

Japanese Law News Monthly Bulletin 2004/5**HEADINGS****Focus in MAY**

- 1. Equity (corporate law, securities law)**
- 2. Debt (insolvency law, banking and financial law)**
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- 4. Oversight and Policy (administrative law, public official law, education policy)**
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**FOCUS in May: Yomiuri Shimbun proposal for constitutional revision**

The Yomiuri Shimbun has published a revised version of its proposal to amend Japan's supreme law that emphasizes the importance of the family as the foundation of society and incorporates a clause on bioethics that could outlaw the manipulation of human life by genetic or other means:

<<http://www.yomiuri.co.jp/newse/20040503wo01.htm>> (3 May)

(full text of this article and its proposed constitution in PDF are available on request)

**1. Equity (corporate law, securities law)**

The Japan Business Federation (Nippon Keidanren), Japan's most powerful business lobby, decided on 10 May to bar scandal-tainted Mitsubishi Motors Corp from its activities for the time being. The decision follows the arrests of seven of the automaker's former executives last week over a fatal truck accident in 2002. The lobby said it will study whether to impose further penalties on the company while monitoring the development of criminal investigations:

(cited at <<http://home.kyodo.co.jp/all/news.jsp?news=business&an=>> visited on 11 May)

Takeshi Deguchi, former president of Inaba Denkisangyo Co, a leading electrical facilities equipment wholesaler, was arrested on suspicion of illegally obtaining about 4.85 million yen through insider trading. It is the first case in which the head of a listed firm has been arrested for insider trading, a violation of the Securities and Exchange Law:

<cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 12 May)

**2. Debt (insolvency law, banking and financial law)**

The new Bankruptcy Law, aimed at providing protection for employees of bankrupt firms and speeding up bankruptcy procedures has been enacted. The law is scheduled to take effect within one year of its promulgation:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040526a3.htm>> (26 May)

### 3. Goods and Services (contracting, product liability, competition law)

A bill to revise the Anti-Monopoly Law, that would double the charges levied on firms found to have engaged in bid-rigging or to have formed price-fixing cartels will be shelved for the time being. Strong opposition from business circles, especially the Keidanren, lay behind the shelving of the bill:

(cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 26 May)

The Diet enacted a revised law to curb infectious diseases among livestock and poultry, including the introduction of a compensation system for poultry farmers hit by bird flu. The legislation is aimed at facilitating the discovery of contagious poultry diseases in the early stages and taking swift countermeasures to protect the poultry industry. It will take effect next month:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040527b4.htm>> (28 May)

### 4. Oversight and Policy (administrative law, public official law, education policy)

The Tokyo Metropolitan Government will give up forcing companies to cut carbon dioxide (CO<sub>2</sub>) emissions because of strong opposition from business circles. The move is a major turnaround after the national government ratified the Kyoto Protocol in June 2002 and began asking companies to reduce carbon dioxide emissions:

<<http://mdn.mainichi.co.jp/news/20040510p2a00m0fp011001c.html>> (11 May)

The Diet on Wednesday [12 May] enacted a new law making it criminal for lawmakers to hire their spouses as state-paid secretaries following a series of pay embezzlement scandals involving politicians. The law still allows them to hire their parents and children as aides on the state payroll and does not ban donations from secretaries paid by the government, casting doubt on its effectiveness in preventing graft:

(cited at <<http://home.kyodo.co.jp/all/news.jsp?news=politics&an=>>> visited on 12 May)

The House of Councillors has unanimously approved a set of bills to amend the School Education Law, one of which will create a special teaching license for school nutritionists. The nutrition teacher system, which allows teachers to manage school lunches as well as teach classes about healthy eating, will be implemented from fiscal 2005:

(cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 18 May)

The Osaka High Court upheld a lower court decision ordering Kobe Pharmaceutical University to return 850,000 yen in tuition fees prepaid by a person who passed the university's entrance examination but then decided not to study at the institution.

Similar lawsuits have been filed across the country, with this ruling the first one handed down by a high court:

(cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 21 May)

The Tokyo Metropolitan Board of Education has decided to punish 40 teachers who failed to stand up during the singing of the national anthem at entrance ceremonies this spring with more than reprimands. But, more than 100 teachers at schools run by the Tokyo Metropolitan Government filed a second lawsuit against the metropolitan board of education, claiming it is unconstitutional to force them to stand facing the Hinomaru flag and sing "Kimigayo" at school ceremonies:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040528a8.htm>> (28 May)

<<http://mdn.mainichi.co.jp/news/20040524p2a00m0dm004000c.html>> (24 May)

## 5. Labour (employment law, pension system)

The Health, Labor and Welfare Ministry is considering revising the Industrial Safety and Health Law to require companies to assess the mental health of their employees, in a bid to urge companies to be more sensitive to mental health problems:

(cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 5 May) (Full text in PDF is available on request)

The ruling coalition and the opposition Democratic Party of Japan agreed to proceed with Diet deliberation on pension reform legislation aimed at the future integration of the existing programs. The House of Representatives approved a series of bills to revise the pension system. The government-sponsored bills will see the rate of corporate employees' pension premiums rise gradually to 18.3 percent of their salaries from the current 13.58 percent over the next 14 years:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040512a1.htm>> (12 May 2004)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040507a4.htm>> (7 May 2004)

## 6. Social Context (NPO law, civil justice reforms)

[Judicial Reform]

Half of those polled in a survey by the Yomiuri newspaper approve of a system in which private citizens help try serious criminal cases with professional judges, but 70 percent did not want to participate as lay judges, according to a survey:

(cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 28 May)

See also EDITORIAL: "Citizen judge system"

<<http://www.asahi.com/english/opinion/TKY200405250136.html>> (26 May)

[Constitution-Related Issues]

The Osaka District Court ruled that Prime Minister Koizumi's controversial visits to Yasukuni Shrine were private. It gave no judgment in the lawsuit on whether his visits violate a constitutional ban on religious activities by the state, even though he signed the visitor register at the shrine as Prime Minister Koizumi.

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040514a2.htm>> (14 May)

## [WWII-Related Issues]

Textile maker Teijin Ltd. has paid 200,000 yen each to at least 10 South Korean women forced to work as slave laborers at a Japanese spinning factory during World War II. The company made the payment out of a "humanitarian consideration":

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040520a9.htm>> (21 May)

A Japanese high court denied redress Monday [24 May] to 15 Chinese men forced to work in Japanese coal mines during World War II in the first-ever ruling at the high court level on a series of lawsuits former Chinese forced laborers have filed across Japan. But the Fukuoka High Court acknowledged that the state and Mitsui Mining Co. shared joint liability for bringing the men from China to Japan and forcing them to work in the mines. The court dismissed the plaintiffs' demand for compensation on the grounds that the statute of limitations has expired on the case:

<<http://home.kyodo.co.jp/all/display.jsp?an=20040524067>> (24 May) (Full text in PDF is available on request)

## [Indigenous Rights]

The Sapporo High Court on Thursday [27 May] dismissed a lawsuit by 19 members of Japan's indigenous Ainu people demanding nullification of the Hokkaido Prefectural Government's decision in the late 1990s to pay them money generated from Ainu land and funds managed by the local government. The plaintiffs claimed that the Hokkaido government's survey to estimate property value was insufficient and that more property should have been returned to the Ainu:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040528a7.htm>> (28 May)

**7. Legal Policy (international relations, constitutional reform)**

## [Constitutional Reform]

The chief policymaker of Japan's ruling Liberal Democratic Party stressed the need for Japan to enact a comprehensive permanent law on the dispatch of Self-Defense Forces troops overseas:

<<http://www.yomiuri.co.jp/newse/20040505wo01.htm>> (5 May) (Full text in PDF is available on request)

As moves to revise the Constitution have gathered momentum in the past few months, the focus has moved from whether the Constitution should be revised to how it should be revised:

<<http://www.yomiuri.co.jp/newse/20040504wo03.htm>> (5 May) (Full text in PDF is available on request)

While opinion polls show an increasing number of people support revision of the constitution, about 5,000 citizens and some politicians took part in an event at Tokyo's Hibiya Park to voice opposition to changing the Constitution:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040504a3.htm>> (6 May)

## [International Trade]

Japan and Mexico are expected to sign a free-trade agreement in August. Mexico aims to put the agreement into force next year after it is ratified by the legislature following the signing. The agreement with Mexico is the first comprehensive deal for Japan that covers its heavily protected agricultural sector:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040505a9.htm>> (5 May)

The Finance Ministry plans to include efforts to computerize and simplify trade procedures in its negotiations for envisioned economic partnership agreements (EPAs) with Asian trading partners to maximize the effect of the accords. The ministry plans to establish comprehensive bilateral partnerships with South Korea, Thailand, Malaysia and the Philippines on investment, services, tariffs and labor flows while developing free trade and investment ties. Japanese companies have called for improvements in the trade environment. The computerization of customs procedures would improve trade monitoring and help prevent goods trafficking and terrorism:

(cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 11 May)

Japan will propose revising tax pacts with other Asian economies, hoping that lower levies will boost cross-border business and investment. The government aims to lower or abolish the taxes that foreign subsidiaries pay to host countries when they pay dividends to their parent firms at home:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040513a1.htm>> (14 May)

Longtime Japan watcher and trade facilitator Andrew Hay, an Australian corporate lawyer, speaks about the future of the Japan-Australian relationship in an interview with Daily Yomiuri in Tokyo. Hay said there were still impediments on a regulatory level to investment in Japan -blockages that will have to be overcome if Prime Minister Junichiro Koizumi is to achieve his stated goal of doubling inward foreign investment by 2008:

<<http://www.yomiuri.co.jp/newse/20040524wo11.htm>> (24 May) (Full text in PDF is available on request)

Japan is set to take a more flexible stance on farm negotiations in the new round of global trade talks under the World Trade Organization if due heed is paid to certain products, especially rice. Japan will not stick to its policy of supporting the so-called Uruguay Round approach on tariff cuts on agricultural products as long as the protection of selected products is taken fully into consideration:

(cited at <<http://home.kyodo.co.jp/all/news.jsp?news=business&an=>>> visited on 26 May)