

Overview of the Act on the Succession to Labor Contracts upon Company Split ("Labor Contract Succession Act")



Labor Contract Succession Act aims to promote the protection of workers in company splits.

Under the company split system based on the Companies Act (targeting stock companies and limited liability companies), the successor company, etc.^{*1} comprehensively succeeds to the rights and obligations of the split company in accordance with the provisions of the split contract, etc.^{*2} executed between the split company and the successor company, etc. However, since the succession to labor contracts without any change has a significant impact on workers, the following provisions have been set for the protection of workers at the time of a company split:

- Labor Contract Succession Act sets forth
 - (i) provisions concerning notice to workers and labor unions
 - (ii) special provisions of the Companies Act concerning the succession to labor contracts
 - (iii) special provisions of the Companies Act concerning the succession to collective agreements
 - (iv) procedures for obtaining understanding and cooperation of workers in a company split and
- Article 5 of the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc.^{*3} sets forth provisions on consultation with workers.

Further, procedures for the protection of workers are translated into reality by Ordinances for Enforcement of Acts, and the Guidelines on the Promotion of Appropriate Implementation of Measures that the Split Company, the Successor Company, etc. Should Take Concerning the Succession to Labor Contracts and Collective Agreements Executed by the Split Company (hereinafter referred to as, the "Guidelines").

We ask all relevant parties to use this pamphlet to promote labor-management consultation and mutual understanding between labor and management, and to take appropriate action to ensure worker protection and smooth organization restructuring on the basis of the sufficient understanding and cooperation between labor and management.

^{*1, *2} The successor company in an absorption-type company split and the incorporated company in an incorporation-type company split are collectively referred to as "successor company, etc." The split agreement in an absorption-type company split and the split agreement in an incorporation-type company split are collectively referred to as "split contract, etc."

^{*3} With the establishment of the company split system by the amendments to the Commercial Code, etc. in 2000, the provision requiring companies to consult with their employees when embarking on a company split was included in the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc.

You can check laws and regulations relating to the Labor Contract Succession Act on the Ministry of Health, Labour and Welfare website (<http://www.mhlw.go.jp/>).

If you have any question, please contact the Law and Regulation Unit 1, Labour Relations Law Division, Labour Standards Bureau of the Ministry of Health, Labour and Welfare, or the Employment and Environment Equality Division (Office) of the nearest Prefectural Labour Office.

For the locations of the Prefectural Labour Bureau, please check the following Ministry of Health, Labour and Welfare website.
(<http://www.mhlw.go.jp/kouseiroudoushou/shozaiannai/roudoukyoku/>)



Ministry of Health, Labour and Welfare / Prefectural Labour Bureau

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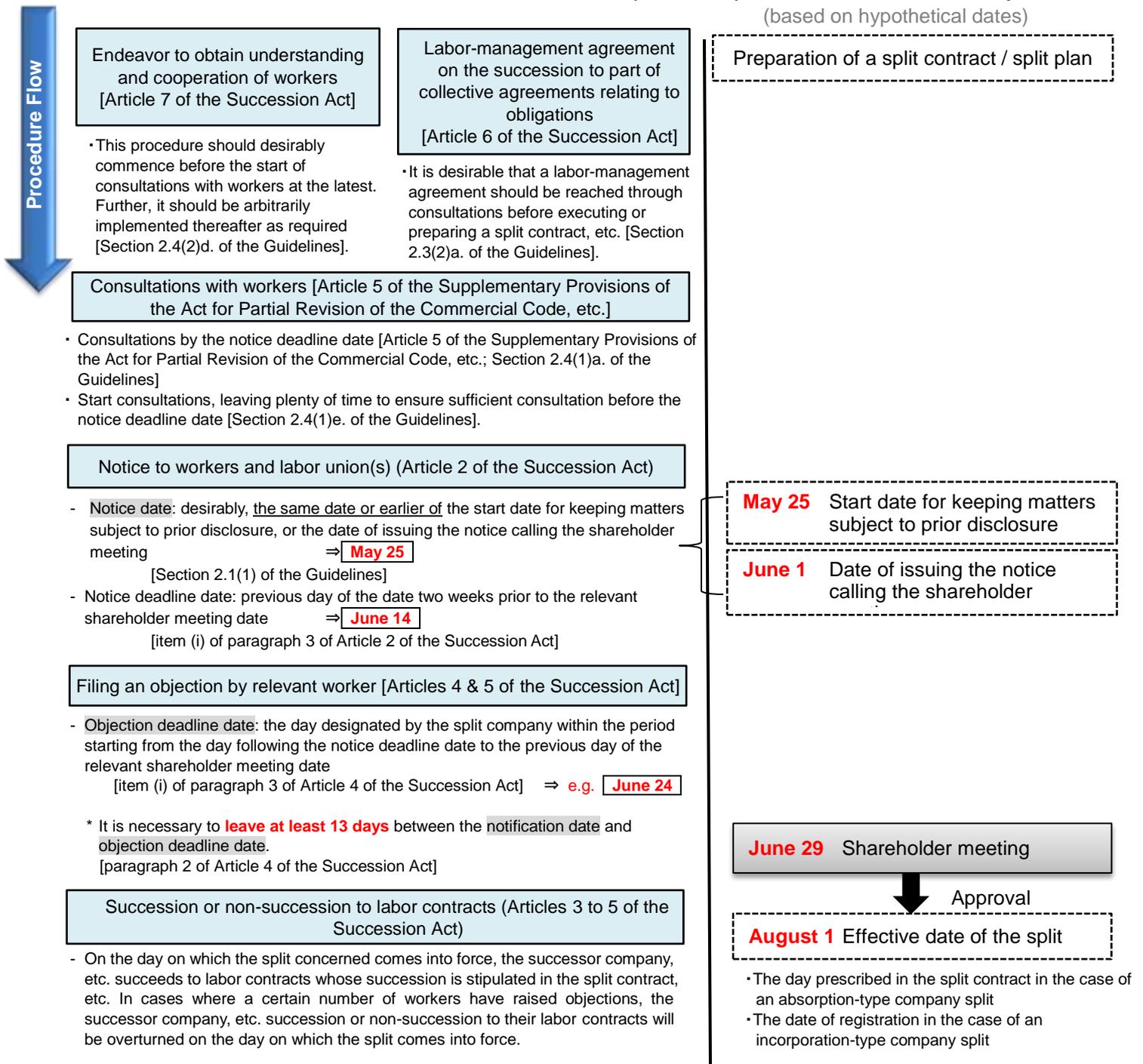
Flow and Overview of Company Split Procedures [Where Approval of a Shareholder meeting is Required]

With regard to the procedure flow based on the Labor Contract Succession Act, etc., the flow of a series of procedures is organized on the basis of a hypothetical, specific schedule with legal provisions taken into consideration, for cases where a stock company embarks on a company split requiring the approval of a shareholder meeting. Please take appropriate action upon confirmation of the flow and target schedule.

[Where the shareholder meeting to approve the company split concerned is to be held on June 29]

Labor Contract Succession Act / Article 5 of the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc. in 2000

(Reference) Procedures under the Companies Act (based on hypothetical dates)



Flow and Overview of Company Split Procedures [In the case of a stock company not requiring the approval of a shareholder meeting / in the case of a limited liability company]

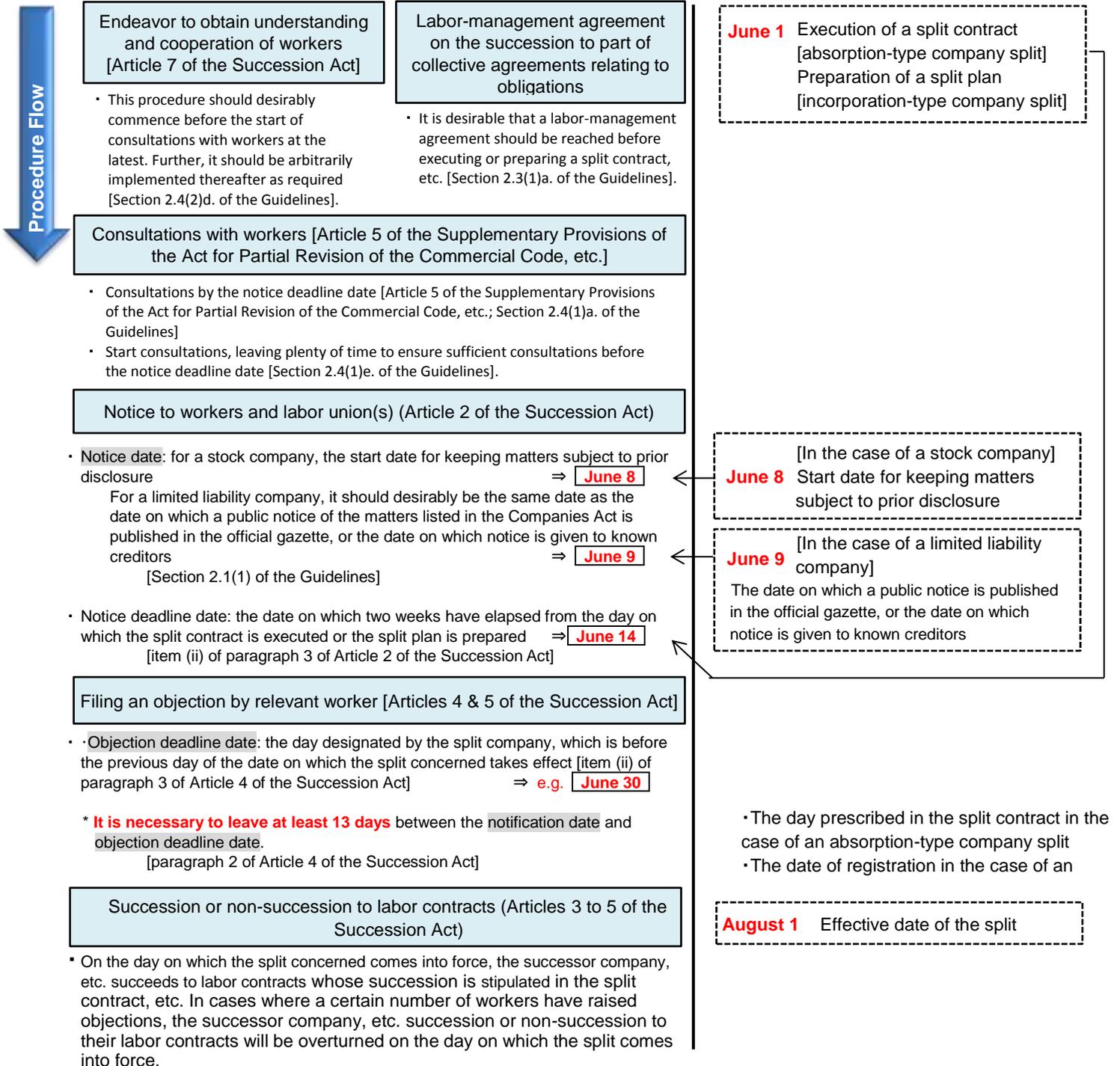
With regard to the procedure flow based on the Labor Contract Succession Act, etc., the flow of a series of procedures is organized on the basis of a hypothetical, specific schedule with legal provisions taken into consideration, for cases where a stock company embarks on a company split not requiring the approval of a shareholder meeting (simple split, etc.) and for cases where a limited liability company embarks on a company split. Please take appropriate action upon confirmation of the flow and target schedule.

[Where a split contract is executed or a split plan is prepared on June 1]

Labor Contract Succession Act / Act for Partial Revision of the Commercial Code, etc. in 2000

(Reference) Procedures under the Companies Act

(based on hypothetical dates)



◇ Purpose (Overview of Article 1)

The purpose of this Act is to promote the protection of workers by providing for special provisions, etc. of the Companies Act in connection with the succession to labor contracts, etc. in company splits.

With the company split system introduced by the amendment to the Commercial Code, etc. in 2000, the Act on the Succession to Labor Contracts upon Company Split (hereinafter referred to as, the "Act") was enacted to set forth special provisions concerning the succession to labor contracts, etc. from the viewpoint of worker protection, on the basis that the successor company, etc. comprehensively succeeds to the rights and obligations of the split company in accordance with the split contract, etc. executed or prepared (hereinafter referred to as, "execute, etc. or execution, etc.") by and between the split company and the successor company, etc.

The Act applies to cases where a stock company or limited liability company implements a company split pursuant to the Companies Act. In the case of implementing a company split, it is necessary to comply with applicable provisions such as those of the Act.

Further, "workers" under the Act mean those employed by the split company, and include all workers who have executed a labor contract with the split company. For this reason, the procedures prescribed by the Act, etc. are required to be followed for not only regular employees but also part-time employees and temporary employees.

◇ Notice to Workers and Labor Unions (Overview of Article 2)

For a company which is to implement a company split (split company), it is necessary to notify its workers and labor union(s) of matters relating to the company split.

(1) Notice targets

Workers and labor union(s) that the split company is required to notify of matters concerning the company split are:

- workers primarily engaged in a business subject to succession (hereinafter referred to as, "Primarily Engaged Worker");
- other than the above workers, those to be handed over to the successor company, etc. (hereinafter referred to as, "Non-primarily Engaged Worker Subject to Succession"); and
- labor union having executed a collective agreement with the split company.

(With regard to the scope of Primarily Engaged Workers, please see page 5 "(1) Scope of Primarily Engaged Workers, <Matters relating to the succession to labor contracts>, in ◇ Succession to Labor Contracts (Overview of Article 3).")

(2) Subject matter of notice

The split company is required to notify, in writing, the notice targets about the subject matter of notice listed on the following page according to each target category, by the notice deadline date. Example forms of notice to workers and labor unions are attached at the end of this document. Please use them for your reference.

Subject Matters of Notice	Worker	Labor Union
(i) The presence or absence of any provision in the split contract, etc., which stipulates whether the worker, who has received the notice, is to be handed over to the successor company, etc.	○	X
(ii) Objection deadline date for the worker	○	X
(iii) Category of "Primarily Engaged Worker" or "Non-primarily Engaged Worker Subject to Succession" the worker falls within	○	X
(iv) In cases where the split contract, etc. provides that the successor company, etc. is to succeed to the labor contract that the worker concerned executed with the split company, the fact that the working conditions stipulated in the labor contract will be maintained as are	○	X
(v) Overview of the business(es) to be succeeded to by the successor company, etc.	○	○
(vi) Trade names, addresses (in the case of an incorporated company, the location of its head office) and business details of the split company and the successor company, etc. on and after the effective date of the company split concerned, and the number of workers that these companies plan to employ on and after the same date	○	○
(vii) Effective date of the company split concerned	○	○
(viii) Operations that the worker is to engage in at the split company or the successor company, etc. his/her workplace, and other employment details on and after the effective date	○	X
(ix) Matters concerning the prospect of the split company's and successor company's performance of obligations on and after the effective date	○	○
(x) In the case of an objection to the succession (or non-succession), the fact that the worker is entitled to file an objection, and the name and address of the department to receive such objection or the name, job title and workplace of the person in charge	○	X
(xi) The presence or absence of any provision in the split contract, etc., which stipulates whether collective agreements executed between the split company and the labor union concerned are to be succeeded to by the successor company, etc.	X	○
(xii) The scope of workers subject to succession (where the names of workers are not clear to the relevant labor union after the scope has been specified, the names of those workers)	X	○
(xiii) Where the successor company, etc. is to succeed to a collective agreement, the details of such agreement	X	○

(3) Notice date, notice deadline date, etc.

The notice date (date prescribed in the Guidelines as the date on which notice should desirably be issued) and the notice deadline date (date prescribed in the Act as the deadline by which notice should be issued) differ between a stock company (whether a shareholder meeting is required or not) and limited liability company. For example, when a stock company, which is the split company, holds a shareholder meeting on June 29 to obtain shareholder approval for a split contract, etc., the notice deadline date is the previous day of the date two weeks prior to the date of the shareholder meeting to approve the split contract, etc., which is June 14. Please also refer to the flow and overview of a company split.

	Stock Company	Limited Liability Company
Notice Date	Notice date should be the same as the earlier of the following dates. - Start date for keeping, at the head office, a written document or an electronic or magnetic record containing or recording the details of the split contract, etc. and other matters required by Ordinances of the Ministry of Justice - Date on which the notice of calling a shareholder meeting is issued	Notice date should be the same as the following date. In cases where all or some creditors may raise objections to the company split concerned, the date on which the split company publishes notice of the matters listed in the Companies Act in the official gazette, or on which notice is given to known creditors
Notice	[Where a shareholder meeting is required]	The date on which two weeks have elapsed

Deadline Date	The previous day of the date two weeks prior to the date of the shareholder meeting in which the split contract, etc. is to be approved [Where a shareholder meeting is not required] The date on which two weeks have elapsed from the day on which the split contract, etc. is executed or prepared	from the day on which the split contract, etc. is executed or prepared
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◇ Succession to Labor Contracts (Overview of Article 3)

On the day on which the company split concerned comes into force, the successor company, etc. succeeds to the labor contracts of Primarily Engaged Workers in accordance with the split contract, etc.

Pursuant to the Companies Act, the successor company, etc. comprehensively succeeds to the matters prescribed in the split contract, etc. in accordance therewith. In contrast, the Act sets forth special provisions based on the concept of the protection of workers. Nonetheless, with regard to Primarily Engaged Workers, if a split contract, etc. provides for the successor company, etc. succession to their labor contracts, the successor company, etc. will succeed to such labor contracts in accordance with the principles of the Companies Act.

The fact that Primarily Engaged Workers to be handed over to the successor company, etc. are not entitled to file an objection under Article 4 of the Act is based on the concept of the enactment of the Act: Labor contracts of such workers are succeeded to by the successor company, etc. with working conditions stipulated therein "maintained as are," and thus are not to be removed from their current duties.

<Matters relating to the succession to labor contracts>

(1) Scope of Primarily Engaged Workers

- (i) Primarily Engaged Workers basically means workers solely engaged in a business subject to succession, as of the day on which the relevant split contract, etc. is executed.

Guidelines set forth the fundamental principle of Primarily Engaged Workers as follows: "A company split is based on a unit composed of rights and obligations associated with each business of the company. Whether a worker falls under item (i) of paragraph 1 of Article 2 of the Act is to be determined by treating the company's business subject to succession as a unit. In so doing, such business should be, in principle, construed as 'assets that are organized for certain business purposes and that organically function as a unit' in light of the Act's objective of protecting workers through securing their employment and duties."

This provision means to be the fundamental principle of "Primarily Engaged Worker" under the Act, following the enactment of the Companies Act in 2005, which has made a company split in a unit of "rights and obligations" possible; in the past, a company split was possible only in a unit of "business."

- (ii) In cases where a worker engages in a business subject to succession as well as in another business, the decision of whether s/he is a "Primarily Engaged Worker" is made by comprehensively taking account of the duration of his/her engagement in each business, his/her roles, etc.
- (iii) Even workers working for so-called back-office departments such as those relating to general affairs, human resources and accounting (hereinafter referred to as, "Secondarily Engaged Workers") are categorized as "Primarily Engaged Workers" if they exclusively engage in business subject to succession. Where a Secondarily Engaged Worker also engages in a business not subject to succession, please determine his/her category in accordance with (ii) above.

In the case where workers work for back-office departments without their work categorized into a particular business and thus it is not possible to categorize such workers in accordance with (ii) above, such workers are categorized as "Primarily Engaged Workers" only where, in principle, the number of

workers who cannot be categorized (A) is excluded from the number of workers employed by the split company, and the majority of the remaining workers after such exclusion (B) are to be handed over to the successor company, etc. (C). A specific example of this calculation is as follows.

Calculation Example (Example Scenario)

Company A (850 workers in total), which has a Home Electronics Manufacturing Department (500 workers), Computer Manufacturing Department (250 workers) and General Affairs Department (100 workers) in charge of the management of human resources and labor for the former departments, is to split part of the workers into the Computer Manufacturing Department (200 workers) and General Affairs Department (30 workers) (230 workers in total). In this company, the General Affairs Department manages human resources and labor without differentiating various manufacturing departments.

(A): The number of workers in the General Affairs Department, who cannot be judged as whether they primarily engage in Computer Manufacturing Department: 100 workers

(B): The majority of workers employed by the split company after the number of workers in (A) has been excluded therefrom: 376 workers (*)

* 850 (total number of workers) - 100 (number of workers who cannot be judged as primarily engaged [A]) / $2 = 375$ workers \Rightarrow the majority is 376 workers

\Rightarrow number of workers subject to succession is 230 workers, not reaching the majority of 376 workers. For this reason, 30 workers in the General Affairs Department, which is subject to succession, are not "Primarily Engaged Workers" for the company's computer business.

- (iv) "Primarily Engaged Workers" do not include those who, although primarily engaging in a business subject to succession as of the day of execution, etc. of the split contract, etc., actually engage in that business temporarily by way of, for example, receiving training or supporting the business and will, without doubt, not primarily engage in the business after the completion of such operations, or those who have agreed with the split company on a personnel relocation for the reason of, for example, childcare and will, without doubt, not primarily engage in the business subject to succession after the day of execution, etc. of the split contract, etc.

On the other hand, "Primarily Engaged Workers" include those who temporarily engage in other business, for example, in order to receive training or support such business and will clearly and primarily engage in business subject to succession after completing such operations, those who, although absent from work as of the day of execution, etc. of the split contract, etc., will clearly and primarily engage in business subject to succession after reinstatement in work, and those who have been offered employment by the company and have accepted such employment, or request a personnel relocation for the reason of, for example, childcare, and will clearly and primarily engage in business subject to succession after the day of execution, etc. of the split contract, etc.



Q.: What happens if the company intentionally implements a personnel relocation for the purpose of excluding a worker from the successor company, etc. or the split company?

A.: Judged by the work of the worker in the past, if it is clear that the labor contract of the worker should be succeeded to by the successor company, etc. or that it is not to be succeeded to thereby, and if the split company intentionally implements a personnel relocation before the effective date of the company split concerned for the purpose of excluding the worker from the successor company, etc. or the split company without reasonable grounds, whether the worker is a "Primarily Engaged Worker" is to be determined by taking into account the actual status of the worker's work in the past.

On that basis, if the split company is found to have indeed implemented such personnel relocation, the worker may claim that the personnel relocation is void.

(2) In the case of a conflict of views between the split company and workers

In the case of a conflict of views between the split company and a worker with regard to whether or not

the worker is a "Primarily Engaged Worker," it is necessary to strive to fill a gap in their views by endeavoring to obtain the understanding and cooperation of the worker as provided for in Article 7 of the Act and by holding consultations with the worker as provided for in Article 5 of the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc. If such conflict still persists, it may be ultimately resolved through a trial. However, it is possible to arrange consultations to work toward resolving the conflict through the "Individual Labour Dispute Resolution System" implemented by the Prefectural Labour Bureau.

(3) Succession to working conditions

Since the succession of the successor company, etc. to labor contracts from the split company on the basis of the provisions of the Companies Act is comprehensive succession, the working conditions set forth in such contracts will be maintained as they are.

Any change to working conditions requires a labor-management agreement pursuant to the Labor Union Act and the Labor Contracts Act. Hence, in a company split, the split company must not make any one-sided, disadvantageous changes to working conditions on the grounds of the company split. Further, any change to working conditions before or after the effective date of the company split concerned requires a labor-management agreement (an agreement under the Labor Union Act [collective agreement] or a labor-management agreement under the Labor Contracts Act), unless such change has resulted from a reasonable change to the rules of employment, which satisfies the requirements of Article 10 of the Labor Contracts Act.

(Reference) Article 10 (Reasonable Change to Rules of Employment) of the Labor Contracts Act

When an Employer changes the working conditions by changing the rules of employment, (i) if the Employer informs the Worker of the changed rules of employment, and (ii) if the change to the rules of employment is reasonable in light of the extent of the disadvantage to be incurred by the Worker, such change to the working conditions is permitted even where it is disadvantageous to the Worker. The reasonableness of (ii) is to be determined by comprehensively taking account of the extent of the disadvantage to be incurred by the Worker, the necessity for changing the working conditions, the appropriateness of the contents of the changed rules of employment, the status of negotiations with a labor union or the like, or any other circumstances pertaining to the change to the rules of employment,.

Q.: In the succession to labor contracts, how should welfare programs such as a company housing leasing system and internal housing finance system be handled?



A.: Welfare programs are to be maintained as working conditions, if their contents constitute rights and obligations between the split company and workers, such as those stipulated in a collective agreement or the rules of employment.

In this case, if it is difficult for the successor company, etc. to succeed to some contents of such welfare programs, the split company should provide relevant information to the workers and strive to reach an adequate solution by endeavoring to obtain the understanding and cooperation of the workers as provided for in Article 7 of the Act, by holding consultations with the workers as provided for in Article 5 of the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc., and/or by discussing alternative measures, etc. with the workers.

(4) Dismissal, etc. on the grounds of a company split

Ordinary dismissal and dismissal for the reason of reorganization are provided for in Article 16 of the Labor Contracts Act, and the legal principle of precedent concerning these types of dismissal has been established. On these bases, companies are not permitted to dismiss a worker solely on the grounds of a

company split.

In addition, in cases where the company system is abused for the purpose of dismissing a specific worker, which include cases where the split company hands over its workers with a business division with no prospect of performing its obligations, and cases where workers are continuously employed for business with no prospect of performing its obligations, the doctrine of so-called piercing the corporate veil or the doctrine of so-called contravention of public policy and morality may be applied. Moreover, it is important to note that any disadvantageous treatment of labor union members may amount to unfair labor practice, against which a relief may be granted to such members.

(Reference) "Prospect of performing obligations"

In accordance with the enactment of the Companies Act and the Ordinance for Enforcement thereof, the subject matter of prior disclosure for a company split include, "matters concerning the prospect of performing obligations." Accordingly, it has been explained that the effect of a company split is not negated, even in the case of no prospect of performing obligations (there are theories against this explanation).

(Reference) Article 16 (Invalidation of Dismissal) of the Labor Contracts Act

If a dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, it is treated as an abuse of rights and invalid.

(Reference) Four requirements (four elements) of dismissal for the reason of reorganization (established by successive court precedents)

- (i) Personnel reorganization is required for a business management reason (necessity of personnel cutbacks)*
- (ii) Sufficient efforts have been made to avoid the dismissal concerned (efforts to avoid dismissal)*
- (iii) The selection of persons to be dismissed is reasonable (reasonableness of personnel selection for dismissal)*
- (iv) Sufficient explanations and consultations have been given to the relevant workers and/or labor union (appropriateness of procedures)*

[The following precedents can be used as reference, although these cases are assignment of business]

- Case of Nihon Gengo Kenkyujyo et al. (Judgment of the Tokyo District Court dated December 10, 2009), in which the succession to an employment relationship was found to have taken place in accordance with the doctrine of piercing the corporate veil (see page 16)*
- Case of Daiichi Koutsu Sangyo et al. (Sano Daiichi Koutsu) (Judgment of the Osaka High Court dated October 26, 2007), in which the court found the parent company to be responsible for the employment relationship concerned in accordance with the doctrine of piercing the corporate veil (see page 16)*
- Case of Shoei Driving School (Ofuna Jidosha Kougyo) (Judgment of the Tokyo High Court dated May 31, 2005), in which the special provision concerning non-succession agreed to individually exclude employees was found to be void for being in violation of Article 90 of the Civil Code, and found only the agreement on succession to be effective (see page 17)*
- Case of Aoyama Kai (Judgment of the Tokyo High Court dated February 27, 2002), in which the transferee company was found to have committed unfair labor practice by refusing to employ a labor union member (see page 17)*
Case of Azuma Jidosha Kotsu for re-examination of unfair labor practices (Order of the Central Labor Relations Commission dated September 16, 2009) (see page 18)



Q.: The profitable division to which I belong has been absorbed into another company, and consequently I will be continuously employed by a business division with no prospect of performing its obligations. There are some overdue wages. Since my current company has no prospect of making payment even if I ask, do I have to give up the unpaid amount?

A.: After the amendment to the Companies Act in 2014 (enforced since May 2015), in the case of such a fraudulent company split (an absorption-type company split implemented with the knowledge that the split company would harm its remaining creditors), workers are entitled to request the successor company to perform the obligations up to the extent of the value of the properties the successor company has succeeded to, only if such workers hold a claim such as unpaid wages, the due date of which has come, for the sake of protecting creditors. (Same applies in the case of an incorporation-type company split.)

(5) Relationship between employment transfer agreement, etc. and legal procedures

(i) Regarding employment transfer agreement

In company split cases, the use of the so-called "employment transfer agreement" method is often observed. According to this method, workers are not subject to a company split and are transferred to the successor company, etc. after their individual consent has been obtained. However, even where a Primarily Engaged Worker is transferred to the successor company, etc. by means of an employment transfer agreement, the split company is not permitted to omit such procedures as statutory notification and consultation with workers pursuant to Article 5 of the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc.

In addition, with regard to Primarily Engaged Workers, it is important to note the following.

- In cases where the split contract, etc. provide that the labor contracts of Primarily Engaged Workers are to be succeeded to by the successor company, etc., working conditions stipulated in the labor contracts executed between the split company and workers will be maintained as are.
- In cases where the split contract, etc. do not provide that the labor contracts of Primarily Engaged Workers are to be succeeded to by the successor company, etc., the split company should explain to them that they may file an objection to the non-succession to their labor contracts.
- In cases where a Primarily Engaged Worker has filed an objection, the working conditions stipulated in the labor contract executed between the split company and worker will be maintained as are. For this reason, the effectiveness of any part of his/her employment transfer agreement contrary to the labor contract will be negated.

[Court Precedents for Reference]

- *Case of Hanshin Bus (Consideration with regard to work / principal action) (Judgment of the Amagasaki Branch of the Kobe District Court dated April 22, 2014), in which the court ruled on the relationship, etc. between employment transfer agreement and legal procedures (see page 18)*

(ii) Regarding secondment

Even where a Primarily Engaged Worker is not subject to a company split, as is the case for employment transfer agreements, if s/he is to be seconded to the successor company, etc. after executing a new labor contract with the successor company, etc. while maintaining his/her labor contract executed with the split company, such procedures as notification and consultations with workers pursuant to Article 5 of the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc. cannot be omitted.

◇ Filing Objection (Overview of Articles 4 & 5)

If a company

- (i) keeps Primarily Engaged Workers in the split company (where the split contract, etc. does not provide for the succession to their labor contracts), or
- (ii) hands over Non-primarily Engaged Workers (workers not primarily engaged in a business subject to succession) to the successor company, etc. (where the split contract, etc. provides for such handover),

these workers may file an objection. The legal effect of filing an objection is to enable the labor contract succession with his/her working conditions unchanged, or enable the worker to remain in the split company.

Filing an objection is stipulated for the protection of workers from detriments caused by being cut off from operations they have been primarily engaged in.

When a worker falling within (i) files an objection to the fact that his/her labor contract is not to be succeeded to, the effect of this objection is that the successor company, etc. will succeed to the labor contract with his/her working conditions unchanged. Further, when a worker falling within (ii) files an objection to the fact that his/her labor contract is to be succeeded to, the effect of this objection is that the worker will remain in the split company with his/her working conditions unchanged.

To file an objection, a worker in (i) or (ii) is required to provide written notice to the contact point for objections designated by the split company.

(1) Subject matters of objection

With regard to subject matters of objection, it is necessary to state the following details in writing.

- In the case of a Primarily Engaged Worker, his/her name and objection to the fact that his/her labor contract is not to be succeeded to
- In the case of a Non-primarily Engaged Worker, his/her name and objection to the fact that his/her labor contract is to be succeeded to

For an objection form, please use the example form at the end of this document as a reference.

(2) Objection deadline date, etc.

The objection deadline date designated by the split company is the date designated by the split company within the period starting from the day following the notice deadline date to the previous day of the date of the shareholder meeting for approval (where approval of the shareholder meeting is not required, or in the case of a company split of a limited liability company, the day designated by the split company within the period until the previous day of the effective date of the company split under an absorption-type company split agreement or an incorporation-type company split plan). When the split company is to set an objection deadline date, it must ensure that there are at least 13 days between the day on which notice is received and the objection deadline date. This is because it is considered necessary for a worker to secure at least two weeks, starting from the day s/he receives notice from the split company, as a period for the worker to consider whether s/he should file an objection.

If an objection is properly filed by the objection deadline date, it takes effect on the day on which the company split concerned takes effect.



Q.: Does a worker receive any disadvantageous treatment on the grounds that s/he has filed an objection?

A.: The filing of an objection is a legal right of workers, which is necessary to prevent them from being cut off from their duties that they have been engaged in so far. Accordingly, companies must not treat any worker in a disadvantageous manner such as dismissal on the grounds that s/he is to file, or has filed, an objection.

◇ Succession to Collective Agreements (Overview of Article 6)

- Given that a labor-management agreement is obtained, it is possible to have the successor company, etc. succeed to part of a collective agreement, which sets forth matters relating to obligations, by stipulating to that effect in the split contract, etc.
- With regard to the normative part of a collective agreement and its part relating to obligations (except its part that has been succeeded to by means of agreement), where the successor company, etc. is to succeed to the labor contracts of labor union members in a company split, the successor company, etc. and the relevant labor union are deemed to have executed a collective agreement containing the same details of the aforesaid parts.

(1) Succession to collective agreements by agreement

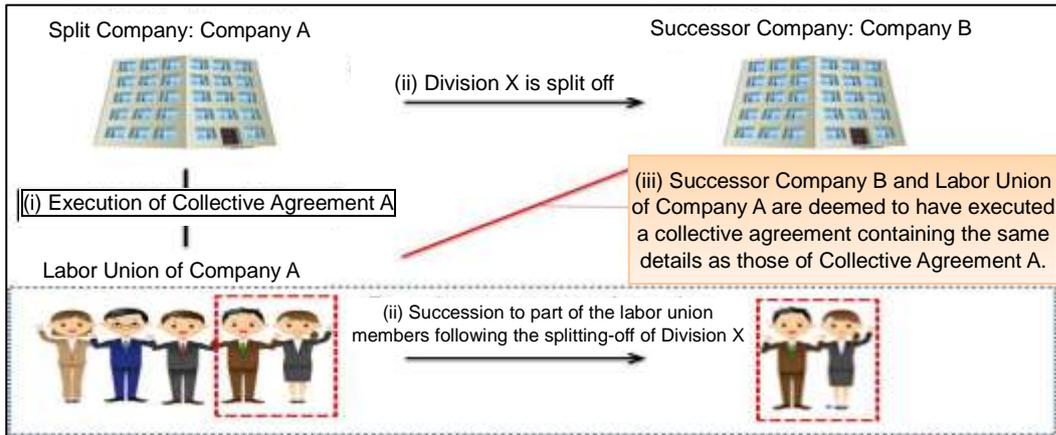
With regard to the part of a collective agreement, which stipulates obligations (e.g. union shop agreement and the provision of convenience to the relevant labor union), if there is an agreement between the split company and the labor union that executed the collective agreement concerned with the split company, it is possible to set which part of the collective agreement is to be succeeded to by the successor company, etc. This is because the part stipulating obligations sets forth the rights and obligations of the split company, which are included in the "rights and obligations" subject to company splits.

Example: "On the basis of a collective agreement setting forth, 'The Company shall lease to the Labor Union a union office of 100 square meters,' the obligation to lease a union office of 40 square meters remains with the Company, and the successor company will succeed to the obligation to lease a union office of the remaining 60 square meters."

(2) Deeming provisions concerning the succession to collective agreements

Among (i) the normative part of a collective agreement (among the provisions of a collective agreement, the part stipulating the working conditions and other treatment of workers) and (ii) the part of that collective agreement relating to obligations, with regard to the part the succession to which is not agreed, the successor company, etc. and the relevant labor union are deemed to have executed a collective agreement containing the same details as such part, if the successor company, etc. is to succeed to the labor contracts of members of the above labor union in a company split. Therefore, this means that the successor company, etc. becomes a party to a collective agreement containing the same details as those of the original collective agreement, and newly assumes rights and obligations between itself and the labor union that executed the original collective agreement with the split company, in line with the main purpose of the rights and obligations set forth in the original collective agreement.

(Illustration) Deeming Provision Concerning the Succession to a Collective Agreement



Q.: In the case of an absorption-type company split, where the successor company has executed a collective agreement with an existing labor union, and if paragraph 3 of Article 6 (Provisions Deeming the Execution of a Collective Agreement Between the Successor Company, etc. and the Labor Union Concerned) of the Act applies, does this mean the successor company has multiple collective agreements?



A.: It is possible that there are two or more labor unions in one company. Further, with regard to the same matter, each labor union may execute a collective agreement containing different contents with the employer. Therefore, naturally, there can be multiple collective agreements existing in one company. Accordingly, in an absorption-type company split, where the provision of paragraph 3 of Article 6 of the Act applies, and where as a result the successor company and labor union are deemed to have executed a collective agreement with the same details as those of the collective agreement executed between the split company and the same labor union, this means that the successor company has executed a different collective agreement from the ones executed between the successor company and other existing labor unions. Consequently, there can be a situation where the working conditions of workers of the same type are different among them, depending on which labor union they belong to.

◇ Endeavor to Obtain the Understanding and Cooperation of Workers (Overview of Article 7)

The split company must endeavor to obtain the understanding and cooperation of its workers in a company split.

In a company split, in order to obtain the understanding and cooperation of workers, it is necessary, in each workplace, to consult with the labor union organized by the majority of workers in the workplace where such a union exists, or with the person representing the majority of workers where such a union does not exist, and/or employ other equivalent means (including consultations, irrespective of the names thereof, which are held on occasions where it is possible to secure faithful consultation on equal footing between management and labor in order to obtain the understanding and cooperation of workers).

Other equivalent means may include, for example, a faithful consultation held as part of a company-wide labor-management council if such a council is organized. Additionally, in a company where a union shop agreement has been executed, a company-wide consultation between the representative of the labor union that executed the union shop agreement and the representative of the company can be considered as such means.

The reason that efforts to achieve the understanding and cooperation of workers were codified in this manner was based on the idea that considering any company split has at least some impact on not only workers engaged in business subject to the split, but also all the workers of the split company, and from the aspect of the protection of workers, it is regarded as desirable that the split company should be required to endeavor to obtain its workers' understanding and cooperation in relation to the split concerned.

Although, for example, in a consultation between the split company and labor union, we do not strictly ask the split company to obtain worker "consent" on subject matters of such consultations, sufficient consultations are still required for the promotion of the mutual understanding between labor and management, and the encouragement of the protection of workers and smooth organization restructuring on the basis of the sufficient understanding and cooperation of both sides.

(1) Matters for which the split company should endeavor to obtain worker understanding and cooperation

Matters for which the split company should endeavor to obtain workers' understanding and cooperation include the following;

- (i) background of and reasons for the company split concerned;
- (ii) matters concerning the prospect of the split company's and the successor company's performance of obligations on and after the effective date of the company split concerned;
- (iii) criteria for judging whether workers are those primarily engaged in a business subject to succession;
- (iv) matters relating to the succession to collective agreements; and
- (v) procedures for resolving problems arising between the split company and its workers in relation to the company split concerned.

In particular, it is necessary for the split company to provide its workers with a proper explanation on (ii) and obtain understanding and cooperation, irrespective of the companies' actual prospects of, or lack of any prospect in performing their obligations. The above matters are just examples. The split company is required to endeavor to seek worker understanding and cooperation with regard to any other matter for which the split company finds such understanding and cooperation necessary.

(2) Right to collective bargaining, etc. under the Labor Union Act

With regard to the subject matters of the collective bargaining prescribed in Article 6 of the Labor Union Act, and associated with the working conditions, etc. of workers in relation to a company split, the split company cannot refuse a lawful request for collective bargaining from a labor union on the grounds that the company has already endeavored to obtain the understanding and cooperation of its workers.

In addition, where a request for collective bargaining is made, the split company is required to negotiate with the relevant labor union in good faith.

In determining which party is the employer that should deal with collective bargaining, "Although a precedent of the Supreme Court held, 'Generally, the employer is the person employing the worker concerned on the basis of his/her labor contract,' it is important to note that there are accumulated precedents holding that a business operator other than the person employing the worker concerned potentially falls within the category of employer 'if, and to the extent that, the business operator is in the position in which it is able to realistically and specifically control and decide the basic working conditions, etc. of the worker concerned to an extent equivalent, albeit partially, to the person employing the worker concerned.' " Although the determination of the employer ultimately depends on each case, please use the following court precedents as reference.

[Court Precedents for Reference with Regard to Which Party is the Employer Who Should Deal with Collective Bargaining]

- *Case of Asahi Broadcasting Corporation (Judgment of the Third Petty Bench of the Supreme Court dated February 28, 1995), which is a judgment of the Supreme Court indicating the framework of determining whether a party is an employer under the Labor Union Act (see page 19)*
- *Case of Morioka Kanzansou Byouin for re-examination of unfair labor practices (Order of the Central Labor Relations Commission dated February 20, 2008), in which a party who could be an employer in the near future was found to be an employer under the Labor Union Act (see page 19)*

(3) Time of commencement, etc.

As part of efforts to obtain the understanding and cooperation of workers, it is necessary to embark on consultations with labor unions, etc. before the commencement of consultations with workers pursuant to Article 5 of the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc. at the latest (e.g. the previous day of the date two weeks prior to the date of the shareholder meeting for approval of the relevant split contract, etc.). Depending on the subject matter of such consultations, it is also necessary to hold consultations thereafter.

(4) Other matters to consider

It is necessary for the split company to take note that there are court precedents and orders of the Central Labour Relations Commission, holding that the successor company, etc. may succeed to liability for unfair labor practice under the Labor Union Act, or to the employer's liability, where such liability arises in relation to the relevant company split.

[Court Precedents, etc. for Reference]

- *Case of Morita, Morita Econos and the Central Labour Relations Commission (Judgment of the Tokyo District Court dated February 27, 2008), in which the court held that following the incorporated company's succession to the labor contracts of labor union members, it succeeded to liability for unfair labor practice attributable to controlling and intervention, and in which the court held that the split company did not lose its status as an employer on the ground of the concerned split. (see page 20)*
- *Case of the State/the Central Labour Relations Commission (Hankyu Travel International) (Judgment of the Tokyo District Court dated December 5, 2013), in which the court held that with the successor company's succession to the split company's dispatch employment relationship following a company split, the successor company was bound to succeed also to the status of being the employer under the Labor Union Act, in association with the dispatch employment relationship between the split company and labor union members (see page 21)*

◇ Consultation with Workers (Overview of Article 5 of the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc.in 2000)

The split company must consult with workers engaged in a business subject to succession on the successor company's succession to their labor contracts.

With the establishment of the company split system by the amendment to the Commercial Code, etc. in 2000, the provision requiring companies to consult with their workers when embarking on a company split

was stipulated. For the protection of workers, the split company is required to follow the procedures concerned in this part, and provide its workers subject to succession with thorough explanations on whether to have the successor company, etc. succeed to their labor contracts or to keep their contracts in the split company. After required explanations and listening to the wishes of such workers, the split company may make a decision in this regard.

(1) Scope of workers subject to consultations

Workers subject to consultations are as follows:

- workers engaged in business subject to succession; and
- workers who are not engaged in business subject to succession but regarding whom the split contract, etc. provides that their labor contracts executed with the split company are to be succeeded to by the successor company, etc.

(2) Subject matters of consultations

It is necessary for the split company to sufficiently explain the matters in the following (i) to (iii) to workers and then consult with them on (iv) and (v) below upon listening to their wishes. In particular, it is necessary for the split company to provide its workers with an explanation on (ii), irrespective of the companies' actual prospects of, or their lack of any prospect of, performing obligations. The above matters are just examples. The split company is required to hold consultations with relevant workers on any other matter in relation to which the split company finds such consultation necessary.

[Matters Requiring Thorough Explanations]

- (i) Overview of the company the worker concerned is to work for after the effective date of the company split
- (ii) Matters concerning the prospect of the split company's and the successor company, etc. performance of obligations on and after the effective date of the company split concerned
- (iii) Manner of considering whether or not the worker is primarily engaged in a business subject to succession etc.

[Subject Matters of Consultation After Listening to Workers' Wishes]

- (iv) After listening to his/her wishes, whether the labor contract of the worker concerned is to be succeeded to by the successor company, etc.
- (v) Planned operations, workplace and other employment details of the worker concerned if his/her labor contract is succeeded to or if it is not succeeded to by the successor company, etc. etc.

Additionally, in the case of a split of a group of rights and obligations not amounting to "business," and among workers the succession of whose labor contracts is not provided for in the split contract, etc., those workers whose duties are potentially affected by the split of rights and obligations should desirably be provided with, when actually affected, some information such as explanations on the situation, aside from efforts to obtain workers' understanding and cooperation as provided for in Article 7 of the Act. For instance, where, among multiple real properties owned by the property management department of Company A, Land B is to be sold due to a company split, the operations of maintaining and managing Land B will no longer exist as part of the duties of the worker in charge of managing such real properties. Accordingly, it is desirable that the worker should be informed to that effect through the provision of relevant information.

(2) Consultation agent selection / Relationship with the right to collective bargaining under the Labor Union Act

With regard to consultations, workers subject to consultation may select a labor union as an agent for

such consultations in whole or part, pursuant to the provisions of the Civil Code (Section III Agency, Chapter 5, Part I of the Civil Code). In this case, the split company is required to hold consultations with such labor union in good faith. Since the representation of both sides is prohibited under the Civil Code, an agent of the split company is not permitted to act as an agent of workers. Further, a person in a managerial or supervisory position at the split company may not be selected as an agent.

With regard to the subject matter of the collective bargaining prescribed in Article 6 of the Labor Union Act, and associated with the working conditions, etc. of workers in relation to a company split, the split company cannot refuse a lawful request for collective bargaining from a labor union on the grounds that the company has engaged in consultations on such working conditions, etc. In addition, where a request for collective bargaining is made, the split company is required to negotiate with the relevant labor union in good faith.

(4) Time of consultation commencement

When starting consultations, the split company is supposed to leave plenty of time to ensure sufficient consultation before the notice deadline date. This means that it is necessary for the split company to secure some time to thoroughly explain the subject matters of consultations to workers subject to succession and, upon listening to their wishes, to sufficiently consult with them on whether to have the successor company, etc. succeed to their labor contracts.

(5) Violation of obligation of consultations leading to the nullity of a company split

A company split implemented may be nullified, if no consultations were held in advance, or in a situation substantially similar to the case of no consultations. Further, in accordance with a precedent of the Supreme Court (case of IBM Japan), in cases where it is clearly contrary to the objective of the Act requiring consultations concerned since such consultations are not held at all or held remarkably insufficiently, Primarily Engaged Workers may individually dispute the effectiveness of the relevant succession to their labor contracts.

To avoid such situations, the split company is required to appropriately hold consultations with workers.

[Court Precedents for Reference]

Case of IBM Japan (Judgment of the Supreme Court dated July 12, 2010) (see page 21)

(Reference) Procedures and Rights Relating to Individual Workers in Company Splits

	Non-primarily Engaged Workers					
	Primarily Engaged Workers		Secondarily Engaged Workers		Non-engaged Workers	
	Provisions on Succession Yes	Provisions on Succession No	Provisions on Succession Yes	Provisions on Succession No	Provisions on Succession Yes	Provisions on Succession No
Article 5 Consultation	○	○	○	○	○	×
Notice	○	○	○	×	○	×
Filing Objection	×	○	○	×	○	×

(Reference) Differences between "Endeavor to Obtain the Understanding and Cooperation of Workers" and "Consultation with Workers"

	Endeavor to Obtain the Understanding and Cooperation of Workers	Consultation with Workers
Legal Basis	Article 7 of the Act	Paragraph 1 of Article 5 of the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc.
Time of Implementation	Commence before the start of the consultation on the right	Commence before the day on which the notice under paragraph 1 of Article 2 of the Act should be given
Subject Worker	Workers employed by the split company	<ul style="list-style-type: none"> - Workers engaged in business subject to succession - Workers who are not engaged in business subject to succession but regarding whom the split contract, etc. provides that their labor contracts are subject to succession
Subject Matters of Consultation, etc.	<ul style="list-style-type: none"> (i) Background of, and reasons for the company split concerned (ii) Matters concerning the prospect of the split company and the successor company, etc. performance of obligations (iii) Criteria for judging whether workers are those primarily engaged in a business subject to succession (iv) Matters relating to the succession to collective agreements (v) Procedures for resolving problems arising between the split company and its workers in relation to the company split concerned etc, 	<ul style="list-style-type: none"> o Matters requiring thorough explanations <ul style="list-style-type: none"> (i) Overview of the company the worker is to work for on and after the effective date of the company split (ii) Matters concerning the prospect of the split company and the successor company, etc. performance of obligations on and after the effective date of the company split concerned (iii) Manner of considering whether or not the worker is primarily engaged in a business subject to succession etc. o Subject matters of consultation after listening to worker wishes <ul style="list-style-type: none"> (iv) Whether there is any succession to worker labor contract (v) Planned operations, workplace and other employment details of the worker if his/her labor contract is succeeded to or if it is not succeeded to by the successor company, etc. <p>etc.</p>
Consultation Procedures	<p>In all workplaces,</p> <ul style="list-style-type: none"> - Consult with the labor union organized by the majority of workers in the workplace - Consult with the person representing the majority of workers (if no labor union organized by the majority of workers exists) <p><i>* Other equivalent means (including consultations, irrespective of names thereof, which are held on occasions where it is possible to secure faithful consultation on equal footing between management and labor, in order to obtain understanding and cooperation of workers)</i></p>	<p>Depend on consultations with each worker. However, where the worker has selected a labor union as his/her agent, the split company is obliged to negotiate with the labor union in good faith.</p>

◇ Guidelines (Overview of Article 8)

The Minister of Health, Labour and Welfare set out guidelines for the promotion of proper implementation of the Act.

The guidelines were formulated to clarify the details prescribed in the Act and to contribute to materializing the protection of workers in company splits through ensuring proper implementation of the Act.

Among all the matters stipulated in the guidelines, their main details are described in this pamphlet.

Main Court Precedents and Orders

► Case in which the succession to an employment relationship was found to have taken place in accordance with the doctrine of piercing the corporate veil [assignment of business]

◇ **Case of Nihon Gengo Kenkyujyo et al. (Judgment of the Tokyo District Court dated December 10, 2009)**

[Overview of Case]

- Because Company X, by which Worker A had once been employed, went bankrupt, it became impossible to confirm Worker A's status in relation to the employment contract between Company X and Worker A, and to obtain the final and binding judgment against Company X on the payment of unpaid wages, etc. Worker A claimed that Company X had abused its legal personality by effectively bankrupting itself for the purpose of escaping from its obligations such as unpaid wages to A and other creditors, and by assigning a large part of its business, etc. to Company Y1 and Company Y2 whose management statuses were very much identical to that of Company X. Accordingly, on the basis of the doctrine of piercing the corporate veil, Worker A brought a case against Company Y1, seeking the confirmation of Worker A's status as having rights under Worker A's employment contract.

[Outline of Judgment]

- Originally, Company Y1 and Company Y2 were business divisions of Company X (Omitted). B (Company X's representative director) should be considered to have been in the position in which B was able to control Company X, Company Y1 and Company Y2 as B pleased.

Further, (omitted) Company X (omitted) transferred all of its business rights to Company Y1 and Company Y2, and consequently went bankrupt without paying a large amount of accumulated wages and obligations. Company Y1 and Company Y2 continued substantially the same businesses as those that Company X had previously engaged in. In light of these facts, it is proper to conclude that Company X had Company Y1 and Company Y2 succeed to all of its business rights, and willingly bankrupted itself for the purpose of escaping from a large amount of financial obligations such as unpaid wages, which Company X owed to Worker A and other creditors. Therefore, Company X's bankruptcy and handover of its business rights to Company Y1 and Company Y2 should be treated as an abuse of the company system, aiming to deviate from its obligations to Worker A and other creditors.

On this basis, in accordance with the doctrine of piercing the corporate veil, Company Y1 was not allowed to assert, against Worker A, that it had a different legal personality from that of Company X, since such assertion was contrary to good faith principles. Consequently, Company Y1 was held responsible, together with Company X, to Worker A for complying with the order issued as part of the judgment in the previous action.

► Case in which the court found that the parent company was responsible for employment relationships in accordance with the doctrine of piercing the corporate veil [assignment of business]

◇ **Case of Daiichi Koutsu Sangyo et al. (Sano Daiichi Koutsu) (Judgment of the Osaka High Court dated October 26, 2007)**

[Overview of Case]

- Company X, which had been running a taxi business, was dissolved by the resolution at a shareholder meeting. Worker A and others, who were employees of Company X, brought an action claiming the following in relation to the dissolution of Company X, and the dismissal of Worker A and others, who were labor union members, on the basis of the dissolution:
 - (i) Asserting that the dissolution and dismissal arranged by Company Z, which was the parent company of Company X (holding all the shares of Company X and Company Y), were unfair labor practices aiming to wipe out the labor union, and claiming, against Company Z, the confirmation of Worker A's and other's statuses as having rights under their labor contracts on the basis of the doctrine of piercing the corporate veil; and
 - (ii) Asserting that Company Y, which had been running a taxi business in the same business area as that of Company X, succeeded to Company X's business under the instruction of Company Z, and claiming, against Company Y, the confirmation of Worker A's and other's statuses as having rights under their labor contracts on

the basis of the doctrine of piercing the corporate veil.

- The court of first instance (Sakai Branch of the Osaka District Court) found that the dissolution was false since Company Z had dissolved Company X by illegally abusing the legal personality of the latter for the purpose of driving out the labor union, and since Company Y continued the same business as that of Company X. On this basis, the court found that Company Y could be held responsible under the employment contracts since it continued the same business as that of Company X, and its legal personality had not become a dead letter, whereas it was not possible to hold Company Z responsible under the employment contracts. Worker A and others, as well as Company Z and Company Y, objected to this ruling, and both sides appealed to the court of second instance.

[Outline of Judgment]

- In this case, although the legal personality of Company X did not completely become a dead letter, the resolution for dissolution of Company X, a subsidiary company, was found to be adopted in the situation where it was under substantial and actual control of Company X, the parent company, and for the illegal and unjust purpose of eliminating the labor union. In addition, it was sufficient to hold that the dissolution of Company X was not true but false. Accordingly, since the degree of abuse of the legal personality by Company Z, the parent company, was remarkable and clear, Worker A and others, who were union members, were entitled to hold Company Z continuously and comprehensively responsible under their employment contracts, even after the dissolution of Company X.

► **Case in which the court found that the special provision concerning non-succession agreed to individually exclude employees was found to be void as it was in violation of Article 90 of the Civil Code, and only the agreement on succession was found to be valid [assignment of business]**

◇ **Case of Shoei Driving School (Ofuna Jidosha Kougyo) (Judgment of the Tokyo High Court dated May 31, 2005)**

[Overview of Case]

- Company X executed a contract with Company Y, under which the whole business of Company X was to be transferred to Company Y. On the same day, the assignment of business was approved by Company X's shareholder meeting, and a resolution for the dissolution of Company X was adopted. Article 4 of the contract provided that despite the fact that Company Y was not to succeed to the employment of Company X's employees, Company Y was to newly employ those employees of Company X who wished to be re-employed by Company Y, and about whom Company X notified Company Y.

Further, Company X and Company Y had agreed on the following matters by the time of execution of the assignment of business contract: (i) the position of Company X with regard to the labor contracts with its employees was to be transferred to Company Y; (ii) the companies were to individually exclude, from the aforesaid transfer, those of Company X's employees who objected to their working conditions such as wages being revised and lowered to a level substantially below the level offered by Company X; and (iii) as the means to achieve this objective, all the employees of Company X were to be required to submit a notice of resignation, Company Y was to re-employ those employees who submitted such notice, and Company X was to dismiss, on the ground of company dissolution, those who did not submit such notice.

Employee A and others who had not submitted a notice of resignation were dismissed by Company X on the grounds of dissolution, and were not re-employed by Company Y. On this basis, Employee A and others brought an action, claiming the confirmation of their status of having rights under their labor contracts with Company Y.

- The court of first instance (the Yokohama District Court) found that (ii) and (iii) of the aforesaid agreement were in violation of Article 90 of the Civil Code, and that only (i) was valid, thus finding Company Y's succession to the employment. Not willing to accept this ruling, Company Y appealed to the court of second instance.

[Outline of Judgment]

- The reason for the dismissal was stated to be the company dissolution. In fact, however, it aimed to individually eliminate employees who objected to the fact that the level of their working conditions such as wages was to be revised and consequently, the level in Company Y was to be substantially below that offered by Company X. Since the dismissal lacked any objectively reasonable grounds and might not be accepted in the light of common sense, it was void as a case of abuse of the right to dismiss.

- (ii) and (iii) of the aforesaid agreement were void for being in violation of Article 90 of the Civil Code. Article 4 of the assignment of business contract concerned, which coincided with the objective of the above agreement was also void for being in violation of Article 90 of the Civil Code.

Therefore, in relation to the above agreement, only the part that set down the principle that Company X's position with regard to its labor contracts with its employees (omitted) was to be transferred to Company Y was to remain valid.

- In accordance with the part that set down the principle of the above agreement, and with regard to the relationship between Company Y and Employee A and others whose dismissals were found to be void, and thus who had retrospectively been employees of Company X at the time of the dissolution, Company Y was treated as having retrospectively succeeded to the position of being party to the labor contracts concerned from the day on which the assignment of business contract came into force.

► Cases in which the court found that the transferee company, etc. refusal to employ labor union members was unfair labor practice [assignment of business]

◇ Case of Aoyama Kai (Judgment of the Tokyo High Court dated February 27, 2002)

[Overview of Case]

- Hospital x run by Medical Corporation X was closed, and subsequently Medical Corporation Y took over the facilities and operations of Hospital x, and opened Hospital y. In so doing, two labor union members, A1 and A2 (an assistant nurse and practical nurse), who had been working for Hospital x, were not hired by Hospital y. The competent District Labour Relations Commission found that this refusal to employ A1 and A2 was unfair labor under the Labor Union Act, and issued an order for relief that required Hospital Y to employ the two union members. Later, the Central Labour Relations Commission dismissed an application for re-examination. Consequently, Y filed an action for rescission of the order of dismissal.
- The court of first instance (the Tokyo District Court) dismissed the action, finding no illegality in the order of the Central Labour Relations Commission and thus no ground for Y's claim. Objecting to this judgment, Y appealed to the court of second instance.

[Outline of Judgment]

- The transfer concerned in this case was understood to be arranged for the business of hospital management, and Y was understood to have taken over X's business through receiving the transfer of X's properties that were to function as an organized and integral part of the business. On this basis, the transfer was analogous to assignment of business under the Commercial Code.
- In the case of assignment of business, whether the transferee succeeds to the employment relationship between the transferor and its employees may be, in principle, determined by agreement between the parties to the relationship at their discretion. However, despite the principle of the freedom of contract, some contractual details are naturally inadmissible in light of the legal order of this country.
- Looking at the employment status at Hospital y, except A1 and A2, all other staff members of Hospital x who were willing to be employed by Hospital y, particularly the staff of the nursing department accounting for a large proportion of the personnel at Hospital x, received an interview for employment. Among such staff members, all those who made a request for employment and agreed on their working conditions such as wages were accepted. On this basis, the actual employment that took place was not fresh hiring, but rather equivalent to succession to the employment relationship.
- Under the contract between X and Y, it was agreed to be Y's sole prerogative to decide whether to succeed to X's position in relation to employment contracts with staff members, and whether to employ such staff members. Notwithstanding this, it is inferred from the actual situation of Y's employment that the aforesaid agreement primarily aimed to exclude the labor union as well as A1 and A2 as a result of a dislike towards them. Accordingly, it is proper to construe the agreement based on such purpose as a means to circumvent the application of the provisions of the Labor Union Act. For this reason, the refusal to employ A1 and A2 was equal to their dismissal led by Y's longstanding dislike of labor union activities, amounting to a case of disadvantageous treatment and thus unfair labor practice.

◇ **Case of Azuma Jidosha Kotsu for re-examination of unfair labor practice(Order of the Central Labor Relations Commission dated September 16, 2009)**

[Overview of Case]

- After the dissolution of Company X, its union members were dismissed. Further, succeeding to part of Company X's business, Company Y employed Company X's employees with the only exception being union members. On the basis of an allegation that Company Y's refusal to employ union members amounted to unfair labor practice, an action was brought for relief.
- Finding that Company X's dissolution and dismissal of the union members amounted to a false dissolution and thus unfair labor practice, the court of first instance granted an order for relief, which required Company Y, which had succeeded to Company X's liability, to treat the union members as if their dismissal had not occurred. Objecting to this order, Y filed an application for re-examination.

[Outline of Order]

- Both Company X and Company Y were operated substantially as one management body under the strong control and influence of President A (representative director of both companies) long before the dissolution of Company X. (Omitted) The fact that Company X dismissed all of its employees and that Company Y employed all of these employees with the only exception being union members can only be explained that the two companies as one management body excluded the labor union and its members by exploiting the plan to have Company Y effectively succeed to part of Company X's business, and to consolidate the business operations of both companies into Company Y in actuality, on the basis of President A's dislike of the labor union.
Therefore, the dismissal and refusal to employ in the present case by means of the two companies' dissolution and partial business succession amounted to unfair labor practice.

▶ **Case in which the court ruled on the relationship, etc. between employment transfer agreement and legal procedures [company split]**

◇ **Case of Hanshin Bus (Consideration with regard to work/principal action) (Judgment of the Amagasaki Branch of the Kobe District Court dated April 22, 2014)**

[Overview of Case]

- Worker A, who was a bus driver working for Company X, had difficulty with defecation and urination. Company X made consideration of Worker A's physical conditions in terms of shift work. However, after Worker A was transferred to Company Y (successor company), that had succeeded to Company X's bus business in a company split (absorption-type company split), Worker A was no longer able to receive such consideration as Worker A had received previously. Asserting that this situation was in contravention of public policy and morality, Worker A brought an action against Company Y, seeking to confirm Worker A's status that Worker A was not required to work in any manner other than on the previous work shift arranged for Worker A.
Although Worker A had executed a labor contract (Labor Contract 1) with Company X, a new labor contract (Labor Contract 2) was made when Worker A was transferred to Company Y due to the company split concerned.

[Outline of Judgment]

- It is proper to find that there was an implied agreement that Labor Contract 1 included a working condition that special consideration was to be given to the work shift of Worker A for the reason of Worker A's defecation disorder, etc.
- Procedures that Company X implemented with regard to its company split did not provide Worker A, who was mainly engaged in the passenger transportation business subject to Company Y's succession, (omitted) with any option that was to require Company Y to succeed to the previous labor contract executed between Worker A and Company X without any change, or with any explanation that such option was available.
Under the relevant split contract, Company Y was not to succeed to any labor contracts executed between Company X and workers mainly engaged in its passenger transportation business. However, Company X failed to follow the notice procedure prescribed in paragraph 1 of Article 2 of the Labor Contract Succession Act, and thus failed to inform Worker A of an opportunity to raise an objection pursuant to paragraph 1 of Article 4 of the same Act with regard to the fact that Company Y would not succeed to Labor Contract 1.
There is no exception prescribed for the provision on the obligation of notification in the Labor Contract Succession Act (paragraph 1 of Article 2 of the same Act). For this reason, the above provision cannot be construed

as automatically allowing the omission of the above notification procedure, etc. even where a worker consents to his/her employment transfer. Moreover, under the aforementioned procedures implemented by Company X in relation to the company split concerned, (omitted) Company X did not explain to Worker A at all about the fact that Company Y could be required to succeed to Labor Contract 1 as it was. Subsequently, Company X individually obtained the transfer consent of Worker A for form's sake, preventing Worker A from realizing benefits of Company Y's succession, and omitted the notification procedure prescribed in the aforesaid Act, which is a precondition for the filing of an objection. This means that Company X unilaterally deprived Worker A of the benefit that Company Y would succeed to Labor Contract 1 without any change, which is a benefit fundamentally guaranteed by the same Act in the case of a company split.

On this basis, (omitted) Company X transferred Worker A to Company Y by having Worker A submit the relevant written consent and agree between them to terminate Labor Contract 1 to retire him/her from Company X, and then by having Worker A execute Labor Contract 2 with Company Y. It is inevitably evident that this procedure unilaterally deprived Worker A of the benefit, guaranteed by the Act concerned, that Company Y would succeed to Labor Contract 1 without any change, and aimed to circumvent the objective of the aforesaid Act. Therefore, it is proper to find that the agreement to terminate Labor Contract 1 was in contravention of public policy and morality, and consequently void, as was the Labor Contract 2.

- In the case where the notice prescribed in paragraph 1 of Article 2 of the Succession Act has not been given, and as a result the opportunity to raise a lawful objection is lost, the relevant worker should be able to claim to have the same effect as s/he would if s/he had been able to raise such lawful objection. Therefore, Labor Contract 1 executed between Worker A and Company X should be treated as having been succeeded to by Company Y, the successor company, without any change, as would be the case if Worker A had lawfully raised an objection as prescribed in the aforesaid paragraph (paragraph 4 of Article 4 of the same Act).
- It is proper that the detrimental change to the working conditions taking account of the physical conditions on the basis of the aforementioned consent is construed as in contravention of public policy and morality, and consequently void. Therefore, the agreement with regard to the consideration to the physical conditions on the basis of Labor Contract 1 was not changed by the above consent of Worker A.

▶ **Precedents concerning which party is the employer that should deal with collective bargaining**

◇ **Case of Asahi Broadcasting Corporation (Judgment of the Third Petty Bench of the Supreme Court dated February 28, 1995)**

[Overview of Case]

In this case, an application was filed against a company engaging in a television broadcasting business (appellee) on the basis that this company refused to participate in a collective bargaining session called for by a labor union with regard to matters associated with contractors' workers for the reason that the company did not consider itself as their employer, and on the basis that a recommendation for withdrawal from the labor union made to union members by the management of the company amounted to unfair labor practice. After an application for re-examination was filed by the company in response to a partial relief order issued as a result of the first examination, the Central Labor Relations Commission partially modified the same order and ordered the company to participate in a collective bargaining session with regard to working conditions. Objecting to this order, the company brought an action to the Tokyo District Court. Since this action was dismissed, the Company further appealed to the court of second instance. The Tokyo High Court delivered a judgment rescinding the judgment in prior instance and the order of the Central Labor Relations Commission. In response to this judgment, the Central Labor Relations Commission filed a final appeal to the Supreme Court.

[Outline of Judgment]

As independent enterprising bodies separate from the appellee, the three contractor companies concerned in this case dispatched their employees to the appellee and had them engage in operations in accordance with the service contracts between the appellee and the three contractor companies with regard to television program production operations. From the beginning, the appellee did not fall under the category of employer in relation to its relationship with the contractor companies' employees. However, the appellee generally managed the operations that employees dispatched by the three contractor companies engaged in, and thus was in the position in which the appellee was able to control and decide the basic working conditions of the dispatched employees to

an equivalent extent, albeit partially, to the three contractor companies that were their actual employers. Only to this extent, it is proper to find that the appellee fell under the category of "employer" under Article 7 of the Labor Union Act, and that it should not be able to refuse, without just cause, to participate in a collective bargaining session as long as such collective bargaining was associated with the working time allocation, form of labor provision, work environment, etc. that the appellee was able to decide by itself. Therefore, the refusal to participate in the relevant collective bargaining on the basis that the appellee was not the employer lacked a just cause, amounting to unfair labor practice under item (ii) of Article 7 of the Labor Union Act.

◇ Case of Morioka Kanzansou Byouin seeking re-examination of unfair labor practice (Order of the Central Labor Relations Commission dated February 20, 2008)

[Overview of Case]

- Following the death of X, the founder of the private hospital concerned in this case (the former hospital), Y (who worked for the former hospital as a part-time doctor) obtained the assets of the former hospital from the heir of the founder through an auction arranged by a court of law, took over the hospital management, and opened a new hospital with the same name as that of the former hospital. An application for relief was made against Y on the basis that Y committed unfair labor practices when refusing to participate in a collective bargaining session which was associated with hiring issues, and was requested by the labor union organized by the employees of the former hospital, on the grounds that Y was not in an employment relationship with the labor union members.
- In the first examination, the refusal to participate in the collective bargaining was found to be an unfair labor practice since it lacked any legitimacy. Y filed an application for re-examination, objecting to the finding.

[Outline of Order]

- At the time of the request for collective bargaining (note: collective bargaining before the establishment of the new hospital, pertaining to the working conditions of employees of the new hospital), Y was scheduled to be the employer of employees of the new hospital under their labor contracts 15 days after the request was made, and thus there was a high probability that employees of the former hospital, including union members, were to be continuously employed by the new hospital. On this basis, it was realistically and specifically possible that Y was going to continuously employ union members in the near future, and thus it was possible to regard Y as the employer under the labor contracts concerned at the time of the request for collective bargaining.

Therefore, Y fell within the category of "employer" under item (ii) of Article 7 of the Labor Union Act, meaning Y was the person responsible for accepting the request concerned.

- Although the establishment of the new hospital by Y appeared as a new establishment, the nature of it could be considered as a succession to the business of the former hospital. Further, in the processes of handover of the business concerned from the former hospital to the new hospital, the series of activities from deciding employment policies to specific hiring decisions, which Y took the initiative in implementing, was to select whom Y was going to continuously employ as employees of the new hospital and whom Y was to dismiss by using the establishment of the new hospital as an opportunity to do so. With the application of item (ii) of Article 7 of the Labor Union Act, it is not proper to consider the refusal to employ in this case to be equivalent to the refusal to hire new employees following the establishment of the new hospital; substantially, it should be seen as equivalent to dismissal by Y.

A request for collective bargaining (note: collective bargaining at the stage of the establishment of the new hospital) was, in its appearance, to request Y to employ all persons willing to be employed. However, as shown above, its substantial nature was to request a collective bargaining session to challenge Y's refusal to employ, which should be considered to be the same as dismissal in essence. Therefore, Y should be treated as the employer under the relevant labor contracts, in relation to the subject matter of the above collective bargaining requested, and fell under the category of "employee" provided for in item (ii) of Article 7 of the Labor Union Act.

▶ Precedents concerning the employer under the Labor Union Act / the succession to liability for unfair labor practice

◇ Case of Morita, Morita Econos and the Central Labour Relations Commission (Judgment of the Tokyo District Court dated February 27, 2008) [company split]

[Overview of Case]

- Company X was split into Company X1 and Company Y, a newly incorporated company (an incorporation-type company split). Following this company split, the members of Labor Union Branch A were transferred to Company

Y.

- In this regard, on the basis that (i) Company X refused to lease an office, etc. to Labor Union Branch A, which was newly established, despite the fact Company X had previously leased an office, etc. to another labor union, and that (ii) the fact that Company X had not participated in a collective bargaining session concerning the company split amounted to unfair labor practice under the Labor Union Act, the competent Prefectural Labour Office issued a relief order requiring Company Y to lease an office, etc. to Labor Union A. Since the Central Labour Relations Commission upheld the order, Company X1 and Company Y brought an action, seeking to rescind the order.

[Outline of Judgment]

- With regard to control and intervention (different treatment from the one for another labor union in relation to the leasing of an office, etc.)
 - (i) Due to the company split concerned, the members of Labor Contract Branch A, who had been employees of Company X, became those of Company Y. Accordingly, the employment contract relationship of the members of Labor Union Branch A with Company X should be treated as having been succeeded to by Company Y. On this basis, Company Y should be treated as having succeeded to Company X's liability for unfair labor practice arising from Company X's control and intervention.
 - (ii) An employment contract relationship, on which the nature of an employer under the Labor Union Act is based, does not necessarily mean an actual employment contract relationship; it is also proper to construe the existence of an employment contract relationship in near past as an element constituting a basis of the nature of an employer under the same Act. (Omitted) Company X1 did not lose its status of being the employer in relation to its relationship with the members of Labor Union Branch A on the grounds of changes in its legal relationship made by the company split concerned.
- Collective bargaining not in good faith with regard to the company split
 - As shown above, Company X1 did not lose its status of being the employer in relation to its relationship with the members of Labor Union Branch A on the grounds of changes in its legal relationship made by the company split concerned.

**◇ Case of the State/the Central Labour Relations Commission (Hankyu Travel International)
(Judgment of the Tokyo District Court dated December 5, 2013) [company split]**

[Overview of Case]

- Company X implemented a company split by having Company Y, the successor company, succeed to the former's travel business (absorption-type company split). Prior to the company split concerned, Company X refused a request for collective bargaining pertaining to the management of working hours of the dispatched workers (dispatched tour conductors) for the business concerned.
- The competent Prefectural Labour Office issued a relief order on the basis of its finding that the refusal of the collective bargaining with respect to the management of working hours amounted to unfair labor practice under the Labor Union Act, and that Company Y succeeded to the liability for that unfair labor practice. After the Central Labour Relations Commission rejected an application for re-examination, Company Y brought an action, seeking the rescission of the order.

[Outline of Judgment]

- In relation to the subject matters of the collective bargaining requested, Company X was the employer under Article 7 of the Labor Union Act in association with its relationship with the labor union to which the dispatched tour conductors belonged. Following the absorption-type company split concerned, Company Y succeeded to rights and obligations relating to Company X's travel business, and should be considered to have succeeded to Company X's dispatch employment relationship with the labor union members since such relationship was incidental to the status of being one of the parties to the worker dispatch contract between the dispatching company and Company X. Accordingly, it is proper to conclude that Company Y succeeded, from Company X, to the status as the employer under Article 7 of the Labor Union Act in relation to the management of working hours, since such status was incidental to the dispatch employment relationship with the labor union members.

► **Case indicating the legal significance of consultations, etc. with workers**

◇ **Case of IBM Japan [company split] (Judgment of the Supreme Court dated July 12, 2010)**

[Overview of Case]

- Company X (split company) founded Company Y (newly incorporated company) by means of an incorporation-type company split. Worker A and others, who had been supposed to be handed over to Company Y as workers to primarily engage in relevant business, asserted that Company Y did not succeed to their labor contracts due to a defect in the succession procedure, and that the company split amounted to an act of tort committed against Worker A and others. On this basis, Worker A and others brought a claim against Company X for confirming their status under their labor contracts and for damages.
- In the first instance and second instance, their claim and appeal were dismissed. Subsequently, they appealed to the Supreme Court.

[Outline of Judgment]

- It is a proper construction that if Article 5 consultations (consultations with workers in relation to labor contract succession, as provided for in paragraph 1 of Article 5 of the Supplementary Provisions of the Act for Partial Revision of the Commercial Code, etc. in 2000) have not been held at all in relation to specific workers, these workers may dispute the effectiveness of the labor contract succession concerned under Article 3 of the Succession Act.

Further, even in a case where Article 5 consultations have been held, if it is clearly contrary to the objective of the Article 5 consultation requirement prescribed in the Act for the reason that explanations from the split company and/or the contents of the consultations are remarkably insufficient, the split company may be judged as in violation of the obligation of the Article 5 consultation requirement, and the relevant worker should be entitled to dispute the effectiveness of the successor's succession to his/her labor contract under Article 3 of the Succession Act.

- Meanwhile, as a measure corresponding to Article 7, the split company is required to endeavor to obtain understanding and cooperation of its workers in the case of a company split (Article 7 of the Succession Act). However, any violation of this Article does not itself cause a change in the effectiveness of labor contract succession. Only under exceptional circumstances such as where Article 5 consultations lack substance due to the fact that sufficient information has not been provided in implementing Article 7 measures, the implementation of any Article 7 measure comes to play a role as a circumstance to be taken into consideration in determining whether there is a violation of the obligation of the Article 5 consultations.
- The details, etc. that the split company should explain in the implementation of Article 7 measures and in Article 5 consultations are set forth in the "Guidelines on the Promotion of Appropriate Implementation of Measures that the Split Company, the Successor Company, etc. Should Take Concerning the Succession to Labor Contracts and Collective Agreements Executed by the Split Company." (Omitted) as explained above, the provisions of the Guidelines are basically reasonable. For this reason, whether Article 7 measures and Article 5 consultations have been implemented in line with the Guidelines should be sufficiently taken into account when determining whether such measures and consultations satisfy the objective of the Act in an individual case.
- In the case before the court, (omitted) Article 7 measures implemented were not considered insufficient. (Omitted) Article 5 consultations were not insufficient, either. On this basis, the court did not agree that the effectiveness of the succession to Worker A and other labor contracts should be denied. Further, the court did not find that an act of tort was established on the basis of an insufficient Article 5 consultation, etc.

[Example Form 1] Notice to Workers (for an absorption-type company split)

MMM DD, YYYY

Notice Concerning Labor Contract Succession in Company Split

Dear Mr./Ms. XXXX:

XXXX Co., Ltd.

XXXX, Manager of Personnel Affairs Department

Our company has decided to embark on a company split and has accordingly executed an absorption-type company split agreement with ZZZZ Co. Ltd., under which our company is the company splitting in this absorption-type split, and ZZZZ Co., Ltd. is the company succeeding in the split (hereinafter referred to as, "successor company"). We are hereby notifying you of the following details pertaining to the company split concerned pursuant to the provision of paragraph 1 of Article 2 of the Act on the Succession to Labor Contracts upon Company Split (hereinafter referred to as, the "Act").

Details

Matters under item (iii) of Article 1 of the Ordinance for Enforcement

1. Overview of the business that is to be succeeded to by the successor company
Businesses associated with XXXX department of our company

Matters under item (iv) of Article 1 of the Ordinance for Enforcement

2. Trade names, addresses, business details, and numbers of workers to be employed on and after the effective date of the company split (hereinafter referred to as, "effective date")

	Our Company	Successor Company
Trade Name	XXXX Co., Ltd.	ZZZZ Co., Ltd.
Address	XX-XX-XX, XX, XX-ku, Tokyo	XX-XX-XX, XX, XX-ku, Tokyo
Business Details	Business related to XX, business related to XX, and business related to XX etc.	Business related to XX, business related to XX, and business related to XX etc.
No. of Workers to Be Employed	XX workers	XX workers

(As of MMM DD, YYYY)

Matters under item (v) of Article 1 of the Ordinance for Enforcement

3. Effective date
MMM DD, YYYY

For the number of workers to be employed, enter the total number of workers (not limited to regular employees but including part-time workers and newly employed workers) who are scheduled to be employed on and after the effective date.

Matters under item (vii) of Article 1 of the Ordinance for Enforcement

4. Matters concerning the prospect of performance of obligations on and after the effective date
Our company and the successor company have no issue with regard to their performance of obligations on and after the effective date.

In addition, you may consider stating, for example, the summary of matters which are related to the prospect of performance of obligations and are subject to prior disclosure in accordance with the provisions of the Companies Act.

Matters under the main body of paragraph 1 of Article 2 of the Act

5. Any provision on the succession to labor contracts in the absorption-type company split agreement
The absorption-type company split agreement executed between our company and the successor company does/does not provide that the successor company is to succeed to your labor contract.

Matters under item (ii) of Article 1 of the Ordinance for Enforcement

6. Succession to working conditions in the company split
Where there is a labor contract executed between our company and a worker, and the split agreement provides that the successor company is to succeed to that labor contract, the working conditions set forth in the labor contract will be maintained as are, since the successor company is to comprehensively succeed to the labor contract from our company on the effective date.

Newly added!

Matters under item (i) of Article 1 of the Ordinance for Enforcement

7. Applicable items of paragraph 1 of Article 2 of the Act
The Act sets forth the following (i) and (ii) categories of workers to be employed by the company splitting in the absorption-type split:
(i) a worker primarily engaged in a business that the successor company is to succeed to
... "worker under item (i) of paragraph 1 of Article 2 of the Act"
(ii) a worker with respect to whom the absorption-type company split agreement provides that the successor company is to succeed to the worker's labor contract (excluding workers falling within (i))
... "worker under item (ii) of paragraph 1 of Article 2 of the Act"
You are a worker under item () of paragraph 1 of Article 2 of the Act.

Matters under item (vi) of Article 1 of the Ordinance for Enforcement

8. Operations you will engage in, your workplace and other employment details on and after the effective date
You will engage in business associated with XXXX department of the successor company (to be assigned to XXXX Office).

Since the workplace or other employment details may be changed within the scope of working conditions subject to succession, it is necessary to notify the worker of such details as these.

Matters under item (viii) of Article 1 of the Ordinance for Enforcement

9. Entitlement to file an objection under paragraph 1 of Article 4 or paragraph 1 of Article 5 of the Act, and contact point for objections

In accordance with the Act,

- with regard to the fact the labor contract of a worker primarily engaged in business subject to the successor company's succession will not be succeeded to by the successor company, or
- with regard to the fact the labor contract of a worker not primarily engaged in business subject to the successor company's succession will be succeeded to by the successor company, the worker concerned may file an objection in writing.

When filing an objection, please submit it to the following contact.

Personnel Affairs Department, XXXX Co., Ltd.
XX-XX-XX, XX, XX-ku, Tokyo



Matters under the main body of paragraph 1 of Article 2 of the Act

10. Objection deadline date

Deadline date for filing an objection in 9. above is MMM DD, YYYY.

For the contact for objections, it is possible to notify the worker of the person in charge (the name, job title and workplace of this person) instead of the department in charge.

[Example Form 2] Notice to Workers (for an incorporation-type company split)

MMM DD, YYYY

Dear Mr./Ms. XXXX: Notice Concerning Labor Contract Succession in Company Split

XXXX Co., Ltd.
XXXX, Manager of Personnel Affairs Department

Our company has decided to embark on a company split and has accordingly formulated an incorporation-type company split plan, in which our company is the company splitting in this incorporation-type split, and ZZZZ Co., Ltd. is the company incorporated in the split (hereinafter referred to as, "incorporated company"). We are hereby notifying you of the following details pertaining to the company split concerned pursuant to the provision of paragraph 1 of Article 2 of the Act on the Succession to Labor Contracts upon Company Split (hereinafter referred to as, the "Act").

Details

In the split plan, the location of the head office is supposed to be stated. However, when it is possible to provide the precise address (for example, Number XX, XX Street, XX City), notifying the worker of such address is considered sufficient.

Matters under item (iii) of Article 1 of the Ordinance for Enforcement

1. **Overview of business that is to be succeeded to by the incorporated company**
Businesses associated with XXXX department of our company

Matters under item (iv) of Article 1 of the Ordinance for Enforcement

2. **Trade names, addresses or head office locations, business details, and numbers of workers to be employed on and after the effective date of the company split (hereinafter referred to as, "effective date")**

	Our Company	Incorporated Company
Trade Name	XXXX Co., Ltd.	ZZZZ Co., Ltd.
Address / Head Office	XX-XX-XX, XX, XX-ku, Tokyo	XX-ku, Tokyo
Business Details	Business related to XX, business related to XX, and business related to XX etc.	Business related to XX, business related to XX, and business related to XX etc.
No. of Workers to Be Employed	XX workers	XX workers

(As of MMM DD, YYYY)

Matters under item (v) of Article 1 of the Ordinance for Enforcement

3. **Effective date**
MMM DD, YYYY

For the number of workers to be employed, enter the total number of workers (not limited to regular employees but including part-time workers and newly employed workers) who are scheduled to be employed on and after the effective date.

Matters under item (vii) of Article 1 of the Ordinance for Enforcement

4. **Matters concerning the prospect of performance of obligations on and after the effective date**
Our company and the incorporated company have no issue with regard to performance of obligations on and after the effective date.

In addition, you may consider stating, for example, the summary of matters which are related to the prospect of performance of obligations and are subject to prior disclosure in accordance with the provisions of the Companies Act.

Matters under the main body of paragraph 1 of Article 2 of the Act

5. **Any provision on the succession to labor contracts in the incorporation-type company split plan**
The incorporation-type company split plan formulated by our company does/does not provide that the incorporated company is to succeed to your labor contract.

Matters under item (ii) of Article 1 of the Ordinance for Enforcement

6. **Succession to working conditions in the company split**
Where there is a labor contract executed between our company and a worker, and the split plan provides that the incorporated company is to succeed to that labor contract, the working conditions set forth in the labor contract will be maintained as are, since the incorporated company is to comprehensively succeed to the labor contract from our company on the effective date.

Newly added!

Matters under item (i) of Article 1 of the Ordinance for Enforcement

7. **Applicable item of paragraph 1 of Article 2 of the Act**
The Act sets forth the following (i) and (ii) categories of workers to be employed by the company splitting in the incorporation-type split:
(i) a worker primarily engaged in business that the incorporated company is to succeed to
... "worker under item (i) of paragraph 1 of Article 2 of the Act"
(ii) a worker with respect to whom the incorporation-type company split plan provides that the incorporated company is to succeed to the worker's labor contract (excluding workers falling within (i))
... "worker under item (ii) of paragraph 1 of Article 2 of the Act"
You are a worker under item () of paragraph 1 of Article 2 of the Act.

Matters under item (vi) of Article 1 of the Ordinance for Enforcement

8. **Operations that you will engage in, and your workplace and other employment details on and after the effective date**
You will engage in business associated with XXXX department of the incorporated company (to be assigned to XXXX Office).

Since the workplace or other employment details may be changed within the scope of working conditions subject to succession, it is necessary to notify the worker of such details.

Matters under item (viii) of Article 1 of the Ordinance for Enforcement

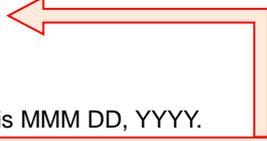
9. The entitlement to file an objection under paragraph 1 of Article 4 or paragraph 1 of Article 5 of the Act, and the contact point for objections

In accordance with the Act,

- with regard to the fact the labor contract of a worker primarily engaged in business subject to the incorporated company's succession will not be succeeded to by the incorporated company, or
- with regard to the fact the labor contract of a worker not primarily engaged in business subject to the incorporated company's succession will be succeeded to by the incorporated company, the worker concerned may file an objection in writing.

When filing an objection, please submit it to the following contact point.

Personnel Affairs Department, XXXX Co., Ltd.
XX-XX-XX, XX, XX-ku, Tokyo



Matters under the main body of paragraph 1 of Article 2 of the Act

10. Objection deadline date

Deadline date for filing an objection in 9. above is MMM DD, YYYY.

For the contact for objections, it is possible to notify the worker of the person in charge (the name, job title and workplace of this person) instead of the department in charge.

MMM DD, YYYY

Notice Concerning Collective Agreement Succession in Company Split

To XXXX Labor Union:

XXXX Co., Ltd.

XXXX, Manager of Personnel Affairs Department

Our company has decided to embark on a company split and has accordingly executed an absorption-type company split agreement with ZZZZ Co. Ltd., under which our company is the company splitting in this absorption-type split, and ZZZZ Co., Ltd. is the company succeeding in the split (hereinafter referred to as, "successor company"). We are hereby notifying you of the following details pertaining to the company split concerned pursuant to the provision of paragraph 2 of Article 2 of the Act on the Succession to Labor Contracts upon Company Split (hereinafter referred to as, the "Act").

Details

Matters under item (i) of Article 3 → item (iii) of Article 1 of the Ordinance for Enforcement

1. Overview of the business that is to be succeeded to by the successor company

Businesses associated with XXXX department of our company

If the indication of the scope of workers subject to succession does not clarify the names of those workers, notify the labor union of the names of such workers.

Matters under item (ii) of Article 3 of the Ordinance for Enforcement

2. Scope of workers whose labor contracts are to be succeeded to by the successor company

Workers engaged in businesses associated with XXXX department of our company

Matters under item (i) of Article 3 → item (iv) of Article 1 of the Ordinance for Enforcement

3. Trade names, addresses, business details, and numbers of workers to be employed on and after the effective date of the company split (hereinafter referred to as, "effective date")

	Our Company	Successor Company
Trade Name	XXXX Co., Ltd.	ZZZZ Co., Ltd.
Address	XX-XX-XX, XX, XX-ku, Tokyo	XX-XX-XX, XX, XX-ku, Tokyo
Business Details	Business related to XX, business related to XX, and business related to XX etc	Business related to XX, business related to XX, and business related to XX etc.
<u>No. of Workers to Be Employed</u>	XX workers	XX workers

(As of MMM DD, YYYY)

For the number of workers to be employed, enter the total number of workers (not limited to regular employees, but including part-time workers and newly employed workers) who are scheduled to be

Matters under item (i) of Article 3 → item (v) of Article 1 of the Ordinance for Enforcement

4. Effective date

MMM DD, YYYY

Matters under item (i) of Article 3 → item (vii) of Article 1 of the Ordinance for Enforcement

5. Matters concerning the prospect of performance of obligations on and after the effective date

Our company and the successor company have no issue with regard to their performance of obligations on and after the effective date.

In addition, you may consider stating, for example, the summary of matters which are related to the prospect of performance of obligations and are subject to prior disclosure in accordance with the provisions of the Companies Act.

Matters under paragraph 2 of Article 2 of the Act

6. Any provision on the succession to collective agreements in the absorption-type company split agreement

The absorption-type company split agreement executed between our company and the successor company does/does not provide that the successor company is to succeed to collective agreements executed between your union and our company.

Matters under item (iii) of Article 3 of the Ordinance for Enforcement

7. Details of the provision on the succession to collective agreements in the absorption-type company split agreement (only if there is such a provision)

- With regard to the union office of 100 square meters leased to your union, the split company continues to assume the obligation to lease a space of 40 square meters, and the successor company is to succeed to the obligation to lease a space of the remaining 60 square meters.

Only if there is a relevant provision, notify the labor union of the details of such provision.

[Example Form 4] Notice to a Labor Union (for an incorporation-type company split)

MMM DD, YYYY

Notice Concerning Collective Agreement Succession in Company Split

To XXXX Labor Union:

XXXX Co., Ltd.

XXXX, Manager of Personnel Affairs Department

Our company has decided to embark on a company split and has accordingly executed an incorporation-type company split plan, in which our company is the company splitting in this incorporation-type split, and XXXX Co., Ltd. is the company incorporated in the split (hereinafter referred to as, "incorporated company"). We are hereby notifying you of the following details pertaining to the company split concerned pursuant to the provision of paragraph 2 of Article 2 of the Act on the Succession to Labor Contracts upon Company Split (hereinafter referred to as, the "Act").

Detail

Matters under item (i) of Article 3 → item (iii) of Article 1 of the Ordinance for Enforcement

1. Overview of the business that is to be succeeded to by the incorporated company

Businesses associated with XXXX department of our company

If the indication of the scope of workers subject to succession does not clarify the names of those workers, notify the labor union of the names of such workers.

Matters under item (ii) of Article 3 of the Ordinance for Enforcement

2. Scope of workers whose labor contracts are to be succeeded to by the incorporated company

Workers engaged in businesses associated with XXXX department of our company

In the split plan, the location of the head office is supposed to be stated. However, when it is possible to provide the precise address (for example, Number XX, XX Street, XX City), notifying the worker of such address is considered sufficient.

Matters under item (i) of Article 3 → item (iv) of Article 1 of the Ordinance for Enforcement

3. Trade names, addresses or head office locations, business details, and numbers of workers to be employed on and after the effective date of the company split (hereinafter referred to as, "effective date")

	Our Company	Incorporated Company
Trade Name	XXXX Co., Ltd.	ZZZZ Co., Ltd.
Address / Head Office	XX-XX-XX, XX, XX-ku, Tokyo	XX-ku, Tokyo
Business Details	Business related to XX, business related to XX, and business related to XX etc.	Business related to XX, business related to XX, and business related to XX etc.
No. of Workers to Be Employed	XX workers	XX workers

(As of MMM DD, YYYY)

For the number of workers to be employed, enter the total number of workers (not limited to regular employees but including part-time workers and newly employed workers) who are scheduled to be employed on and after the effective date.

Matters under item (i) of Article 3 → item (v) of Article 1 of the Ordinance for Enforcement

4. Effective date

MMM DD, YYYY

Matters under item (i) of Article 3 → item (vii) of Article 1 of the Ordinance for Enforcement

5. Matters concerning the prospect of performance of obligations on and after the effective date

Our company and the incorporated company have no issue with regard to their performance of obligations on and after the effective date.

In addition, you may consider stating, for example, the summary of matters which are related to the prospect of performance of obligations and are subject to prior disclosure in accordance with the provisions of the Companies Act.

Matters under paragraph 2 of Article 2 of the Act

6. Any provision on the succession to collective agreements in the incorporation-type company split plan

The incorporation-type company split plan formulated by our company does/does not provide that the incorporated company is to succeed to collective agreements executed between your union and our company.

Matters under item (iii) of Article 3 of the Ordinance for Enforcement

7. Details of the provision on the succession to collective agreements in the incorporation-type company split plan (only if there is such provision)

- With regard to the union office of 100 square meters leased to your union, the split company continues to assume the obligation to lease a space of 40 square meters, and the incorporated company is to succeed to the obligation to lease the remaining 60 square meters.

Only if there is a relevant provision, notify the labor union of the details of such provision.

MMM DD, YYYY

Objection to Labor Contract Succession in Company Split

To Personnel Affairs Department, XXXX Co., Ltd.:

XXXX (name)
XXXX Section, XXXX Department
XXXX Co., Ltd.

Where the worker primarily engages in a business subject to succession, but the successor company, etc. is not to succeed to his/her labor contract

In accordance with the provision of paragraph 1 of Article 4 of the Act on the Succession to Labor Contracts upon Company Split, I am hereby filing an objection to the fact that the successor company, etc. is not to succeed to my labor contract.

Where the worker does not primarily engage in business subject to succession, but the successor company, etc. is to succeed to his/her labor contract

In accordance with the provision of paragraph 1 of Article 5 of the Act on the Succession to Labor Contracts upon Company Split, I am hereby filing an objection to the fact that the successor company, etc. is to succeed to my labor contract.

Further, I consider myself not primarily engaged in business subject to succession.

In contrast with cases falling within paragraph 1 of Article 4 of the Act, when filing an objection pursuant to paragraph 1 of Article 5 of the Act, it is possible that the split company regards the worker as "primarily engaged in business subject to succession" whereas the worker considers him/herself as "not primarily engaged in business subject to succession." If this is the case, it is necessary to swiftly resolve this difference of judgment first. Thus, it is considered proper for the worker to clearly indicate this point.