

Japanese Law News Monthly Bulletin 2004/12**HEADINGS****FOCUS in December**

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 December: Gear shift on constitutional change

The Liberal Democratic Party recently came under public criticism for "going to extremes" in its bid to update the Constitution, Japan's first democratic charter that took effect in 1947. The criticism has prompted the party to alter its plans for constitutional reform. The party appears to have recognized the need to exercise due caution in its attempt to draft a revision bill:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?ed20041224a1.htm>> (24 Dec)

See also, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041222a5.htm>> (22 Dec)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041208a6.htm>> (8 Dec)

1. Equity (securities law, corporate law)

Banks in Japan are allowed to sell stocks directly starting Wednesday [1 December] as part of deregulation to spur the securities market by widening the scope of investors. Under the revised Securities and Exchange Law, the government has lifted a ban on stock deals by banks and other financial institutions, enabling individual investors to buy stocks at their outlets:

(cited at <<http://home.kyodo.co.jp/all/news.jsp?news=business&an=>> visited on 1 December)

Prospective buyers will be allowed to offer shares instead of cash in their acquisition bids. Saddled with stubbornly depressed share prices and a pending change in corporate law that eases restrictions on foreign firms, Japanese companies are peering over the battlements for an expected onslaught of takeover attempts:

<<http://www.asahi.com/english/business/TKY200412100176.html>> (10 Dec; full text in PDF is available on request)

The Jasadq Securities Exchange, which lists start-ups such as McDonald Holdings Japan and Rakuten Inc., commenced operation Monday as the nation's sixth securities exchange, transforming from an over-the-counter stock market. It is the first securities exchange to open in the 54 years since the Sapporo Securities Exchange was launched in 1950:

<<http://www.yomiuri.co.jp/newse/20041214wo11.htm>> (14 Dec; full text in PDF is available on request)

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

The new chief executive of Citibank Japan apologized at a Diet committee Tuesday [30 November] and promised that misled customers would be compensated at its private-banking unit, where regulators have found violations:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20041201a3.htm>> (1 Dec)

Mutual benefit associations that are beyond government supervision will become subject to Financial Services Agency oversight in a move to protect subscribers to the associations' insurance plans:

<<http://www.yomiuri.co.jp/newse/20041130wo11.htm>> (1 Dec; full text in PDF is available on request)

Former UFJ Bank Vice President Kazuyoshi Okazaki, arrested Wednesday with two other former executives on suspicion of concealing the bank's massive bad loans from government inspectors in autumn 2003, personally directed the cover-up, according to investigators:

<<http://www.yomiuri.co.jp/newse/20041206wo21.htm>> (6 Dec; full text in PDF is available on request). See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041222a4.htm>> (22 Dec)

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

The transport ministry said Tuesday [30 November] that it will amend an ordinance and toughen the screening of new vehicles manufactured by an automaker found to have engaged in dishonest recall practices:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041201a5.htm>> (1 Dec)

Yet another scandal involving corporate executives has been brought to light. Mitsui & Co., a leading trading house, falsified data on the performance of diesel-engine particulate-matter filters of vehicles it sold to the Tokyo metropolitan government and the governments of the prefectures surrounding Tokyo:

<<http://www.yomiuri.co.jp/newse/20041130wo12.htm>> (1 Dec; full text in PDF is available on request). See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041214a9.htm>> (14 Dec)

The Construction and Transport Ministry has instructed crane makers to recall defective cranes following reports of a series of traffic accidents nationwide caused by defects in the steering apparatus of large crane trucks:

<<http://www.yomiuri.co.jp/newse/20041211wo25.htm>> (11 Dec; full text in PDF is available on request)

Could patent sharing replace the lawsuit as a competitive business strategy? A cross-licensing agreement reached last week between Sony Corp. and Samsung

Electronics Co. is unprecedented in scope for large manufacturers. The accord will give the two companies free access to each other's patent portfolios, including those held by the subsidiaries of the two electronics giants:

<<http://www.asahi.com/english/business/TKY200412210132.html>> (21 Dec; full text in PDF is available on request)

4. Labour (employment law, pension system)

The Liberal Democratic Party's Research Commission on the Tax System plans to try to close a tax loophole that allows part-time workers to avoid paying residential tax, according to sources. The research commission plans to ensure residential taxes are more strictly collected from part-time workers who have worked less than one year:

<<http://www.yomiuri.co.jp/newse/20041205wo11.htm>> (5 Dec; full text in PDF is available on request)

About 75 percent of company officials want the government to immediately begin a drastic reform of the social security system, according to an Asahi Shimbun survey:

<<http://www.asahi.com/english/business/TKY200412070140.html>> (7 Dec; full text in PDF is available on request)

The Health, Labor and Welfare Ministry is considering reviewing the law banning women from working at mines and tunnel construction sites, aiming to expand their labor opportunities:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041212b1.htm>> (12 Dec)

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

Debate over donations to political parties is set to continue into the new year after the extraordinary Diet session convened primarily to deal with revision of the Political Funds Control Law closed Friday. On the same day, the former treasurer of the Liberal Democratic Party faction previously led by former Prime Minister Ryutaro Hashimoto was convicted of covering up a 100 million yen donation from the Japan Dental Association:

<<http://www.yomiuri.co.jp/newse/20041204wo01.htm>> (4 Dec; full text in PDF is available on request)

A constitutional amendment drafted by a senior Self-Defense Forces officer is a private proposal and does not violate laws on the political activities of SDF members, Chief Cabinet Secretary Hiroyuki Hosoda said Monday [6 December]. Hosoda said he did not see a big problem with the act itself, although he added that the government would closely examine the draft to see if it involves any serious problem:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041207a5.htm>> (7 Dec)

<<http://mdn.mainichi.co.jp/news/20041206p2a00m0dm008000c.html>> (6 Dec)

The government has fleshed out the so-called triple reform plan to cut subsidies to local governments by 1.68 trillion yen in fiscal 2005, but in return will transfer tax sources worth about 1.11 trillion yen to them:

<<http://www.yomiuri.co.jp/newse/20041208wo11.htm>> (8 Dec; full text in PDF is available on request)

The government will crackdown on human traffickers and strengthen immigration controls as part of a comprehensive strategy to combat human trafficking that received official endorsement at a meeting of related ministries and agencies at the Prime Minister's Office on Tuesday [7 December]. The government hopes that moves to strengthen domestic laws and promote efforts to prevent human trafficking will stem international criticism of Japan's record on the issue:

<<http://www.yomiuri.co.jp/newse/20041209wo25.htm>> (9 Dec; full text in PDF is available on request)

The Fisheries Agency has decided to impose tougher limits on imports of farmed bluefin tuna due to criticism that tuna farms have caused environment pollution and overexploitation:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041212a9.htm>> (12 Dec)

The tax system panels of the Liberal Democratic Party and its coalition partner New Komeito have agreed to conditionally phase out the current fixed-rate tax breaks on income tax and individual resident tax in two years... The abolition of the special tax breaks, introduced in 1999 as an economic stimulus measure, has been a focal point of debate regarding tax reforms to be introduced next fiscal year:

<<http://www.yomiuri.co.jp/newse/20041212wo11.htm>> (12 Dec; full text in PDF is available on request)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041212a6.htm>> (12 Dec)

See also, <<http://www.yomiuri.co.jp/newse/20041216wo02.htm>> (16 Dec; full text in PDF is available on request)

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

A basic law concerning compensation and counseling for crime victims will likely pass through the Diet on Wednesday [1 December] after deliberations on the bill by the House of Councillors. But the new law only stipulates the basic concepts of measures to help victims:

<<http://www.yomiuri.co.jp/newse/20041201wo34.htm>> (1 Dec; full text in PDF is available on request)

A government task force on fighting international terrorism formally adopted a plan Friday that includes fingerprinting and photographing all foreign visitors upon entry into Japan:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041211b5.htm>> (11 Dec)

See also, <<http://mdn.mainichi.co.jp/news/archive/200412/05/20041205p2a00m0fp011000c.html>> (5 Dec)

A man who made off with a small amount of money from a home here and threatened a resident when he returned to the scene in an unsuccessful bid to steal more cannot be convicted of 'constructive robbery,' the top court has ruled... "After committing the

theft, the defendant was never spotted or chased by anybody, so his theft had been completed (by the time he had returned to the scene). Therefore, he cannot be convicted of constructive robbery even though he threatened the victim with a knife," Presiding Judge Osamu Tsuno said as he handed down the ruling on Friday [10 December]:

<<http://mdn.mainichi.co.jp/news/20041212p2a00m0dm004000c.html>> (12 Dec)

The government Monday [13 December] decided to introduce as early as 2006 a system that will provide minors taken into custody by family courts with state-financed lawyers throughout their court proceedings, according to government sources. The government is considering incorporating a provision into a bill scheduled to be submitted to the ordinary Diet session next year to revise the Juvenile Law:

<<http://www.yomiuri.co.jp/newse/20041214wo34.htm>> (14 Dec; full text in PDF is available on request)

7. International Context (constitutional reform, international relations)

[International Security]

The United States has proposed launching a bilateral dialogue with Japan on possible joint cooperation in the event hostilities erupt between China and Taiwan... Japan has been put in a difficult position over the proposal, which was made in November at a working-level meeting in Washington to discuss U.S. military realignment in Japan, because the government has not clarified whether Taiwan is covered in the scope of Japanese-U.S. defense guidelines set in 1999:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041214a6.htm>> (14 Dec)

<<http://home.kyodo.co.jp/all/display.jsp?an=20041214015>> (14 Dec; full text in PDF is available on request)

[International Trade and Economy]

Japan and the Association of Southeast Asian Nations agreed Tuesday [30 November] to start talks on broader economic alliances -- including free-trade agreements -- while pledging to fight terrorism. They are "committed to endeavor to conclude the negotiations within two years from that date,":

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041201a2.htm>> (1 Dec)

Prime Minister Junichiro Koizumi and [Philippines] President Gloria Macapagal Arroyo signed a basic accord for a free-trade agreement Monday [29 November] but left tough talks on stickier issues for the months ahead:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041130a2.htm>> (1 Dec)

<<http://www.yomiuri.co.jp/newse/20041201wo12.htm>> (1 Dec; full text in PDF is available on request)

The Japanese government has urged Thailand to lift tariffs on car imports as part of its efforts to conclude a free trade agreement. At the same time, Japanese automakers, whose affiliated firms take up most of the Thai auto market, are cautious about the FTA because it could cause fierce competition between the same Japanese car models:

<<http://www.yomiuri.co.jp/newse/20041208wo13.htm>> (8 Dec; full text in PDF is available on request)

The government on Tuesday endorsed a basic policy for promoting free trade agreements, putting priority on striking accords with Asian trading partners to help build an East Asian community:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20041222a2.htm>> (22 Dec)

[WWII Related Issues]

The Supreme Court on Tuesday rejected an appeal filed by the families of Korean victims of a ship explosion in 1945 that killed hundreds of Korean slave laborers returning from Japan after World War II. The ruling preserves a May 2003 high court ruling that rejected their demand for compensation and an apology from the Japanese government:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041201a7.htm>> (1 Dec)

See also, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041130a1.htm>>

& <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20041216a8.htm>>