

Japanese Law News Monthly Bulletin 2004/6**HEADINGS****FOCUS in June**

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, pension system)**
6. **Social Context (NPO law, civil justice reforms)**
7. **Legal Policy (constitutional reform, international relations)**

FOCUS in June: Standard English legal code translation in works

The government plans to translate laws such as the Civil Code and the Commercial Code into English in a bid to facilitate foreign investment and help domestic firms expand their international business activities. The government will establish this month a project team on the issue within the government's task force on judicial reform. The translated laws will be available via the Internet and in published form to allow anyone to access them, according to sources:

<<http://www.yomiuri.co.jp/newse/20040613wo01.htm>> (13 June) (Full text in PDF is available on request). See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040610a3.htm>> (10 June)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040621a1.htm>> (21 June)

1. Equity (securities law, corporate law)

The Financial Services Agency is set to slap a banking group headed by UFJ Holdings Inc. with a series of business-improvement orders over its inappropriate handling of loans to small companies and other operational problems:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040603a1.htm>> (3 June)

Japan may allow companies to use cash or foreign shares when buying other companies, the Nihon Keizai newspaper reported, without saying where it got the information. The regulations would increase foreign companies' options when acquiring Japanese companies, Nikkei said. Under the current rules, a foreign company cannot use equity to buy a Japanese company if it seeks to merge the target firm with a local subsidiary and cash can be used only in combination with stock:

<<http://quote.bloomberg.com/apps/news?pid=10000101&sid=aq4QWOJIIH7k&refer=japan>> (6 June)

Companies attempting to turn around their businesses are issuing under-market-value shares to third parties, seeking to obtain financial commitment in return for value purchases. While the measure is seen as a way to attract supporters willing to take risk, analysts have warned that it puts existing shareholders at a disadvantage as the shares' values might decline:

<<http://www.yomiuri.co.jp/newse/20040611wo12.htm>> (11 June) (Full text in PDF is

available on request).

The Securities and Exchange Commission has amended its list of foreign companies (including many Japanese companies) that claim the registration exemption of Rule 12g3-2(b) under the Securities Exchange Act of 1934. Rule 12g3-2(b)3 provides an exemption from registration under Section 12(g) of the Act with respect to a foreign private issuer that submits to the Commission, on a current basis, the material required by the Rule. The list is cited at <<http://www.sec.gov/rules/other/34-49846.htm>>

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

Japan's private equity firms are piling into the distressed asset market as banks rush to clear bad loans from their books, but the number of deals is dwindling. Players hope the tap is still on for distressed deals ahead of a March 2005 government deadline for big banks to halve their ratio of problem loans to total loans from March 2002 levels: <<http://asia.news.yahoo.com/040604/3/1iufm.html>> (4 June)

The nation's banks have introduced, or are planning to introduce, a new type of settlement deposit that will be fully protected in the event of a bank failure, ahead of the full implementation of the payoff system in April. The new settlement-specific deposit has to meet three criteria—deposits earn no interest, transaction settlement services are provided and depositors can draw upon the account balance on demand: <<http://www.yomiuri.co.jp/newse/20040610wo12.htm>> (10 June) (Full text in PDF is available on request).

Japan's Financial Services Agency is set to issue a business improvement order to UFJ Bank this week after it judged that the lender tried to evade an inspection by the regulator, the Nihon Keizai newspaper said: <<http://asia.news.yahoo.com/040617/3/1jia4.html>> (17 June)

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

Three authors filed for a provisional injunction with the Tokyo District Court on 3 June to stop companies including Gakken Co., a major publishing firm, from using electronic learning materials based on their literary works at the company's franchise cram schools without permission. This is the first time that authors have sued over electronic learning materials: <<http://www.yomiuri.co.jp/newse/20040604wo21.htm>> (4 June) (Full text in PDF is available on request)

The ministry will revise the implementation regulations for the national health insurance law to state that foreigners without permission to stay in Japan will be excluded without exception from the insurance plan: <http://www.troyrecord.com/site/news.cfm?newsid=11885921&BRD=1170&PAG=740&dept_id=226968&rfi=6> (7 June)

DaimlerChrysler AG said Tuesday [8 June] it is studying seeking compensation from Mitsubishi Motors Corp. over the quality problem at Mitsubishi Fuso Truck & Bus Corp. A possible damage claim would be based on the terms of the share purchase contract between Mitsubishi Motors and Daimler Chrysler for shares in the truck and bus company, the German automaker said:
(cited at <<http://home.kyodo.co.jp/all/news.jsp?news=business&an=>> visited on 9 June)

Japan has effectively rejected US calls to reform the "kampo" life insurance services offered by post offices... A US life insurance industry body urged Japan on Wednesday to put the state-run "kampo" life insurance services under Financial Services Agency supervision, as are private-sector insurers:
<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040610a5.htm>> (10 June)
<<http://asia.news.yahoo.com/040624/kyodo/d83d1oqg0.html>> (24 June)

Sharp filed a suit at the Tokyo District Court, claiming the LCD TV panels that Teco Japan, the Japan-based subsidiary of Taiwan-based Teco Electric & Machinery, uses has violated its LCD TV patents:
<<http://www.digitimes.com/NewsShow/Article.asp?datePublish=2004/06/10&pages=PR&seq=203>> (10 June)
See also, <<http://www.asahi.com/english/business/TKY200406150092.html>> (15 June)

Two bereaved families plan to sue the government and a pharmaceutical firm for damages, claiming the side effects of a so-called wonder drug for lung cancer killed their relatives. The families, ... say the state is responsible because it insufficiently screened the lung-cancer drug Iressa before the health ministry approved it for use in July 2002:
<<http://www.asahi.com/english/nation/TKY200406230140.html>> (23 June)

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

The Diet on Wednesday [2 June] enacted a set of laws to privatize four debt-ridden expressway corporations in fiscal 2005. The laws are part of moves to have Japan Highway Public Corp., Metropolitan Expressway Public Corp., Hanshin Expressway Public Corp. and the Honshu-Shikoku Bridge Authority repay their combined debts of 43.8 trillion yen and realize toll-free expressways in 45 years:
<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040603a3.htm>> (3 June)

The government has agreed to pay 5 million yen in compensation to a former Japanese citizen in the United States who claims she suffered under Japan's past policy of forcibly segregating Hansen's disease patients:
<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040603b2.htm>> (3 June)

The Justice Ministry has ordered prosecutors to disclose the interrogation reports of suspects or witnesses for the victims' side in dropped cases if such evidence is deemed essential in ensuing damages suits.... The ministry set three criteria for interrogation reports to be shown to victims: that such reports be essential for damages suits filed by victims; that those who had been interrogated cannot appear at such trials; and that the

disclosure of the reports does not greatly infringe on the privacy of those who were interrogated:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040608a6.htm>> (8 June)

The introduction of an identification number system for taxpayers came a step closer after a government panel decided as a first step to give the numbers to individual investors who want to receive them:

<<http://www.yomiuri.co.jp/newse/20040610wo11.htm>> (10 June)

<<http://www.yomiuri.co.jp/newse/20040624wo12.htm>> (24 June)

(full text in PDF is available on request).

Changes will allow equity losses to be offset against other taxable financial gains. The Tax Commission is pushing through revisions aimed at encouraging private investment in stocks and other financial instruments:

<<http://www.asahi.com/english/business/TKY200406100162.html>> (10 June)

5. Labour (employment law, pension system)

A set of pension reform bills passed the House of Councillors on 5 June with the support of the ruling coalition, despite last-ditch resistance by opposition parties throughout the night:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040606a1.htm>> (6 June)

See also, <<http://asia.news.yahoo.com/040604/kyodo/d8301q180.html>> (4 June)

However, the government admitted on 23 June that the recently revised law covering pensions for corporate workers contains a technical error that could prevent some senior citizens from receiving additional benefits. Article 44 determines the amount of the additional benefits by referring to Article 43 as "the previous Article." The insertion of four clauses between Article 43 and 44 has made unclear the meaning of the "previous Article":

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040624a5.htm>> (24 June)

The labor ministry is pushing for legislation that would require employers to pay part-time workers extra for overtime work. The move is designed to free up more time for part-timers to attend to their personal affairs, including the tending of children and the serving of local communities:

<<http://www.asahi.com/english/business/TKY200406220132.html>> (22 June)

A government panel called on 22 June for a ban on indirect gender-based discrimination and unfair treatment of pregnant women in the field of employment... The ministry plans to submit a bill aimed at revising the law to the Diet during its 2006 ordinary session:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040623a6.htm>> (23 June)

Meanwhile, two female flight attendants sued Japan Airlines on 23 June for significantly reducing their working days, resulting in sharp drops in income, after they chose to be exempt from night flights in order to raise their children:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040624b1.htm>> (24 June)

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

[Juvenile Law]

The Justice Ministry has established in its Criminal Affairs Bureau a project team to devise measures to prevent minors from committing crimes. The team is investigating a slate of measures, including possible revisions to the Juvenile Law and the juvenile reformatory law:

<<http://www.yomiuri.co.jp/newse/20040603wo27.htm>> (3 June) (Full text in PDF is available on request).

[Judicial Reform]

The Diet enacted a set of judicial reform laws on 11 June, including a measure aimed at setting up a high court specializing in disputes over intellectual property rights. The law stipulates that the high court will be set up at the Tokyo High Court and start operations in April. It will deal with issues such as patented technologies and product contents. The new legislation also bolsters rules governing lawsuits on intellectual property rights, including cases involving disputes over "company secrets," such as by empowering the court to order parties concerned not to divulge secret information and to keep trials closed. It also introduces a system that allows assistant judges and prosecutors to acquire more legal experience:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040612b6.htm>> (12 June)

The ordinary Diet session has enacted many new criminal laws, among them one on a quasi-jury system for having lay judges, and legal officials have begun preparing for the new system to be inaugurated in 2009:

<<http://asia.news.yahoo.com/040623/kyodo/d83d15j80.html>> (23 June)

[Human Life]

The recent incident in which a doctor is suspected of allowing a patient to die at a Hokkaido hospital by removing his respirator though the conditions required for euthanasia were not met has raised questions over the extent to which doctors should provide patients with life-sustaining treatment... The ministry plans to ask medical experts to hammer out guidelines covering procedures for the withdrawal of life support from patients who have given clear verbal or written instructions that they do not wish to receive such treatment:

<<http://www.yomiuri.co.jp/newse/20040603wo31.htm>>

<<http://www.yomiuri.co.jp/newse/20040605wo33.htm>>

(Full text in PDF is available on request)

At issue now is whether conditions for becoming a donor are too strict. Unlike the US and other countries... Japan does not permit families to say yes on behalf of a donor who has not previously expressed such a wish in writing. Critics of the law say that's unrealistic - and blame the provision for the shortage of donors:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040623f3.htm>> (23 June)

A government panel on 23 June said it will recommend that Japan permit the limited cloning of human embryos for scientific research, an official said:

<<http://asia.news.yahoo.com/040623/ap/d83cucog0.html>> (23 June)

[WWII-Related Issues]

Prosecutors have kept documents on court rulings convicting 10 Japanese in 1936 of kidnapping 15 Japanese women to force them to work as "comfort women" at a military brothel in Shanghai, a quarterly journal showed... Ryukoku University professor Etsuro Totsuka found the documents at the Nagasaki District Public Prosecutor's Office and made them available in the latest issue of the Quarterly Journal on the Study of War Responsibility, published Tuesday by the Center for Research and Documentation on Japan's War Responsibility: (from The Japan Times 16 June: full text is available on request).

7. Legal Policy (constitutional reform, international relations)

[Constitutional Reform]

The main opposition Democratic Party of Japan unveiled Tuesday an interim report on constitutional revision, which proposes that Japan has "limited right" of self-defense. The report also proposes that Japan considers the establishment of a reserve force for the United Nations so that it can play a role in global peace and stability: (cited at <<http://home.kyodo.co.jp/all/news.jsp?news=politics&an=>> visited on 23 June)

[International Relations]

Trade Representative Robert Zoellick had positive words for Japan after a US government report cited progress in deregulation and market-opening moves by Tokyo:

<http://news.yahoo.com/news?tmpl=story&u=/afp/20040608/pl_afp/us_japan_trade_040608211308> (8 June)

See also, <<http://www.yomiuri.co.jp/newse/20040606wo44.htm>> (6 June) (Full text in PDF is available on request)

After a bill to ban ships seen as a security threat from docking at Japanese ports is passed early this week, the government will have all necessary means at its disposal to pressure North Korea over pending issues. The government already has revised the Foreign Exchange and Foreign Trade Law to allow Japan to unilaterally impose sanctions on North Korea, including the banning of trade and cash remittances between the two countries:

<<http://www.yomiuri.co.jp/newse/20040613wo06.htm>> (13 June) (Full text in PDF is available on request).

Seven laws designed to supplement Japan's war-contingency legislation were enacted on 14 June with the approval of the House of Councilors. The new laws, which supplement a set of three laws enacted last June, effectively complete Japan's first post-World War II legal codes to define the nation's response to a military attack:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040615a1.htm>> (15 June)

Japan will have to make concessions in selected areas if it wishes to safeguard sensitive products such as rice in World Trade Organization negotiations, EU Commissioner

Pascal Lamy said... Of particular concern for Japan is how sensitive products for the country, such as rice and beef, will be handled in basic framework agreements on agriculture, trade and market access that are being negotiated under the Doha Round:

<<http://www.yomiuri.co.jp/newse/20040622wo12.htm>> (22 June) (Full text in PDF is available on request). See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040623a2.htm>> (23 June)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040617a2.htm>> (17 June)