

RECHTSPRECHUNG

Recent Judgements of the Supreme Court

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Availability of Submission Order of *ringisho* to Court

Judgement of the Supreme Court, Second Petit Bench, November 12, 1999

The Supreme Court ruled on the availability of a submission order for documents concerning *ringisho* of a bank for the first time in its decision of November 12, 1999.

Ringisho is an internal document of companies which contains business proposals. It is circulated within the company in order to seek approval from senior executives. In the present case, the *ringisho* involved a proposal to extend a substantial amount of loans to an individual. It was prepared by a branch of the bank (defendant) in order to seek approval of the head office for a loan which exceeded the limits given to the branch manager in its amount and content. Usually, in such documents, in addition to the content of the loan, including the name of the borrower, amount of loan, purpose of the money, security and guarantee, method of repayment, matters such as the prospect of profitability for the bank, creditworthiness of the borrower, assessment of the borrower, and the views of the person directly in charge of the proposed loan are included. Based upon such information, the opinion of the person directly in charge on loans in the head office as well as of those who are empowered to make the final decision as to whether the loan should be extended or not is expressed in the document.

In the present case, an individual received a loan of 650 million yen from a bank and invested it in securities, but incurred a heavy loss. The plaintiff, an heir of this individual, sued the bank for extending excessive loans knowing that in the light of the financial state of this person, the interest of the loan had to be paid from the proceeds of the investment in securities. This, according to the plaintiff, was in breach of the duty to care for the safety of the customer on the part of financial institutions.

The plaintiff filed a petition to court for issuing an order to the defendant to submit the *ringisho* for the internal approval of the loan and the document approving the loan by the head office.

The Code of Civil Procedure which came into effect in 1998 has substantially expanded the availability of document submission orders. Thus, Article 220 provides that in the instances listed in this provision, the possessor of the document may not refuse submission of the document. In addition to specific clauses, Article 220 contains a general clause which mandates submission of a document unless, *inter alia*, it is solely for the use of the possessor (subpara. 4 (c)). The defendant contended that the document in question qualifies as a document solely for the use of the possessor.

The appellate court ruled that the *ringisho* and the document of approval in the present case were not 'documents which are solely for the use of its possessor' as provided by Article 220, subpara. 4 (c), since it was covered by the inspection of financial supervisory authorities, and furthermore, often voluntarily submitted to court by banks as evidence. Therefore, the court ordered the appellant to submit the documents.

However, the Supreme Court reversed this decision. The Supreme Court ruled that when the document, judging from the purpose of preparation, content, the process until it came into the possession of the present possessor and other circumstances, has been prepared solely for the internal use of the possessor and did not presuppose disclosure to outsiders, and by disclosure, is likely to cause disadvantage which cannot be overlooked, such as the violation of privacy, or inhibition of free formulation of will by individuals or organisations, unless there are special circumstances, it is appropriate to regard the document as 'a document which is primarily for the use of its possessor' as provided by Article 220, subpara.4 (c) which is exempted from submission order.

According to the Supreme Court, judging from the purpose of making the document and its contents, *ringisho* for the approval of a loan is a document which is made internally by the bank in order to form an opinion on a proposed loan in a smooth and appropriate way, but is not made under the requirement of law, and due to the nature of the document, presupposes that a frank assessment and views be contained therein. Therefore, this is a document which is prepared solely for the internal use of the bank and is not intended to be disclosed externally. Disclosure of such a document may affect the free exchange of opinions and inhibit free formulation of opinions within the bank, and unless special circumstances exist, the document should be considered to be 'documents solely for the use of the possessor'.

Since the Code of Civil Procedure took effect, the lower court decisions have been divided on this issue. Some lower courts have acknowledged the obligation to submit *ringisho* for a loan on the ground that 1) the document ensures the reasonableness of the decision-making process and accountability of the decision-makers, 2) it substantiates the legitimacy and reasonableness of the loan in cases of dispute, 3) it is an important document for inspection by financial supervisory authorities¹. However, the Supreme Court decided to side with those lower courts which denied the availability of submission orders. At the time the new Code was prepared, it was the view of the Ministry of Justice that the *ringisho* was not covered by a submission order. In this sense, the conclusion of the Supreme Court was not unexpected. On the other hand, it is questionable whether the free exchange of views and formulation of opinions within the bank should be protected at the cost of fair and just settlement of disputes.

¹ See comments by K.YAMAMOTO in *New Business Law*, No.679, December 15, 1999.