

Long-Term Continuous Contracts in Japan

Hiroshi Oda

- I. Prevalent Form of Contracts between Companies in Japan
- II. The Doctrine of Good Faith and Fair Dealing
- III. Earlier Judgments
- IV. Interim Relief against Termination
- V. Two Supreme Court Judgments
- VI. Post-1998 Judgments
- VII. Balancing of Interests by the Court
- VIII. Concluding Remarks

I. PREVALENT FORM OF CONTRACTS BETWEEN COMPANIES IN JAPAN

Contracts between Japanese companies are often ‘relational’ contracts, i.e. contracts with long-standing partners that have been in place for decades. Distributorship agreements and arrangements between parts and components suppliers and manufacturers are examples of such contracts. In order to be adaptable to changing circumstances, they cannot provide for details. Terms such as price, volume and delivery dates need to be renegotiated and adjusted from time to time. Differences between the parties are to be settled in an amicable way rather than resorting to litigation. This, to a certain extent, explains why inter-company contracts in Japan are said to be short and general. These contracts are called long-term continuous contracts (*chōki keizokuteki keiyaku*) in Japanese.¹

Despite the terminology, long-term continuous contracts are usually valid for only a year, or at the best, three years. What makes these contracts long term is the automatic renewal clause. In a typical such contract, there is a clause to the effect that the contract shall be automatically renewed unless either party expresses an intention to terminate no later than one month before the end of the valid period. This right of termination is seldom exercised, and therefore the contract tends to continue for years.

The benefit of the relationship is mutual. For instance, large manufacturers have nurtured the relationship with part and components producers to ensure product quality requirements and timely delivery by transferring technology and by providing finance. A similar relationship exists between suppliers/manufacturers and distributors. Distribu-

¹ In general on this topic, see H. NAKADA, *Chōki keizokuteki keiyaku no kenkyū* [Study on Long-Term Continuous Contracts] (Tokyo 2000).

tors are not mere wholesalers or retailers, but entities integrated into the distribution network of the manufacturer (supplier). They closely cooperate with the manufacturer (supplier) for the promotion of the product.

However, such a mutually dependent relationship tends to be exclusive and therefore came to be criticised by prospective new entrants into the market. In the US-Japan semiconductor dispute, the US government urged Japan to open up the parts and components market; as a result, the Japanese electronics industry had to agree to purchase 30% of its parts and components from overseas instead of from its established suppliers. On the distribution side, with the emergence of discount retailers, there was a move by manufacturers to terminate the relationship with these discounters. The US-Japan Structural Impediments Initiatives Talk of 1989/1990 addressed this system, resulting in the JFTC (Japanese Fair Trade Commission) Guidelines on the Distributions Systems and Business Practice.²

Furthermore, as the recession worsened in the 1990s, some manufacturers opted to abandon the long established relationship and moved for a more cost-effective partner. Thus, the long-term stable relationship between Japanese companies has gradually eroded.

The problem of whether such long-term continuous contracts can be unilaterally terminated has been an issue since the early 1970s. In light of the freedom of contract, it is up to the parties to decide whether to conclude a contract or renew it and, if they are to enter into a contract, to choose the counterparty. If the parties have clearly agreed to an automatic renewal clause, then the clause should be valid and the party should be able to terminate the contract with an appropriate notice.

The perception of the businesspeople was rather different. In a survey of 130 companies, when given a hypothetical case of a supplier in a distributorship agreement refusing to renew a contract which had been renewed for 10 years, while only 6.1% of the respondents replied that the refusal to renew had no legal effect, 54% responded that compensation should be paid, and 23% replied that the contract should continue for some time, during which the parties should negotiate settlement.³

Termination of long-term continuous contracts was disputed in court as early as the 1970s. These disputes mainly involved long-standing distributorship arrangements. Now there is established case law to the effect that parties to a long-term continuous contract are not entirely free to refuse renewal of such contracts. Lower court judgments require either a reasonable ground or a compelling ground to refuse renewal of a contract which had been in place for many years and had been automatically renewed. This is based upon the doctrine of good faith and fair dealing. The issue now is not whether such contracts can be freely terminated, but more what constitutes a compelling or reasonable ground.

2 See www.jftc.go.jp.

3 S. KITAYAMA, The Result of the Domestic Survey on the Long-Term Contracts, in: NBL No. 629 (1997) pp. 56-58.

II. THE DOCTRINE OF GOOD FAITH AND FAIR DEALING

The doctrine of good faith and fair dealing (*Treu und Glauben*) has its origin in Germany. The Japanese Civil Code was prepared in the 1890s primarily based upon the first draft of the German BGB. Although this provision was introduced into the Japanese Code during the post-Second World War reform, in court practice the doctrine had been applied since the 1920s.⁴ Unlike the BGB, in which the provision is located in the part of the Law of Obligations, the Japanese Civil Code accommodates this doctrine at the very beginning of the Code:

Rights shall be performed and duties be performed in good faith and a fair manner (Art. 1, para. 2)

This is in line with the Swiss Civil Code, which was enacted in 1912 (Art. 2, para. 1).

In Japan this doctrine is quite extensively used by the courts. In order to attain fair and equitable results, the courts often read terms into contracts that are not explicitly provided or create duties that are not directly derived from the statutes. *Culpa in contrahendo* has been acknowledged in various cases by resorting to this doctrine.⁵ The duty of the employer to care for employees, which has no explicit statutory basis, was created by the court on the basis of this doctrine.⁶ Statutory rights can be restricted by this doctrine, too. By resorting to this doctrine, the Supreme Court ruled that the state is not entitled to claim that the application for government aid by a victim of the nuclear bomb was time-barred while this person was out of the country.⁷

III. EARLIER JUDGMENTS

An example of an earlier judgment on a long-term continuous contract involved a sole distributorship contract. This was a contract without a fixed period. After three years, due to a disagreement over the rate of the commercial margin, the supplier terminated the supply. However, during the three-year period, the distributor had made a significant investment and marketed the product as its primary merchandise, built sales facilities, paid for advertisements, and developed the market. Termination resulted in a ‘free ride’ of the efforts of the distributor by the supplier. The distributor sued the supplier for the non-performance of obligation and sought compensation.

4 M. YASUNAGA, in: T. Taniguchi/K. Ishida (eds.), *Shinpan chūshaku minpō* (1) [New Commentary on Civil Law] (Revised edition, Tokyo 2002) p. 78.

5 Judgment of the Supreme Court, 27 February 2007, in: Hanrei Jihō No. 1964, p. 45.

6 Judgment of the Supreme Court, 8 July 1976, in: Minshū 30-7-689.

7 Judgment of the Supreme Court, 6 February 2007, in: Minshū 61-1-122. For a comprehensive review of the scope of application of this doctrine, see YASUNAGA *supra* note 4, pp. 110-148.

The Nagoya High Court ruled that where a distributor has made some reasonable investment, unless there is a significant act of bad faith or a significant reason which makes it impossible for the parties to continue the relations (a 'compelling ground'), stability of contractual relationship is required, and a unilateral termination of the contract is impermissible, unless there is a reasonable period of notice which enables the loss to be recovered or reasonable compensation. It should be noted that there is an explicit provision in the Civil Code regarding lease which allows a contract without a fixed period to be terminated at any time. Although the Court referred to the provisions on lease as a typical long-term contract, it simply ignored this particular provision. The Court based this conclusion on the doctrine of good faith and fair dealing. The Court ordered the supplier to pay compensation equivalent to one year's profit.⁸

In another case, the supply contract had no fixed period but had been in place for three years. After three years, the supplier refused to supply goods and the retailer initiated an action in court against the supplier for compensation. The Court found that this agreement qualified as a long-term continuous contract. As such, since there was no act of bad faith on the part of the distributor or circumstances indicating that the continuation of the contract could not be expected, the Court concluded that the supplier was in breach for terminating the supply.⁹ The Court ordered the supplier to pay compensation.

Contracts addressed in these cases were not typical long-term contracts; rather they were contracts without a fixed period which had continued for some time; renewal was not at issue. The courts acknowledged that the supplier was not completely free to refuse supply, but instead of invalidating the termination of the contract by the supplier merely ordered the supplier to pay compensation. However, the decision of the Sapporo High Court in 1987 changed this situation.

IV. INTERIM RELIEF AGAINST TERMINATION

This was a case between a large supplier, Ford Tractor Hokkaido, and a regional sole distributor. The parties concluded a sole distributorship agreement in 1971 on the sale of agricultural equipment. The contract was renewed in 1982. In the renewed contract, there was a clause which provided that the effective term of the contract was one year, but it was renewable for another year unless either party objected up to three months before the expiration of the contract. The contract had been automatically renewed until 1987, when the manufacturer decided to sell its products by itself and notified the refusal to renew the contract three month before its expiration. The distributor sought an injunction preventing the manufacturer from selling its products except to the distributor. The first instance court did not grant the injunction by interpreting the contract literally

8 Judgment of the Nagoya High Court, 29 March 1971, in: *Hanrei Jihō* No. 634, p. 50.

9 Judgment of the Tokyo High Court, 24 December 1984, in: *Hanrei Jihō* No. 1144, p. 89.

and finding that the contract had actually been terminated by the supplier serving a notice.

The High Court reversed the decision of the lower court. The Court ruled that despite the existence of an explicit provision to the effect that the contract could be terminated with a three-month advance notice, the contract cannot be terminated by the mere existence of such a clause. Whether the contract can be terminated in such a way has to be determined by taking into account the background to the conclusion of the contract, the nature of the contract, the benefit and loss on the part of the parties by the termination of the contract and other special circumstances.

The Court took into consideration the following:

- automatic renewal of the contract without objection was indeed the original intention of both parties;
- since the equipment is fairly expensive, it requires a long period of sales promotion (1.5-3.0 years);
- the distributor has to hold a large amount of equipment as an inventory;
- the distributor had invested a lot in the ‘software’ side of the equipment, such as research and development as well as dissemination of information, and this has contributed to its sale;
- for the equipment, distributors are all linked to a specific manufacturer and it is impossible for the distributor to find a new supplier; and
- as a result of the intended termination, the distributor will lose all its sales network and incur a loss of 140 million yen for disposing of the inventories.

The Court ruled that the clause that allows termination with three months’ notice should be interpreted to be a clause for the party to terminate the contract in cases where the continuation of the contract is harsh on the party, and when there are circumstances which make the termination of the contract inevitable. The Court did not find this to be the case. The Court specifically pointed out that the necessity for the rationalisation of the business as argued by the supplier does not constitute a justifiable ground for termination.¹⁰

The rule that the manufacturer/supplier cannot freely terminate the contract despite the existence of an automatic renewal clause in the contract was thus supported by the Court. However, in this case, the Court did not derive this conclusion directly from any doctrine. Instead, the Court based its conclusion on its rather fictitious interpretation of the contract, which was rather different from the explicit wording of the contract.

While the above case involved an interim measure, in 1996, the Osaka High Court ruled on a case where the validity of the termination was contested.

In this case, the manufacturer had been supplying a chemical product to the distributor for 27 years. The contract was for one year but automatically renewed unless either

10 Decision of the Sapporo High Court, 30 September 1987, in: Hanrei Jihō No. 1258, p.76.

party objected. After 27 years, the supplier refused to renew the contract, so the distributor brought an action in court.

The first instance court found the termination by refusal to renew to be valid. The High Court ruled that the contractual relationship between the parties had been automatically renewed repeatedly without any disruption, and therefore this should be regarded as a continuous contractual relationship. In such cases, according to the Court, in light of the provisions of the Civil Code on long-term employment contracts and lease contracts, unless there is a destruction of mutual trust or other compelling reasons, such contracts cannot be rescinded or refused renewal.

The Court proceeded to examine whether there was a compelling ground for refusal to renew the contract. The Court found that while the parties had cooperated for the expansion of the sale and had worked together to fend off inexpensive imports and thus built a relationship of mutual trust, the distributor had begun importing inexpensive products by itself and, above all, had failed to report this to the manufacturer despite the contractual requirement. Even after this fact came to be known to the manufacturer, the distributor failed to give reasons and continued the import. Under such circumstances, there was a compelling ground for the manufacturer to refuse renewal of the contract.¹¹

It should be noted that there was one case where the Court pointed out that just because the given contract was a long-term continuous contract did not always mean that it should always be renewed. However, in this case, there was no automatic renewal clause in the contract.¹²

In some of the above cases, the courts did not explicitly refer to the doctrine of good faith and fair dealing. Nevertheless, commentators were of the view that only this doctrine could justify such conclusions of the court.¹³

V. TWO SUPREME COURT JUDGMENTS

As demonstrated above, the case law on the termination of long-term continuous contracts developed on the basis of the High Court and district court judgments. There was no Supreme Court judgment on this matter. However, in 1998, the Supreme Court ruled on two cases on distributorship agreement. These were disputes between a manufacturer of cosmetic products and its distributor.

In the first case (*Shiseido*), there was a distributorship agreement with selected retailers that was valid for one year but renewable for another year unless either party objected. During this period, the contract could be terminated with three months' notice. The contract had been renewed every year since 1962.

11 Judgment of the Osaka High Court, 25 October 1996, in: Hanrei Jihō No. 1595, p. 71.

12 Judgment of the Tokyo High Court, 20 October 1992, in: Hanrei Taimuzu No. 811 (1992) 149.

13 K. IWAKI, in: K. Yunoki / T. Takagi (eds.), *Shinpan chūshaku minpō* (14) [New Commentary on Civil Law (14)] (Tokyo) p. 93.

There was a requirement in the contract that the distributor should sell Shiseido products (cosmetics) face to face to customers. The distributor, which came to be known over the years as a discounter, failed to comply with this requirement and sold the products off the premises by visiting customers, despite repeated warnings from Shiseido. The parties reached an agreement settling the dispute, but the terms of the settlement were not observed. Shiseido terminated the contract with a three-month notice.

The distributor brought an action in court on the ground that this was an abuse of rights and was against the doctrine of good faith and fair dealing.

The first instance court ruled that in a continuous supply contract such as this, even if there is a termination clause, a compelling reason is required for termination. The court found that the requirement of face-to-face sale is intended for resale price maintenance; therefore, the failure to comply with the requirement does not serve as a ground for termination.

The second instance court upheld this judgment and ruled that a compelling reason such as an unfaithful act on the part of the distributor that makes it difficult to continue is needed to terminate the contract. However, the court concluded that the requirement of face-to-face sale was prima facie reasonable as a means of selling the products, and insofar as the same term is required of other distributors, it is not against the mandatory requirements of law. Therefore, a repeated breach of this requirement was an unfaithful act which justified termination.

The distributor appealed on the ground that the requirement of face-to-face sale was against competition law (in Japan, Law against Private Monopolisation). The Supreme Court ruled that the requirement of the face-to-face sale was not an unfair practice. The Court referred to the freedom of choice of the sales policy or the method of sale by manufacturers and wholesalers which should be respected in principle, and ruled that the requirement had some degree of reasonableness for the sale and insofar as the same requirement is imposed on other distributors, such a requirement does not affect fair competition.¹⁴

The Supreme Court ruled on a similar case on the same day.¹⁵ The facts are similar to those in the *Shiseido* case. The distributorship contract was first concluded in 1964, was probably renewed many times and was due to expire in 1999. There was a requirement of 'counselling sale' in the contract with which the distributor, a known discount shop, failed to comply. In this case, there was also an alleged breach of the sale by the distributor to other distributors. The supplier terminated the contract. The distributor brought an action in court on the same grounds as in the *Shiseido* case.

14 Judgment of the Supreme Court, 18 December 1998, in: Hanrei Jihō No. 1664, p. 3.

15 Judgment of the Supreme Court, 18 December 1998, in: Hanrei Jihō No. 1664, p. 14.

The first instance court ruled that a compelling reason was not needed to terminate this contract; on the other hand, it found that the requirement of counselling sale may constitute unfair trade practice and partly acknowledged the distributor's claim.

The second instance court found that unless there was a breach of the doctrine of good faith and fair dealing or other general clauses, termination was allowed without a justifiable reason. The court ruled in conclusion that the termination could not be regarded as a measure for preventing discount sale, the requirement for counselling sale had some reasonableness, and the prohibition of the sale to other distributors was not against the competition law, while the breach on the part of the distributor amounted to the destruction of mutual trust, and found the termination to be justifiable.

The ruling of the Supreme Court was more or less the same as that in the *Shiseido* case. The Court found that there was certain reasonableness in the requirement of the counselling sale. It should be noted that the Supreme Court judgments may have been influenced by the decision of the European Commission on selective distribution.

These two judgments are occasionally quoted for supporting the view that the case law regarding the termination of a long-term continuous contract has now been rejected by the Supreme Court. This represents a sceptical view of the case law in that parties should be allowed to agree on what they want to agree, and the courts should not interfere with the contracts in this manner. However, both cases involved the termination contracts during their effective terms on one of the grounds stipulated in the contract. Furthermore, since the ground for the appeal to the Supreme Court was limited to competition law matters, the Court did not really address the issue of whether the Supreme Court requires a reasonable ground or a compelling reason for terminating long-term contracts.

VI. POST-1998 JUDGMENTS

Regardless of these Supreme Court judgments, the lower courts still continue to require compelling grounds or reasonable grounds to terminate long-term continuous contracts.

In 1999, a long-term sales agreement was at issue between an importer of US-made razor blades, Gillette, and a Japanese wholesaler.¹⁶ The relationship had been on-going for over 30 years. There was no written contract at the time when the parties started business in 1968, but in 1986 they concluded a written agreement which was renewed every year. Some years later, the importer notified the wholesaler that it would not renew the contract anymore and duly served a notice. The manufacturer cited alleged unfaithful acts by the wholesaler, namely the fact that it neglected the sale of Gillette products while promoting competitors' products. According to the manufacturer, the

16 Tokyo District Court 5 February 1999, in: Hanrei Jihô No. 1690, p.87

wholesaler failed to promote Gillette products and to convey product information to the retailers.

The Tokyo District Court ruled that where a continuous supply contract has been in operation for a long period by repeated renewals, and if the distributor (or wholesaler) has invested in personnel and installations for the sale of the product in expectation of the continuation of the relationship, there is a need for stability. In such cases, the refusal to renew the contract by the supplier should be placed under some restriction based upon fairness or the doctrine of good faith and fair dealing. A reasonable ground is required to justify termination.

Then the court examined whether there was a reasonable ground in this case. The Court found that there were instances where the wholesaler favoured Gillette's competitors to Gillette; in fact, the wholesaler sold six times as many Schick products as Gillette products. The Court also examined whether the wholesaler had actually made an investment for selling Gillette products. Although the wholesaler claimed that it had invested a lot in developing a sales network and advertising, there was no proof that they were solely for Gillette products.

The Court took into account that the wholesaler was the largest for the product in Japan, the relationship between the importer and the wholesaler in this case was on an equal footing, and that it could not be said that by the termination of the contract, the wholesaler would become unable to recover the investment. On the other hand, there were circumstances which enabled one to suspect that the wholesaler was not keen enough in the sale of Gillette products. There was no reason to believe that the importer had an unjustifiable profit by terminating the contract; on the contrary, it must have been a serious commercial decision on the part of the importer to terminate dealing with the largest wholesaler of the product in Japan. Thus, although there was no firm and direct evidence that the wholesaler was particularly inactive in selling Gillette products, it could be concluded that there was a certain reasonableness in the refusal of renewal by the importer. Therefore, the refusal to renew the contract is neither against the doctrine of good faith and fair dealing or against the law.

In another case, a company that supplied materials to a pharmaceutical company terminated a contract which had been in place for six years. The Court ruled that 'for a long term continuous contract of this kind to be terminated, on the basis of the doctrine of good faith and fair dealing, there has to be a compelling ground such as an act in bad faith on the counterparty which makes the continuation of the trading relationship untenable'. The Court did not find any 'special circumstance' justifying termination.¹⁷

There were two cases involving car distributorship for imported cars in the early 2000s. In the first case regarding the distributorship of Land Rover, the Court acknowledged that the termination of the contract was restricted by the doctrine of good faith

17 Judgment of the Kyoto District Court, 28 August, 2000, in: Hanrei Jihō No. 1737, p. 41 (*Kao case*).

and fair dealing, but took into consideration that the manufacturer assisted the distributor in entering into a distributorship contract with the company which took over the sale from Austin Rover and was also paid some compensation for the loss of another product, and found the termination not to be against the doctrine of good faith and fair dealing.¹⁸

In another case involving Audi products, the Court ruled that if a party has made investments presupposing the continuation of the relationship, regardless of the contractual clause on the period of the contract, the opposite party is under an obligation on the basis of the doctrine of good faith and fair dealing to cooperate with the distributor for the continuation of the relationship. The refusal to renew may comprise abuse of rights or is not allowed on the basis of the doctrine of good faith and fair dealing. However, in this case, the Court did not find any reason to believe that the distributor's investment was totally lost due to the termination. The Court ruled that there was no abuse of rights or breach of the doctrine of good faith and fair dealing.¹⁹

Finally, at the High Court level, there was a judgment regarding a newspaper distributorship. The newspaper company terminated a distribution contract with a distributor. The Court ruled that in order for a long-term continuous contract to be terminated, there must be a justifiable ground – i.e. the distributor was in serious breach of the contract and had damaged the mutual trust in a way which makes it difficult to continue the trade relationship. The Court found no such circumstances and concluded that the termination was lawful.²⁰

VII. BALANCING OF INTERESTS BY THE COURT

The rule that parties are not entirely free to terminate a long-term continuous contract may be said to be established by case law and is still applicable after the 1998 Supreme Court judgments. Either a compelling ground or, at the minimum, a reasonable ground is required to justify termination. However, as seen from the above cases, the courts do not always find the termination to be unjustifiable. It depends on the particular circumstances involved in each case. The courts take various factors into consideration and weigh them.

Japanese courts do not apply law or doctrines in a deductive manner. The court will take various factors into consideration to reach an equitable solution of a specific case. The courts' starting point is that some justification is required to terminate a long-term continuous contract, but when determining whether there is a justifiable ground, the court will try to balance different interests.

18 Judgment of the Tokyo District Court, 16 October 2003.

19 Judgment of the Tokyo District Court, 31 May 2004.

20 Judgment of the Fukuoka High Court, 19 June 2007, in: *Hanrei Taimuzu* No. 1265 (2007) 253.

According to an authoritative commentary, factors considered by the courts in cases on the termination of long-term continuous contracts include:

- the circumstances which led to the conclusion of the contract; namely whether it was intended to be a continuous relationship and to what extent the supplier created the expectation on the part of the distributor that it would be a long-term contract;
- the status of the parties in the market and the relative bargaining power between the parties;
- the extent of investment by the distributor in the sale of the product;
- the length of the relationship;
- the contribution of the distributor to the increase in the sale of products;
- the circumstances or reasons which led to termination; any special advantage accorded to the supplier by termination;
- the behaviour of the supplier throughout the process of dissolution of the relationship; whether there was sufficient advance notice, renegotiation of terms, etc.; and
- the expected loss of the distributor.

VIII. CONCLUDING REMARKS

Over the years, Japanese courts have developed a rule that requires some justification, either a compelling ground or a reasonable ground, for a party to terminate a long-term continuous contract. This was without a specific statutory basis and often against explicit contractual clauses which allowed termination. Such an approach was made possible by resorting to the doctrine of good faith and fair dealing accommodated in the Civil Code.

The approach of the courts can be characterised as a social policy consideration, which has been traditionally expressed in cases involving tenancy contracts and employment contracts as the protection of tenants and employees. The consideration is based upon the policy of protecting the parties in a weaker bargaining position. The courts adopted the same approach in supplier/distributor relations by requiring a compelling ground or a reasonable ground for termination. In recent years, this approach has been criticised by some people who contend that in commercial relations, a party's freedom of business and freedom of contract must be respected. After all, in commercial relations, as a rule, parties are on equal footing, a party's choice should be respected, and therefore, once accommodated in the contract, termination should not be restricted. On the other hand, it can be argued that out of fairness, some adjustment is needed, since, after all, no parties in commercial transactions are on an equal footing in reality.

However, if one looks at the case law carefully, the concern that the courts are interfering with commercial freedom seems to be ill-founded. In principle, the courts, based upon the doctrine of good faith and fair dealing, require that termination should be

restricted in one way or another. Then, the courts proceed to balance various factors and circumstances in each case. Social policy considerations such as the protection of a distributor without a strong bargaining position may be taken into account at this stage, but it is not the sole factor to be considered. If, for example, the investment by the distributor based upon the expectation for continuation is not significant, the distributor may not be protected. Whether the supplier unfairly benefits from termination (free ride) is an important factor. If the supplier offered some alternative sources of supply, that may be considered. Thus, the rule that suppliers are not entirely free to terminate the relationship is not against the freedom of business; it merely prevents some excess. It is an instrument for accommodating the equitable solution of disputes where the application of commercial/business rules result in unfairness.

Finally, it should be stressed that it would be erroneous to presuppose that a certain conclusion can be directly deducted from the doctrine of good faith and fair dealing. The doctrine allows the courts to deviate from the contractual provisions or even statutes, but the courts then balance relevant interests and reach their own conclusion.