

Japanese Law News Monthly Bulletin 2005/6**HEADINGS****FOCUS in June**

1. **Equity (securities law, corporate law)**
2. **Debt (insolvency law, banking and finance law)**
3. **Goods and Services (contracting, competition law, IP, PL, consumer law)**
4. **Labour (employment law, pension system)**
5. **Oversight and Policy (administrative law, public official law, tax policy)**
6. **Social Context (NPO law, civil justice reforms, education)**
7. **Legal Policy (constitutional reform, international relations)**

**FOCUS in June: “Diet passes corporate defense bill”**

The House of Councillors passed into law Wednesday [29 June] a bill that incorporates easing criteria for corporate mergers, preventive measures against hostile takeover bids and abolition of the limited liability company system. The legislation passed in the upper house with the majority of members from the Liberal Democratic Party, New Komeito and the Democratic Party of Japan voting in favour:

<<http://www.yomiuri.co.jp/dy/business/20050630TDY01002.htm>> (30 June)

See also, “New Company Law expands business strategy options”

<<http://www.asahi.com/english/Herald-asahi/TKY200506290309.html>>

“New law to help shield firms But it won't make life much easier for listed companies”

<<http://www.yomiuri.co.jp/dy/business/20050701TDY08009.htm>> (1 July)

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

“Poison pill shot down by court”

The nation's first corporate poison pill met its demise Wednesday [1 June] with an injunction handed down by the Tokyo District Court. The action strikes a blow against companies considering similar schemes to combat hostile takeover bids. In March, high-tech measuring device manufacturer Nireco Corp. announced what it called a “Security Plan” that included an issuance of subscription warrants to shareholders in the event of an unfriendly takeover bid:

<<http://www.asahi.com/english/Herald-asahi/TKY200506020149.html>> (2 June)

“FSA to clean up forex market”

A revised law governing foreign exchange margin trading will be enforced in July to counter the predatory business practices of certain dealers. The Financial Services Agency will regulate such trading under the law concerning financial futures contracts that will come into effect that month, aiming to bar pernicious dealers:

<<http://www.yomiuri.co.jp/dy/business/20050603TDY04005.htm>> (3 June)

“Law OK'd to fine firms for false financial info”

The Diet on Wednesday passed a bill to amend the Securities and Exchange Law to fine companies for providing false information in their financial statements and to tighten

rules on large-lot off-hours stock trading. The revision was approved by the House of Councillors, and the section on false information will take effect in December, while the off-hours trading section will go into force in July:

<<http://home.kyodo.co.jp/modules/fstStory/index.php?storyid=187693>> (22 June)

“Experts in corporate law cash in on takeover jitters”

Corporate anxiety over predatory bids is proving to be a windfall for lawyers and consultants selling advice on poison pills. Executives, fearful after the battle between Livedoor Co. and Fuji Television Network Inc., are signing up for seminars in droves and paying as much as 20 million yen for consultation services:

<<http://www.asahi.com/english/Herald-asahi/TKY200506240156.html>> (24 June)

## **2. Debt (insolvency law, banking and finance law)**

“Hagi university to file for bankruptcy”

HAGI, Yamaguchi Prefecture--Hagi International University officials Monday [20 June] confirmed the university will become the first to seek protection from creditors under the Corporate Rehabilitation Law because of a lack of students. And recent education ministry data indicate it will not likely be the last. Hagi International University has had problems attracting students ever since its creation in 1999:

<<http://www.asahi.com/english/Herald-asahi/TKY200506210116.html>> (21 June)

“Ex-LTCB execs convicted of hiding loans lose appeal”

The Tokyo High Court on Tuesday rejected an appeal by three former top executives of the now-defunct Long-Term Credit Bank of Japan who were convicted of window-dressing the bank's earnings reports. Former LTCB President Katsunobu Onogi, 69, had received a suspended three-year prison term by the Tokyo District Court in September 2002, while former Vice Presidents Masami Suda, 65, and Yoshiharu Suzuki, 68, were handed suspended two-year terms:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050622a9.htm>> (22 June)

<<http://www.asahi.com/english/Herald-asahi/TKY200506220156.html>> (22 June)

## **3. Goods and Services (contracting, competition law, IP, PL, consumer law)**

“Govt, industry to convene panel on TV copyright rules”

The Internal Affairs and Communications Ministry and about 30 organizations, including key commercial TV broadcasters, NHK, Internet service providers and the Japanese Society for Rights of Authors, Composers and Publishers, will establish a joint council in July to make copyright rules on TV programs. Establishing new rules is expected to accelerate efforts to have programs distributed via transmissions on broadband networks:

<<http://www.yomiuri.co.jp/dy/business/20050603TDY08009.htm>> (3 June)

**“Revised patent law to boost local brands”**

With a bill to revise the Trademark Law being passed by the Diet last week, more products are expected to be acknowledged as local brands, a step expected to stimulate local economies. Local brands refer to products as well as services specific to certain regions. Prior to the law revision, such goods and services needed to be recognized nationwide in order to be authorized for trademark registration:

<<http://www.yomiuri.co.jp/dy/national/20050617TDY04002.htm>> (17 June)

**“Govt system failed to stop bid-rigging”**

Bid-riggers tendering for government-funded bridge projects were able to foil a technical screening system used to award contracts, The Yomiuri Shimbun has learned. The Construction and Transport Ministry introduced the system in 1999 to prevent collusion among companies tendering for sections of public works projects administered by the ministry:

<<http://www.yomiuri.co.jp/newse/20050620wo23.htm>> (20 June; full text in PDF is available on request)

**“26 firms face lawsuits over bid-rigging”**

An Osaka-based shareholder ombudsman likely will file lawsuits for damages against individual executives of 26 companies that were indicted on suspicion of rigging bids for government steel bridge construction projects... The nonprofit organization intends to demand that presidents and other executive members in charge of the projects pay more than 1 billion yen per firm to cover losses incurred after the bid-rigging allegations came to light:

<<http://www.yomiuri.co.jp/newse/20050622wo22.htm>> (22 June; full text in PDF is available on request)

**“Japan Highway raided in expanding bid-rigging scandal”**

Prosecutors on Wednesday raided the offices of Japan Highway Public Corp. to uncover how deeply involved officials were in rigging bids for lucrative bridge-building contracts... The searches followed a criminal complaint filed by the Fair Trade Commission against three major steel bridge contractors--Yokogawa Bridge Corp., Mitsubishi Heavy Industries and Ishikawajima-Harima Heavy Industries Co:

<<http://www.asahi.com/english/Herald-asahi/TKY200506290237.html>> (29 June)

**4. Labour (employment law, pension system)****“Govt to keep control of SIA through new entity”**

As part of the Social Insurance Agency reform, a new government entity will be established to manage public pension programs, but the government will retain complete control over the system. The plan was based on similar recommendations made in a final report by an advisory panel on the agency's reform to Chief Cabinet Secretary Hiroyuki Hosoda and Liberal Democratic Party proposals:

<<http://www.yomiuri.co.jp/newse/20050602wo01.htm>> (2 June; full text in PDF is available on request). See also, “Panel: Keep state control over pensions”

<<http://www.yomiuri.co.jp/newse/20050601wo01.htm>> (1 June; full text in PDF is available on request)

“Employers take new recruiting tack as baby boomers near retirement”

For a number of years now, many companies have been replacing full-time employees with part-time or temporary workers in an attempt to reduce operating costs. But an increasing number of companies are having second thoughts about their employment policies and are actively recruiting permanent employees or giving contract employees de facto permanent status:

<<http://www.yomiuri.co.jp/newse/20050624wo11.htm>> (24 June; full text in PDF is available on request)

## **5. Oversight and Policy (administrative law, public official law, tax policy)**

[Tax Policy]

“Analysis Tax panel pushes income tax hikes, but timetable remains unclear”

The government's Tax Commission recommended scrapping deductions to increase income tax revenue but stopped short of providing a timetable before the start of full-fledged debate on the most important issue--raising the consumption tax. The commission's report released Tuesday [21 June] suggests the income tax hike be accomplished by eliminating deductions for spouses as well as the special deduction for dependent children aged between 16 and 22. The panel also proposed narrowing the age range of dependents eligible for the tax deductions:

<<http://www.asahi.com/english/Herald-asahi/TKY200506220226.html>> (22 June)

See also, “Panel eyes cuts in income tax deductions”

<<http://www.yomiuri.co.jp/dy/business/20050618TDY08011.htm>> (18 June)

[Immigration]

“Afghan loses high court bid for refugee status”

The Tokyo High Court on Tuesday [31 May] rejected a lawsuit by an Afghan man seeking asylum in Japan, overturning an earlier decision in his favor. Mohammad Jawad was asking the government to grant him refugee status and rescind its decision to deport him, saying he fears persecution if he returns to Afghanistan:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050601a7.htm>> (1 June)

“Info exchange on refugees rapped”

Japan may explicitly legalize providing personal information on people seeking asylum to authorities in their country of origin, where they fear persecution, lawyers said Monday [6 June]. In April, legal amendments aimed at cracking down on human-trafficking were approved by the House of Councilors -- including a revision to the Immigration Control and Refugee Recognition Law. The revision, which is now before the House of Representatives, states that the justice minister may provide information to foreign authorities "if necessary to carry out tasks related to immigration control and refugee recognition.":

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050607a3.htm>> (7 June)

“Diet approves human trafficking bill”

The Diet passed legislation Thursday [16 June] to crack down on human trafficking by introducing tougher penalties for the crime and measures to intercept traffickers. The House of Representatives unanimously passed the bills to revise the Penal Code and the Immigration Control and Refugee Recognition Law at its plenary session, making them into legislation:

<<http://www.yomiuri.co.jp/newse/20050617wo01.htm>> (17 June; full text in PDF is available on request)

[Environmental Law]

“Foes of Isahaya project can appeal to top court”

The Fukuoka High Court, which has reversed a previous order to halt a controversial project to fill in Isahaya Bay in Nagasaki Prefecture, on Monday allowed fishermen seeking to block the project to appeal to the Supreme Court. Lawyers for the fishermen requested the permission after the high court ruled May 16 in favor of a government appeal to scrap an order by the Saga District Court that the project be halted due to its damage to the local fishing industry:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050628b1.htm>> (28 June)

<<http://home.kyodo.co.jp/modules/fstStory/index.php?storyid=189126>> (28 June)

[Others]

“10% of bureaucrats quit after subsidized sabbaticals”

Out of 576 young career-track bureaucrats who studied abroad at government expense from fiscal 1997 through 2002, 56 quit within five years after returning home, according to a study by the National Personnel Authority. The government disbursed some 730 million yen to the 56 civil servants -- about 13 million yen each -- to cover their tuition and other expenses, but only a few have repaid the expenses since quitting, according to the authority:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050622a6.htm>> (22 June)

“Govt, LDP reach accord on postal bills Stage set for new tug-of-war over legislation”

The dispute over a set of postal reform bills took a major turn Tuesday [28 June], when the government and the Liberal Democratic Party reached an agreement on some specific amendments to the legislation. The agreement has set the stage for another tug-of-war between proponents and opponents of postal privatization during a vote on the amended bills at the House of Representatives. The agreement will make changes in four items of the bills, including expanding the list of duties performed by post-privatization post offices to include providing services on behalf of a postal savings bank and a postal insurance company to be created through the privatization:

<<http://www.yomiuri.co.jp/dy/national/20050629TDY01004.htm>> (29 June)

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

### “Nagoya court snubs suit against Juki Net”

The Nagoya District Court on Tuesday [31 May] rejected a request by 13 Aichi Prefecture residents to remove their personal information from the national residency registry network, just a day after a court in Kanazawa ruled the system violates privacy rights. The plaintiffs had each demanded 220,000 yen in compensation from the national and prefectural governments as well as have their data removed from the network:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050601a5.htm>> (1 June)

### “Judicial officials rule against Cool Biz”

Most judges and court officials wore neckties when attending a two-day joint meeting on Wednesday to discuss judicial administrative problems despite having been encouraged not to do so. In so-called Cool Biz style, necktie-less Supreme Court Chief Justice Akira Machida greeted 80 high, district and family court chiefs from across the country at the Supreme Court building in Tokyo. He also talked about possible problems related to the implementation of the lay judge system in four years:

<<http://www.yomiuri.co.jp/newse/20050623wo33.htm>> (23 June; full text in PDF is available on request)

### “Guiding Japan: Call to make human rights key policy issue”

Nations may justify taking aggressive security measures because of the "war on terror," but that is no excuse for rising violations of fundamental human rights, says Irene Khan, the secretary-general of Amnesty International, based in London. Khan recently indicated in Tokyo that Japanese authorities are limiting civil liberties through a restrictive refugee recognition procedure, by drafting a bill that would muzzle the media and by charging anti-war activists simply for distributing leaflets to the families of Self-Defense Forces personnel. Khan insists Japan must uphold human rights because excessively curtailing civil liberties could lead to social unrest:

<<http://www.asahi.com/english/Herald-asahi/TKY200506270107.html>> (27 June)

### “Death sentence upheld in curry case”

The Osaka High Court on Tuesday upheld a lower court death sentence for Masumi Hayashi for killing four people and sickening 63 others by adding arsenic to a pot of curry at a community festival near her home in Wakayama in July 1998. Presiding Judge Kazuhisa Shirai called the crime brutal, heartless and cruel. "Even if her intent to murder were viewed as willful negligence, the death sentence [ordered by the lower court] would still be inevitable," he said:

<<http://www.yomiuri.co.jp/dy/national/20050629TDY02012.htm>> (29 June)

<<http://www.asahi.com/english/Herald-asahi/TKY200506290143.html>> (29 June)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050629a2.htm>> (29 June)

## 7. International Context (constitutional reform, international relations)

[Constitutional Issues]

“Referendum bill to be postponed”

The submission of the bill to stipulate procedures to amend the Constitution by a national referendum, which had earlier been scheduled for the current Diet session, will be postponed until the next extraordinary Diet session at the earliest... An extraordinary Diet session is usually called in autumn:

<<http://www.yomiuri.co.jp/newse/20050609wo02.htm>> (9 June; full text in PDF is available on request)

[International Relations]

“Japan threatens U.S. with trade sanctions”

Japan has joined with six other countries and the European Union in warning the U.S. government of their intention to impose trade sanctions unless Washington abolishes the Byrd Amendment--an antidumping tariff amendment... The eight governments told the U.S. government that they are ready to impose retaliatory sanctions if the United States does not abolish the Continued Dumping and Subsidy Offset Act of 2000--informally named for its Senate sponsor, Sen. Robert Byrd, D-W.Va.--by July. The move followed the World Trade Organization's ruling that the Byrd Amendment violates WTO rules:

<<http://www.yomiuri.co.jp/dy/business/20050610TDY01002.htm>> (10 June)

“International commission upholds whaling ban”

The International Whaling Commission voted Tuesday [21 June] to uphold an almost two-decade-old ban on commercial whaling, dealing a setback to Japan and its allies that favor a resumption. Commission members voted 29-23 against the proposal, which needed a three-fourths majority to pass. There were five abstentions, including countries that have often voted with Japan on other issues at the commission:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050622a4.htm>> (22 June)

See also, “Whaling council snubbed”

<<http://www.asahi.com/english/Herald-asahi/TKY200506250140.html>> (25 June)

“U.S. confirms 2nd mad cow/ Announcement could delay Japan's lifting of beef import ban”

In a reversal of its previous statement, the U.S. Agriculture Department said Friday it had confirmed the second case of mad cow disease in the United States, raising concerns that lifting Japan's 18-monthlong ban on U.S. beef imports could be delayed further. The ban was widely anticipated to be lifted this summer:

<<http://www.yomiuri.co.jp/newse/20050626wo11.htm>> (26 June; full text in PDF is available on request). See also,

"2nd BSE case may mean import delay"

<<http://www.asahi.com/english/Herald-asahi/TKY200506270115.html>> (27 June)

## “Japan, China eye criminal investigation treaty”

The Japanese and Chinese governments plan to conclude a bilateral criminal investigation cooperation treaty to deal with the increasing number of criminal cases in Japan committed by Chinese... The central pillar of the treaty will be exchanging information on suspects, and the two governments already have started preparatory negotiations aimed at creating the pact next year:

<<http://www.yomiuri.co.jp/newse/20050626wo41.htm>> (26 June; full text in PDF is available on request)

[WWII-Related]

## “LDP politician again doubts legitimacy of Tokyo War Crimes Tribunal”

Masahiro Morioka, a Liberal Democratic Party lawmaker who infuriated Japan's neighbors a month ago, again suggested that Japanese war criminals were unjustly convicted at the Tokyo war crimes tribunal after World War II. "We should raise the question to the Japanese people and to the world about whether the results of the Tokyo tribunal were really fair or not," said Morioka, a Lower House member and parliamentary secretary of the Ministry of Health, Labor and Welfare:

<<http://www.asahi.com/english/Herald-asahi/TKY200506220268.html>> (22 June)