

Japanese Law News Monthly Bulletin 2004/3**HEADINGS****Focus in March**

1. **Equity (securities law, corporate law)**
2. **Debt (insolvency law, banking and finance law)**
3. **Goods and Services (contracting, product liability, competition law)**
4. **Oversight and Policy (administrative law, public official law, tax policy)**
5. **Labour (employment law)**
6. **Social Context (NPO law, civil justice reforms)**
7. **Legal Policy (constitutional reform, immigration, economy)**

FOCUS in March: PM Koizumi's E-Mail Magazine Now in English

The weekly Koizumi Cabinet E-mail Magazine is now available in English. It includes columns such as "Lion Heart" an opinion column by Prime Minister Junichiro Koizumi, and "What's up around the Prime Minister". Subscription can now be made for free on the official website of the Prime Minister of Japan and His Cabinet at

<<http://www.kantei.go.jp/foreign/m-magazine/>>

Delivery will start from March 25. A sample version is available at

<<http://www.kantei.go.jp/foreign/m-magazine/sample.html>>

1. Equity (securities law, corporate law)

The Tokyo Stock Exchange said Thursday it will change the method of calculating the Topix index of all first section issues to better track corporate performances:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040227b2.htm>> (27 Feb)

Online brokerage Matsui Securities Co and Resona Holdings Inc will soon forge a business tie up under which individual investors will be able to open Matsui brokerage accounts at Resona group banking outlets:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040313a1.htm>> (13 March)

The Tokyo Stock Exchange said Tuesday it will abolish its foreign section to lure overseas companies:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040317a1.htm>> (17 March)

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

Foreign direct investment in Japanese financial institutions is helping to promote financial reforms in Japan, including the disposal of bad loans:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040313a3.htm>> (13 March)

The Liberal Democratic Party urged the government to change its plan to allow banks to sell all types of insurance:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040317b1.htm>> (17 March)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040312b4.htm>> (12 March)

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

The Japan unit was raided on 26 February by the Fair Trade Commission on suspicion of violating the Antimonopoly Law:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040228a1.htm>> (28 Feb)

A US life insurance group has asked President George W Bush to raise the issue of Japan's state-run "kampo" life insurance services when he meets with Japanese Prime Minister Junichiro Koizumi in June:

<<http://asia.news.yahoo.com/040323/kyodo/d81gadk80.html>> (24 March)

Japan's vehicle-recall system: a summary of its principles, which was written in response to Mitsubishi's recall of some 112,000 large vehicles due to defective wheel hubs that have caused a series of accidents:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040325a4.htm>> (25 March)

The Nagasaki District Court handed a welder a suspended 18-month prison term on 24 March for carelessness that resulted in a fire aboard a luxury liner at a Mitsubishi Heavy Industries Ltd. shipyard in Nagasaki in 2002:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040325a8.htm>> (25 March)

The Tokyo High Court also sentenced nine officials of seven oil companies to suspended prison terms ranging from six to 18 months for violating the Antimonopoly Law:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040325a9.htm>> (25 March)

The Supreme Court ruled on 25 March that insurance companies are obliged to pay out on contracts even when clients kill themselves solely for the designated beneficiary to receive the cash:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040326a9.htm>> (26 March)

4. Oversight and Policy (administrative law, tax policy)

The Senate Foreign Relations Committee on 4 March unanimously approved the first major rewrite of the US-Japan tax treaty in more than three decades. A key treaty benefit is zero withholding taxes on dividends from subsidiaries in either country that are at least 50% owned by companies in the other country. Currently, such dividends face a 10% tax:

<http://story.news.yahoo.com/news?tmpl=story&u=/dowjones/20040304/bs_dowjones/200403041800001260> (4 March)

Seventy wealthy people across the nation failed to declare billions of yen in income by investing in an international project-based lease financing scheme for airplanes offered by Nomura Babcock & Brown (NBB). The tax authorities have ruled that the scheme was arranged primarily for tax avoidance purposes:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040317b4.htm>> (17 March)

Ruling and opposition parties, except for the Japanese Communist Party (JCP), agreed on 24 March to revise legislation to bar lawmakers from soliciting donations for politicians from state-funded secretaries, as well as from hiring their spouses as state-paid secretaries:

<<http://asia.news.yahoo.com/040324/kyodo/d81gnbs80.html>> (24 March)

A government panel tasked with spurring foreign direct investment in Japan decided on 24 March to set up a working group to craft measures to improve the tax environment for cross-border mergers and acquisitions:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040325a8.htm>> (25 March)

5. Labour (employment law)

In response to a spate of insider revelations of corporate wrongdoing in recent years, the Cabinet endorsed a bill on 9 March to protect whistle-blowers from employer retaliation under certain conditions:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040310a8.htm>> (10 March)

Prime Minister Junichiro Koizumi has backpedaled on his recent pledge to bar the practice of amakudari (descent from heaven), in which retired top bureaucrats public corporations and independent administrative bodies where they previously had administrative jurisdiction:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040312a5.htm>> (12 March)

Survey: 61% of women quit career to raise children. More than 60 percent of women left their jobs near the time of giving birth to their first child and remained unemployed, according to a Health, Labor and Welfare Ministry survey released on 17 March. The survey on the employment situation of women before and after childbearing demonstrated the difficulty women face in holding down jobs while rearing children due to the insufficiency of facilities and systems to support child-raising.

(cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 18 March 2004)

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

[Human Rights]

Foreigners in Japan should not expect to have the same human rights protections here as Japanese, 21.8 percent of respondents in a fiscal 2002 survey said:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040303a8.htm>> (3 March)

The Hokkaido Prefectural Government was asked to create an ordinance to punish those who discriminate against foreigners:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040319a8.htm>> (19 March)

Steps will be taken to stop distinguishing children born out of wedlock from those born to married couples when their births are recorded in family registries:

<<http://202.221.217.59/print/news/nn03-2004/nn20040309b7.htm>> (9 March)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040303a5.htm>> (3 March)

[Judicial Reform]

The Cabinet on 2 March adopted nine bills related to judicial reform, including legislation that will create a new trial system under which citizen judges will work with professional judges on serious criminal cases such as murder. The envisaged law on citizen judges will go into force within five years after the Diet passes the bill, meaning the new system will be introduced by 2009 if the current Diet session enacts the legislation, according to government officials. A new system under which citizen judges and professional judges will try serious criminal cases such as murder may place a heavy burden on the public. The role is mandatory and is considered to have a workload similar to that of national civil servants. The penalty for leaking information is up to one year in prison or a fine up to 500,000 yen. This punishment contrasts with regulations regarding professional judges, who are exempt from legal penalties. Although the service will be mandatory, a candidate would be allowed to decline for "unavoidable reasons" to be defined in a government ordinance in which the government task force is planning to incorporate considerations of personal freedom.

(cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 4 March 2004)

The lawyer community in Japan is set to change with the implementation in April of a legal revision that will abolish various regulations on lawyers and allow public servants to qualify for the bar:

<<http://asia.news.yahoo.com/040325/kyodo/d81h2o780.html>> (25 March)

[WWII-Related Issues]

The Sapporo District Court on Tuesday rejected an 860 million yen damages suit against the government and six companies filed by 43 Chinese nationals enslaved to work at coal mines and construction sites in Hokkaido during World War II:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040324a2.htm>> (24 March)

A TV production company was handed a court order on 24 March to pay 1 million yen in damages to a Tokyo-based citizens' group for misleading its members about the content of a program on the "comfort women" issue:

<<http://asia.news.yahoo.com/040324/kyodo/d81ghppg0.html>> (24 March)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040325a3.htm>> (25 March)

7. Legal Policy (international relations, constitutional reform)

[Constitutional Reform]

A special team of the Liberal Democratic Party's Research Commission on the Constitution has proposed rewriting the basic law's preamble and creating a constitutional court:

(cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 11 March 2004)

A defense policy subcommittee of the Liberal Democratic Party has proposed a revision of the war-renouncing Article 9 of the Constitution to turn the Self-Defense Forces into conventional armed forces and establish a basic national defense law stipulating that the country can exercise the right to collective self-defense:

(cited at <<http://www.yomiuri.co.jp/index-e.htm>> visited on 12 March 2004)

The Diet shall be the highest organ of state power, and shall be the sole lawmaking organ of the State. Thus reads Article 41 of the Constitution. Political insiders say, however, that the Policy Affairs Research Council of the Liberal Democratic Party actually wields greater decision-making power within the nation's lawmaking machinery, and that the decisions it makes are those sought by the bureaucracy:
<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040316a8.htm>> (16 March)

[International Trade]

Japan and Mexico reached a final agreement on a free trade pact. The government is planning to soon set up a ministerial conference in a bid to promote negotiations for free trade agreements (FTAs) with Japan's trading partners in Southeast Asia:
<<http://asia.news.yahoo.com/040323/kyodo/d81g6sm00.html>> (24 March)
<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040313a2.htm>> (13 March)
<<http://www.asahi.com/english/opinion/TKY200403130124.html>> (13 March)
<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040312a2.htm>> (12 March)
<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040311a2.htm>> (11 March)

[Immigration]

The Nagoya District Court on Thursday dismissed a suit by two Afghan men seeking revocation of a deportation order following the government's refusal to grant them refugee status. The presiding Judge Yukio Kato said the pair cannot be recognized as refugees because persecution by the Afghan government against the country's Hazara minority was not occurring when the deportation orders were issued:
<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040319a7.htm>> (19 March)

The Justice Ministry will review a controversial Immigration Bureau Web site where people can anonymously report suspicious foreigners who might be illegal aliens:
<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040319a3.htm>> (19 March)

Japan's largest police-operated detention facility with a capacity for 120 people has been completed in Tokyo's Shinagawa Ward:
<<http://asia.news.yahoo.com/040324/kyodo/d81gk04g4.html>> (24 March)