paragraph 1 of the Law, it shall be sufficient for the worker concerned to state in writing his name, that he comes under the category of worker mentioned in Article 2, Paragraph 1, Item 2 of the Law, and that he opposes the formed company, etc. concerned not succeeding to the labour contract that covers him, and send this notice by the deadline date provided for in Article 5, Paragraph 1 of the Law to the place for notice of objection that the divisively reorganizing company concerned designates.

B. Matters for Consideration Concerning the Deadline Date

In a case where the notice of objection provided for in Article 4, Paragraph 1 or Article 5, Paragraph 1 of the Law is made by postal service, etc., because, pursuant to the provisions of Article 97, Paragraph 1 of the Civil Code, notification is effective from the date it reaches the

recipient, notice of objection must reach the divisively reorganizing company concerned on or before the deadline date provided for in Article 4, Paragraph 1 or Article 5.

C. Treatment of Notice of Objection

A divisively reorganizing company shall designate a place for notice of objection that makes it easy for a worker seeking to file the notice of objection provided for in Article 4, Paragraph 1 or Article 5, Paragraph 1 of the Law to do so and shall also see to it that actions necessary for filing a notice of objection may be taken during working hours.

Further, no divisively reorganizing company or formed company, etc. shall dismiss or otherwise treat disadvantageously a worker by reason of his seeking to file or having filed a notice of objection provided for in Article 4, Paragraph 1 or Article 5, Paragraph 1 of the Law.

(3) Matters Concerning the Scope of Worker Primarily Engaged in the Business Succeeded To

A. Judgment at the Point in Time When the Divisive Reorganization Plan, Etc. is Prepared

(A) A worker who engages solely in the business succeeded to at the point in time when the divisive reorganization plan, etc. is prepared shall come under the category of worker mentioned in Article 2, Paragraph 1, Item 1 of the Law.

(B) In a case where a worker also engages in a business other than the business succeeded to, a comprehensive judgment as to whether the worker concerned is primarily engaged in the business succeeded to shall be made by considering matters such as time spent engaged in the respective businesses and the roles that the worker concerned fulfills therein.

(C) A worker who is engaged in a so-called back-office section such as general affairs, personnel, accounting, or asset management in a bank and who is engaged solely on behalf of the business succeeded to shall come under the category of worker mentioned in Article 2, Paragraph 1, Item 1 of the Law.

In a case where a worker is also engaged on behalf of a business other than the business succeeded to and a judgment may be made in accordance with the example of (B) above, judgment shall be so made.

In a case where a worker is engaged in a so-called back-office section without distinction as to whether he is engaged on behalf of one business or the other and no judgment may be made in accordance with the example of (B) above, then in the absence of special circumstances, the worker concerned shall come under the category of worker provided for in Article 2, Paragraph 1, Item 1 of the Law only in a case where the formed company, etc. succeeds to the labour contract that covers the majority of the workers employed by the divisively reorganizing company other than the worker with respect to whom said judgment cannot be made.

B. Cases Where It Is Improper to Make Judgment at the Point in Time When the Divisive Reorganization Plan, Etc. is Prepared

(A) Even where a worker is primarily engaged in the business succeeded to at the point in time when the divisive reorganization plan, etc. is prepared, that worker shall not come under the category of worker provided for in Article 2, Paragraph 1, Item 1 of the Law if it is clear that the divisively reorganizing company had the worker concerned temporarily engage in the business succeeded to by means of an order for study or training, an order for support work, an order to take part in planning work that will conclude at the end of a fixed period, etc., and that when the ordered work concludes, the worker will no longer be primarily engaged in the business succeeded to.

Further, a worker, etc. who desired a transfer from the business succeeded to for the purpose of child care, etc. and with respect to whom it was clear that, pursuant to an agreement with the divisively reorganizing company made before the point in time when the divisive reorganization plan, etc. was prepared, the worker would not be engaged primarily in the business succeeded to after the point in time when the divisive reorganization plan, etc. was prepared, shall not come under the category of worker provided for in Article 2, Paragraph 1, Item 1 of the Law.

(B) Among workers who are primarily engaged in the business succeeded to at the point in time when the divisive reorganization plan, etc. is prepared but who are temporarily primarily engaged in a business other than the business succeeded to at the point in time when the divisive reorganization plan, etc. is prepared due to an order issued by the divisively reorganizing company for study or training, an order for support work, an order to take part in planning work that will conclude at the end of a fixed period, etc. (including an order for transfer), a worker with respect to whom it is clear that he will be primarily engaged in the business succeeded to when work pursuant to the order concerned concludes shall come under the category of worker provided for in Article 2, Paragraph 1, Item 1 of the Law.

Among workers who are primarily engaged in the business succeeded to before the point in time when the divisive reorganization plan, etc. is prepared but who are temporarily primarily engaged in a business other than the business succeeded to at the point in time when the divisive reorganization plan, etc. is prepared due to an order issued by the divisively reorganizing company for study or training, an order for support work, an order to take part in planning work that will conclude at the end of a fixed period, etc. (including an order for transfer), a worker with respect to whom it is clear that he will be primarily engaged in the business succeeded to when work pursuant to the order concerned concludes shall come under the category of worker provided for in Article 2, Paragraph 1, Item 1 of the Law.

Among workers who are primarily engaged in the business succeeded to before the point in time when the divisive reorganization plan, etc. is prepared but who thereafter take vacation and are not primarily engaged in the business succeeded to at the point in time when the divisive reorganization plan, etc. is prepared, a worker with respect to whom it is clear that he will again be primarily engaged in the business succeeded to when he returns from said vacation shall come under the category of worker provided for in Article 2, Paragraph 1, Item 1 of the Law.

A worker who was not engaged primarily in the business succeeded to after the point in time when the divisive reorganization plan, etc. was prepared, such as an unofficially appointed person with whom a labour contract has been formed and a worker who desired a transfer for the purpose of child care, etc., but with respect to whom it was clear that the worker would thereafter be engaged primarily in the business succeeded to after the point in time concerned shall come under the category of worker provided for in Article 2, Paragraph 1, Item 1 of the Law.

(C) In a case where, without good cause and before the divisive reorganization concerned, the divisively reorganizing company, with the purpose of excluding from the formed company, etc. or the divisively reorganizing company after the divisive reorganization a worker with respect to whom it is clear judging from the actual situation of his past work whether his labour contract should or should not be succeeded to by the formed company, etc., conducts the intentional transfer, etc. of the worker concerned, the judgment of whether the worker concerned comes under the category of worker provided for in Article 2, Paragraph 1, Item 1 of the Law should be made based on the actual situation of his past work.

C. Case Where There Is a Difference of Opinion Between the Divisively Reorganizing Company and the Worker

If there is a difference of opinion between the divisively reorganizing company and the worker concerning the judgment of whether the worker concerned comes under the category of worker provided for in Article 2, Paragraph 1, Item 1 of the Law, the divisively reorganizing company concerned shall strive to resolve the difference of opinion through discussions, etc. with the worker concerned based on Article 7 of the Law, Article 5 of the Supplemental Provisions to the Law for the Partial Revision of the Commercial Code, Etc. (Law No. 90 of 2000; hereinafter referred to as "Commercial Code, Etc. Revision Law") and Section 4 below. In this case, the following matters should be considered. Further, in a case where these discussions, etc. fail to resolve the difference of opinion, a party shall be able to seek resolution through a lawsuit.

(A) In a case where the worker is one primarily engaged in the business succeeded to and with respect to whom there is no statement in the partition plan, etc. to the effect that the formed

company, etc. will succeed to the labour contract that the worker entered into with the divisively reorganizing company, but the worker did not lawfully receive the notification provided for in Article 2, Paragraph 1 of the Law (including the case where the divisively reorganizing company concerned does not make the notification concerned because it treats the worker concerned as one who is not primarily engaged in the business succeeded to and the case where the company intentionally fails to make the notification concerned), the worker concerned may, even after the divisive reorganization concerned, demand that the formed company, etc. concerned preserve or confirm his position as an employed worker; alternatively, he may demand that the formed company, etc. concerned confirm that he is not an employed worker thereof.

(B) If, in a case where a worker not primarily engaged in the business succeeded to and with respect to whom there is a statement in the partition plan, etc. to the effect that the formed company, etc. will succeed to the labour contract that the worker entered into with the divisively reorganizing company files the notice of objection provided for in Article 5, Paragraph 1 of the Law, the divisively reorganizing company concerned treats the worker concerned as one with respect to whom the formed company, etc. is made to succeed to the labour contract covering him because he is primarily engaged in the business succeeded to, the worker concerned may, even after the divisive reorganization concerned, demand that the formed company, etc. concerned preserve or confirm his position as an employed worker; alternatively, he may demand that the formed company, etc. concerned confirm that he is not an employed worker thereof. The case where a worker did not lawfully receive the notification provided for in Article 2, Paragraph 1 of the Law notwithstanding his being a worker not primarily engaged in the business succeeded to and with respect to whom there is a statement in the partition plan, etc. to the effect that the formed company, etc. will succeed to the labour contract that the worker entered into with the divisively reorganizing company shall be treated in the same way.

ii. Other Matters to be Considered

(A) The divisively reorganizing company shall not, with the intent to commit an unfair labour practice and for an unlawful purpose such as that of excluding the worker concerned from the formed company, etc. or the divisively reorganizing company after the divisive reorganization, conduct the transfer, etc. of the worker concerned before the divisive reorganization concerned. This kind of transfer, etc. shall be invalid.

(B) With respect to a worker who is not at all engaged in the business succeeded to, in a case where a labour contract that is outside the scope of the application of Book 2, Chapter 4, Section 6-3 of the Commercial Code, Chapter 6 of the Limited Liability Company Law and that the Law that the worker concerned entered into with the divisively reorganizing company is transferred from the divisively reorganizing company to the formed company, etc., Article 625, Paragraph 1 of the Civil Code shall apply and it shall be necessary to obtain the individual agreement of the

worker concerned.

(4) Matters Concerning Working Conditions, Etc.

A. Basic Principles

(A) Maintained Working Conditions

In order that a labour contract to which the formed company, etc. succeeds based on the provisions of the Commercial Code or the Limited Liability Company Law undergoes comprehensive succession from the divisively reorganizing company to the formed company, etc., the working conditions contained therein shall be maintained intact.

In this case, working conditions prescribed in collective agreements, company regulations and labour contracts as well as conditions concerning the treatment of workers among the settled traditional labour practices impliedly agreed to by the divisively reorganizing company and the workers, and the customs provided for in Article 92 of the Civil Code that are found to be established shall be maintained as working conditions contained in the labour contract.

Further, with respect to the number of years of continuous service for the purposes of determining the number of days of paid annual leave, calculating the amount of retirement pension, determining eligibility for a commendation for long years of service, etc., the years earned at the divisively reorganizing company shall be included in the total.

Provisions concerning fringe benefits such as the company housing rental system and the company housing loan system that are found to be the subject of rights and duties between the divisively reorganizing company and the worker, including those institutionalized by prescription in a collective agreement or company regulations, shall be maintained as working conditions contained in the labour contract. In this case, the divisively reorganizing company concerned shall inform the worker concerned of the treatment after divisive reorganization of fringe benefits that are difficult, due to their nature, for the formed company, etc. to succeed to with the same contents intact. With respect to these fringe benefits, the divisively reorganizing company shall conduct discussions, etc. with the worker concerned based on Article 7 of the Law, Article 5 of the Supplemental Provisions to the Commercial Code, Etc. Revision Law and Section 4 below, including discussion of substitute measures, and shall endeavor to reach an appropriate resolution.

Further, with respect to a qualified retirement pension or other external contributory retirement pension related to a company pension based on the provisions of Article 84, Paragraph 3 of the Corporate Taxation Law (Law No. 34 of 1965) that is paid to the worker based on a retirement

pension agreement entered into between the business owner and a financial institution, etc., in a case where entitlement thereto is provided for in the labour contract, such as where the requirements, standards, etc. for benefits that are the terms of the retirement pension concerned are prescribed in the collective agreement or company regulations, the entitlement of a worker to whose labour contract the formed company, etc. will succeed from the divisively reorganizing company through the divisive reorganization of the company shall be maintained as a working condition.

(B) Disadvantageous Change to Working Conditions By Reason of Divisive Reorganization of Company

Because changes to working conditions that are the terms of a labour contract are considered to require a labour-management agreement under the Trade union Law (Law No. 174 of 1949) or the agreement of both parties to an agreement based on the basic principles of the Civil Code, in a divisive reorganization, a company shall not unilaterally conduct a disadvantageous change to the working conditions by reason of divisive reorganization of the company. Further, in a case where the working conditions are changed after the divisive reorganization of the company, a labour-management agreement shall, in accordance with laws and ordinances and judicial precedents, be the basis.

(C) Dismissal By Reason of Divisive Reorganization of the Company

Judicial precedents and doctrines with respect to ordinary dismissal and dismissal for the purposes of reorganization are settled, and a company shall not, in violation thereof, conduct a dismissal solely by reason of the divisive reorganization of the company.

B. Matters for Consideration Concerning Fringe Benefits of a Gratuitous Nature

As set forth in A.(B) above, fringe benefits that are found to be the subject of rights and duties between the divisively reorganizing company and the worker shall be maintained as working conditions contained in the labour contract. However, with respect to gratuitous fringe benefits (i.e., those lacking such a right-based nature), the divisively reorganizing company shall inform the worker concerned of the treatment thereof after divisive reorganization; conduct discussions, etc. with the worker concerned based on Article 7 of the Law, Article 5 of the Supplemental Provisions to the Commercial Code, Etc. Revision Law and Section 4 below; and endeavor to reach an appropriate resolution.

C. Matters for Consideration Concerning Fringe Benefits Whose Requirements Are Prescribed By Law

In a case where a third party other than the divisively reorganizing company implements, in accordance with a provision of law, all or part of a fringe benefit, including an employees'

pension plan fund based on the provisions of Chapter 9, Section 1 of the Employees' Pension Insurance Law (Law No. 115 of 1944), a health insurance association based on the provisions of Chapter 3 of the Health Insurance Law (Law No. 70 of 1922), a financial institution, etc. provided for in Article 6 of the Worker Asset Formation Promotion Law (Law No. 92 of 1971), a workers' retirement allowance cooperative based on the provisions of Chapter 6 of the Small and Medium Enterprise Retirement Allowance Cooperative Law (Law No. 160 of 1959), the treatment of fringe benefits concerned after the divisive reorganization of the company must be in accordance with the provisions of each applicable law in addition to being in accordance with the provisions of Book 2, Chapter 4, Section 6-3 of the Commercial Code, Chapter 6 of the Limited Liability Company Law. Therefore, the divisively reorganizing company concerned shall consider the following matters; inform the worker concerned of the treatment of such fringe benefits after divisive reorganization; conduct discussions, etc. with the worker concerned based on Article 7 of the Law, Article 5 of the Supplemental Provisions to the Commercial Code, Etc. Revision Law and Section 4 below; and endeavor to reach an appropriate resolution.

(A) Employees' Pension Plan Fund

An employees' pension plan fund based on the provisions of Chapter 9, Section 1 of the Employees' Pension Insurance Law (hereinafter referred to as "fund") is a voluntarily established entity. Thus, of course, even where divisive reorganization of the company is done, the fund is not thereby converted from one whose members consist of employees of the divisively reorganizing company to one whose members consist of the employees of the formed company, etc.

In this case, there are the following methods for continuing the benefits for the elderly provided for in Article 106 of the Employees' Pension Insurance Law for a worker employed by the divisively reorganizing company who is a member of the fund and whose labour contract is succeeded to by the formed company, etc.; however, because it will be necessary in any case to amend the articles of the fund, establish a new fund or divisively reorganize the existing fund, the approval of the competent minister will be necessary.

a. Case of Formational-Divisive Reorganization

(a) A method in which the articles of the fund connected with the divisively reorganizing company are partially revised and the company formed by formational-divisive reorganization pursuant to the provisions of the Commercial Code or the Limited Liability Company Law (hereinafter referred to as "formed company") is added to the workplace covered by the fund concerned.

(b) A method in which divisive reorganization of the fund connected with the divisively

reorganizing company concerning the worker whose labour contract is succeeded to by the formed company is carried out and a fund with the formed company as a workplace covered is newly formed.

b. Case of Assimilative-Divisive Reorganization

(a) Case Where Successor Company Has Fund

A method in which rights and duties concerning the provision of a pension benefit to members of the fund connected with the divisively reorganizing company are transferred to the fund connected with the company that succeeds to the divisively reorganizing company's business (hereinafter referred to as "successor company") pursuant to an assimilative-divisive reorganization under the provisions of the Commercial Code or the Limited Liability Company Law (hereinafter referred to as "assimilative-divisive reorganization") or a method in which a merger is carried out between the fund connected with the divisively reorganizing company and the fund connected with the successor company.

(b) Case Where Successor Company Has No Fund

A method in which the articles of the fund connected with the divisively reorganizing company are partially revised and the successor company is added to the workplace formed by the fund concerned or a method in which a fund with the successor company as a workplace covered is newly formed.

(B) Health Insurance Association

A health insurance association based on the provisions of Chapter 3 of the Health Insurance Law is a voluntarily established entity with the subject workplace as its basis. Thus, it is fundamentally handled in a way similar to the case of the fund provided for in (A).

(C) Asset Formation Savings Contract, Etc.

An asset formation savings contract, etc. (this shall mean an asset formation savings contract, a asset formation pension savings contract and an asset formation home savings contract; hereinafter, the same shall apply) is a contract that worker and a financial institution, etc. enter into concerning that worker's asset formation. When entering into such a contract, the worker is considered to be entering into a contract with the business owner for proxy payroll deduction and payment pursuant to Article 6, Paragraph 1, Item 1 (a) of the Worker Asset Formation Promotion Law. The contract concerned shall be maintained as working conditions contained in the labour contract. Consequently, in a case where a labour contract is succeeded to by the formed company, etc. from the divisively reorganizing company through divisive reorganization of the company, because the duty of proxy payroll deduction and payment based on the contract concerned is also succeeded to by the formed company, etc., a worker covered by the labour contract succeeded to

may retain his asset formation savings contract, etc. Further, in this case, it is necessary for there to be a labour-management agreement provided for in Article 24, Paragraph 1 of the Labour Standards Law (Law No. 49 of 1947) in place at the workplace of the formed company, etc. concerned. In addition, it is necessary for the formed company, etc. to carry out prescribed procedures with the financial institution, etc.

(D) Small and Medium Enterprise Retirement Allowance Cooperative Contract

A small and medium enterprise retirement allowance cooperative contract is one that a small and medium enterprise owner (cooperative member) enters into with respect to each employee (beneficiary) with a workers' retirement allowance cooperative (hereinafter referred to as "cooperative") based on the provisions of Chapter 2 of the Small and Medium Enterprise Retirement Allowance Cooperative Law. Under this contract, the small and medium enterprise owner concerned pays premiums to the cooperative and the cooperative undertakes to pay a retirement allowance to the employee concerned. Further, the employee's receipt of payment of the retirement allowance from the cooperative is recognized as being among the rights and duties between the small and medium enterprise owner and the employee concerned and shall be maintained as a working condition contained in the labour contract. Moreover, even in a case where the business owner changes as a result of the divisive reorganization of the company, the cooperative contract shall be treated as though it were continued with respect to an employee whose labour contract is succeeded to by the formed company, etc. from the divisively reorganizing company through the divisive reorganization concerned. In addition, in this case, it is necessary for the formed company, etc. to carry out prescribed procedures with the cooperative.

3. Measures, Etc. That Should Be Taken Concerning the Succession of Collective agreement

(1) Matters Concerning Agreement Between Divisively Reorganizing Company and Trade union

A. Time of Agreement

It is desirable that the agreement between a divisively reorganizing company and a trade union provided for in Article 6, Paragraph 2 of the Law be reached through labour-management discussions in advance of the preparation of the divisive reorganization plan, etc.

B. Treatment of Collective agreement

(A) Treatment of Case Where There Is An Agreement Provided For in Article 6, Paragraph 2 of the Law

If there is a statement in the partition plan, etc. to the effect that, based on the Commercial Code or the Limited Liability Company Law and Article 6, Paragraph 1 of the Law, the formed company, etc. will be made to succeed to the collective agreement from the divisively

reorganizing company and an agreement provided for in Article 6, Paragraph 2 of the Law is made concerning a portion outside the standard provided for in Article 16 of the Trade union Law, then the formed company, etc. shall, at the time the divisive reorganization concerned becomes effective, be made to succeed to only the portion of the collective agreement concerned involved in said agreement.

The agreement provided for in Article 6, Paragraph 2 of the Law may be made with respect to the succession of all or part of the portion outside the standard provided for in Article 16 of the Trade union Law. For example, it is possible to have a statement in the divisive reorganization plan, etc. or an agreement that says, "Among the 100 square meters covered in the text of the collective agreement; i.e., 'the Company shall loan the union office space of 100 square meters,' the duty to loan 40 square meters of union office space shall remain with the company concerned, and the duty to loan 60 square meters of union office space shall be succeeded to by the formed company."

(B) Treatment of Case Where There Is An Agreement Provided For in Article 6, Paragraph 2 of the Law

If there is no agreement provided for in Article 6, Paragraph 2 of the Law concerning the portion outside the standard provided for in Article 16 of the Trade union Law, then based on the provisions of Article 6, Paragraph 3 of the Law, the divisively reorganizing company remains in the position of a party to the collective agreement with respect to said portion even after the divisive reorganization; and if the labour contract relating to members of the trade union concerned is succeeded to by the formed company, etc., then the formed company, etc. concerned will stand in the position of a party to a collective agreement that has the same contents as the collective agreement concerned. In this case, the formed company, etc. concerned comes to have rights and duties consistent with the true purpose of the rights and duties involved in the collective agreement concerned.

(C) Treatment of Portion of Article 16 of Trade union Law Concerning Standard

With respect to the portion of Article 16 of Trade union Law concerning the standard, whether or not there is a statement in the partition plan, etc. to the effect that, based on the Commercial Code or the Limited Liability Company Law and Article 6, Paragraph 1 of the Law, the formed company, etc. will be made to succeed to the collective agreement from the divisively reorganizing company, based on the provisions of Article 6, Paragraph 3 of the Law, the divisively reorganizing company concerned still remains in the position of a party to the collective agreement concerned even after the divisive reorganization; and if the labour contract relating to members of the trade union concerned is succeeded to by the formed company, etc., then the formed company, etc. concerned will stand in the position of a party to a collective

agreement that has the same contents as the collective agreement concerned.

(2) Relationship to Existing Collective agreement at Successor Company

Because a collective agreement is one entered into between the employer and the trade union, in a case where workers belonging to different trade unions are working at one company, it is possible for there to be a case where labour contracts with different provisions on the same matter for each trade union coexist.

Consequently, it is possible for workers of the same type to have different working conditions in the case of assimilative-divisive reorganization in which, based on the provisions of Article 6, Paragraph 3 of the Law, a collective agreement with the same contents as the one entered into with the divisively reorganizing company is deemed entered into between the successor company and the trade union concerned. This is because the successor company concerned will have entered into labour contracts with different provisions on the same matter with multiple trade unions.

(3) Labour-Management Agreements, Etc. For Which Organizational Requirements are Conditions to Validity

A. General Binding Power of Article 17 of the Trade union Law

It is considered a requirement for the general binding power of Article 17 of the Trade union Law that three fourths or greater of the number of workers of the same type who are regularly employed at a factory or other workplace be subject to the application of one collective agreement. Even in a case where Article 17 of the Trade union Law applied at a factory or other workplace of the divisively reorganizing company before divisive reorganization of the company, Article 17 of the Trade union Law shall not apply at the factory or other workplace of a divisively reorganizing company or formed company, etc. at which the requirement concerned is no longer fulfilled after the divisive reorganization concerned.

The same applies to a collective agreement involved with the so-called shop system provided for in the proviso of Article 7, Item 1 of the Trade union Law.

B. Labour-Management Agreements Under the Labour Standards Law

Because labour-management agreements provided for in Article 24, Article 36, etc. of the Labour Standards Law are not ones that prescribe civil rights and duties, they are not subject to succession by the formed company, etc. through the divisively reorganizing company's stating them in the divisive reorganization plan, etc. These labour-management agreements can be construed to continue being valid at workplace found to be identical before and after the divisive

reorganization of the company. In a case where the identical nature of the workplace is lost, because the applicable exemption from criminal liability under the Labour Standards Law is lost, it will be necessary to enter once again into the labour-management agreement and file notice thereof based in the respective statutes after the divisive reorganization concerned.

4. Matters Concerning the Understanding and Cooperation of the Workers

(1) Discussions Provided for in Article 5 of the Supplemental Provisions to the Commercial Code, Etc. Revision Law

A. Advance Discussion With Worker

Pursuant to Article 5 of the Supplemental Provisions to the Commercial Code, Etc. Revision Law, the divisively reorganizing company shall, on or before the headquarters availability date of the divisive reorganization plan, etc., discuss the succession to the labour contract consequent upon the divisive reorganization of the company with a worker engaged in the business succeeded to.

The divisively reorganizing company shall fully explain to the worker concerned matters such as the outline of the company at which the worker concerned will work after the divisive reorganization concerned as well as the company's idea about whether the worker concerned comes under the category of worker mentioned in Article 2, Paragraph 1, Item 1 of the Law. After hearing the wishes of the worker concerned, the divisively reorganizing company shall discuss whether the labour contract that covers the worker concerned will be succeeded to or not; the contents of the business the worker concerned is expected to engage in the case of succession and in the case of no succession; the workplace; and other matters such as the type of employment.

B. Relationship to Effort to Obtain the Understanding and Cooperation of the Workers Provided for in Article 7 of the Law

In contrast to the discussion concerned being a procedure to protect the individual worker who engages in the business succeeded to, the effort to obtain the understanding and cooperation of workers provided for in Article 7 of the Law, as explained in (2) below, is an effort to obtain the understanding and cooperation of the entire body of workers working at the divisively reorganizing company on the occasion of the divisive reorganization of the company. As such, it differs in time of implementation, scope of subject workers, scope of subject matter, procedures and so on.

C. Relationship to the Right to Bargain Collectively Under the Trade union Law

With respect to the subject matter of collective bargaining provided for in Article 6 of the Trade union Law concerning the working conditions of workers consequent upon the divisive

reorganization of the company, a divisively reorganizing company may not, by reason of holding the discussion concerned, refuse a lawful collective bargaining proposal made by a trade union in connection with the divisive reorganization concerned

D. Selection of Representative in Holding Discussion

In a case where, pursuant to the provisions of the Civil Code, a worker individually selects a trade union as his representative in connection with all or part of the discussion concerned, the divisively reorganizing company shall hold such discussion with the trade union concerned in good faith.

E. Time for Commencement of Discussion

The divisively reorganizing company shall commence discussion at a time such that sufficient discussion may be had before the headquarters availability date of the divisive reorganization plan, etc.

F. Violation of Duty to Discuss As Ground of Invalidity of Divisive Reorganization

It should be borne in mind that with respect to the divisive reorganization of a company in a case where the discussion required by Article 5 of the Supplemental Provisions to the Commercial Code, Etc. Revision Law is not held at all or in a case substantially similar thereto, such violation of the duty to discuss may be a ground for the invalidity of the divisive reorganization.

(2) Effort to Obtain the Understanding and Cooperation of the Workers Provided for in Article 7 of the Law

A. Contents

In the divisive reorganization concerned, the divisively reorganizing company shall, based on Article 7 of the Law, endeavor to obtain the understanding and cooperation of the workers in its employ through holding discussion at each of its workplace with the trade union comprised of the majority of the workers where there is such a trade union (or with the representative of the majority of the workers where there is no such trade union) or through another corresponding method.

The process of holding a discussion at a place that ensures that management and labour can have discussions on equal footing and in good faith in order to obtain the understanding and cooperation of the workers shall, regardless of name, be included as "another corresponding method".

B. Subject Matter

The following are matters on which the divisively reorganizing company shall endeavor to obtain the understanding and cooperation of the workers in its employ:

- (A) the background and reasons for conducting the divisive reorganization of the company;
- (B) the prospects for the divisively reorganizing company and formed company, etc. being able to perform their obligations after the divisive reorganization of the company;
- (C) the standards for judging whether a worker comes under the category of worker mentioned in Article 2, Paragraph 1, Item 1 of the Law;
- (D) matters concerning the succession of the collective agreement provided for in Article 6 of the Law; and
- (E) procedures for resolving labour relations problems that arise during the process of divisive reorganization of the company between the divisively reorganizing company or the formed company, etc. and the trade union concerned or worker.

C. Relationship to the Right to Bargain Collectively Under the Trade union Law

With respect to the subject matter of collective bargaining provided for in Article 6 of the Trade union Law concerning the working conditions of workers consequent upon the divisive reorganization of the company, a divisively reorganizing company may not, by reason of carrying out the procedures provided for in Article 7 of the Law, refuse a lawful collective bargaining proposal made by a trade union in connection with the divisive reorganization concerned.

D. Commencement Time, Etc.

The procedures provided for in Article 7 of the Law shall commence, at latest, at or before the commencement of the discussion based on the provisions of Article 5 of the Supplemental Provisions to the Commercial Code, Etc. Revision Law, and shall be carried out appropriately, as needed, thereafter.

5. Other

(1) Matters Concerning Legal Organizations Comprised of Employee Representatives, Including Safety and Health Committees, Etc.

With respect to committees, etc. for which, by law or ordinance, the scale of the enterprise or workplace is a condition of establishment, such as safety and health committees, etc. provided for in Article 19 of the Labour Safety and Health Law (Law No. 57 of 1972), it is desirable that committees, etc. similar to the ones existing before the divisive reorganization concerned be established at the divisively reorganizing company and formed company, etc. even in a case where a condition of establishment is no longer fulfilled after divisive reorganization of the

company.

(2) Treatment of Dispatched Workers

In a case where a dispatched worker is dispatched to the divisively reorganizing company in accordance with the provisions of the Law on Ensuring the Proper Operation of Worker Dispatching Businesses and Maintaining the Working Conditions of Dispatched Workers (Law No. 88 of 1985) and the worker dispatching agreement that covers said dispatched worker is succeeded to by the formed company, etc. from the divisively reorganizing company concerned, because the formed company, etc. concerned succeeds to the position of the company supplied with the dispatched worker, in applying the provisions relating to the term of receiving dispatched workers (including Article 40-2 and Article 40-3 of the same law), the term concerned shall be calculated by including the worker's term at the divisively reorganizing company before the divisive reorganization of the company occurred.

(3) Treatment of Mariners

Labour-management agreements pursuant to the provisions of the Mariners Law (Law No. 100 of 1947) and safety and health committees provided for in Article 11 of the Law on Promoting Mariners Disaster Prevention Activities (Law No. 61 of 1967) shall be treated in the same way as the treatment of labour-management agreements under the Labour Standards Law and that of safety and health committees under the Labour Safety and Health Law.

(4) Employment Stability

The divisively reorganizing company and the formed company, etc. shall endeavor to promote the employment stability of workers after divisive reorganization of the company.