

Japanese Law News Monthly Bulletin 2005/1**HEADINGS****FOCUS in January**

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 January: 2005 an epochal year for constitutional change

Political moves toward Constitutional change are passing significant milestones this year. For example, the Constitution research commissions of both chambers of the Diet will summarize five years of discussions in preparations for their final reports.

At the same time, the ruling Liberal Democratic Party is scheduled to publish its draft revisions, while Minshuto (Democratic Party of Japan), the largest opposition party, also will make proposals for constitutional change. Since both ruling and opposition parties are to present their revision plans, amendments to the Constitution finally will be put on the political schedule:

<<http://www.yomiuri.co.jp/newse/20050104wo04.htm>> (4 January; full text in PDF is available on request). See also,

<<http://www.yomiuri.co.jp/newse/20050116wo03.htm>> (“Minshuto to discuss referendum with coalition” 16 January; full text in PDF is available on request)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050119a9.htm>> (“Keidanren airs plan to amend Constitution” 19 January)

<<http://www.yomiuri.co.jp/newse/20050128wo04.htm>> (“Calls for Constitutional revision growing” 28 January; full text in PDF is available on request)

1. Equity (securities law, corporate law)

“Expansion of Trust Business Law prompts flurry of activity”

The expansion of the Trust Business Law in December to include nonfinancial companies and assets such as intellectual property has triggered a rush of activity into previously uncharted areas. It's little wonder-the revisions are the first in about 80 years and have enabled small businesses with promising patents and copyrights to get in on the action to raise funds prior to the launch of a product or project:

<<http://www.asahi.com/english/business/TKY200501070147.html>> (7 January; full text in PDF is available on request)

“Prosecutors question former execs in Seibu group”

Prosecutors have begun to question former senior executives of the scandal-tainted Seibu Railway group on a voluntary basis over allegations of falsified financial reports

about shareholders, sources said. The Tokyo District Public Prosecutors Office suspects the group violated the Securities and Exchange Law by falsifying documents, committing insider trading and other infractions

<<http://www.asahi.com/english/business/TKY200501120136.html>> (12 January; full text in PDF is available on request). (“Seibu Railway's Delisting Shows Harder Regulatory Line in Japan” from The Wall Street Journal, 17 January 2005 is also available)

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

“Ashikaga Bank misstated borrowers' condition”

Ashikaga Bank, now under state control, concealed a negative net worth of 223.3 billion yen by reviewing its self-assessment of borrowers immediately before the Financial Supervisory Agency--the predecessor to the Financial Services Agency--started investigations in November 1998. The move apparently was aimed at maintaining a capital adequacy ratio of 8 percent, according to in-house documents obtained by The Yomiuri Shimbun:

<<http://www.yomiuri.co.jp/newse/20050107wo11.htm>> (7 January; full text in PDF is available on request)

“Foreign investors key to bond issue”

Fearing domestic investors may no longer be willing to help cover the nation's expenditures, the Finance Ministry is turning to foreign investors to buy more government bonds... And from April, new regulations will greatly simplify purchasing procedures. Only about 4 percent of Japanese government bonds are currently held by overseas investors. That has raised concerns that Japan may not be able to count on domestic investors alone to cover the issuance of large-scale government bonds in the years ahead:

<<http://www.asahi.com/english/politics/TKY200501110121.html>> (11 January; full text in PDF is available on request)

“Momentum building for reform of investment laws”

Momentum is gathering for the creation of an investment services law to cover a wide range of financial products, including stocks, bonds and financial futures. The move is aimed at setting across-the-board rules for the protection of investors to encourage more people to invest their savings. Financial assets possessed by Japanese total an estimated 1.4 yen quadrillion:

<<http://www.yomiuri.co.jp/newse/20050128wo14.htm>> (28 January; full text in PDF is available on request)

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

“More power eyed for patent lawyers”

The Patent Office has decided to revise the Patent Attorneys Law to authorize patent attorneys to represent clients in out-of-court disputes over copyrights for music, movies

and other works. The number of disputes over intellectual property rights has been increasing, and the office aims to more quickly solve these cases by giving patent attorneys who are versed in copyright law the power to arbitrate in such disputes:

<<http://www.yomiuri.co.jp/newse/20050117wo33.htm>> (17 January; full text in PDF is available on request)

“SAFEGUARDING DATA: Ministry targeting corporate snitches”

Corporate tattlers hoping to profit by leaking trade secrets will face harsher penalties from next year-even if they have already left their company. Under the bill to amend the Unfair Competition Prevention Law, employees who leak corporate intellectual property, including business strategies and policies, either here or overseas will face criminal charges. The bill is primarily aimed at preventing hard-to-recover, state-of-the-art technology from ending up in the hands of overseas competitors:

<<http://www.asahi.com/english/politics/TKY200501240146.html>> (24 January; full text in PDF is available on request)

4. Labour (employment law, pension system)

“Equal pay for equal work tops Rengo agenda”

This year's shunto, or annual spring campaign by the Japanese Trade Union Confederation (Rengo), will focus on improving working conditions for temporary, part-time and casual workers, according to Rengo officials. Rengo, the nation's largest labor organization, with a membership of 6.8 million, says the gap in wages and working conditions between permanent and nonpermanent workers is an urgent problem that needs to be solved in interest of equity:

<<http://www.yomiuri.co.jp/newse/20050107wo12.htm>> (7 January; full text in PDF is available on request)

“Govt to ease law on construction workers”

To help prevent unemployment in the slumping construction industry, the government will submit to the next Diet session a bill to revise the law to improve the working conditions of construction workers by allowing construction firms to dispatch redundant employees to other companies when business is slow:

<<http://www.yomiuri.co.jp/newse/20050112wo03.htm>> (12 January; full text in PDF is available on request)

“3 parties to discuss pension system”

The Liberal Democratic Party, coalition partner New Komeito, and opposition Minshuto (Democratic Party of Japan) are to set up a joint panel in the Diet to discuss a unified pension system and other social security reforms:

<<http://www.yomiuri.co.jp/newse/20050129wo03.htm>> (29 January; full text in PDF is available on request)

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

“Civil service reform hits brick wall”

Civil service reform is deadlocked, with bills related to the reform still pending and some even saying the government should scrap the bills and write new ones. The bills aim to introduce the merit-based pay and promotion system for public servants and tighten regulations on the practice of amakudari, in which retiring bureaucrats find new executive posts in the private sector or in semigovernmental organizations:

<<http://www.yomiuri.co.jp/newse/20050101wo01.htm>> (1 January; full text in PDF is available on request)

“Long road to local govt reform”

Government efforts to promote the triple reform of local finances appear to have passed their most important stage. However, there is still a long way to go in accomplishing the goal due to the slow progress in achieving targets set for the current campaign, the second phase of the reform that was initiated a decade ago:

<<http://www.yomiuri.co.jp/newse/20050105wo07.htm>> (5 January; full text in PDF is available on request)

“Postal privatization spat rolls on”

As attitudes toward postal privatization continue to split the government and its ruling coalition, the two sides are unlikely to see eye to eye on the specifics of a bill on the issue during upcoming talks in mid-January, party sources said. There is a gap between the two sides on how to transform the state-run postal system into private sector services, a main pillar of the structural reforms pursued by Prime Minister Junichiro Koizumi, according to the sources:

<<http://www.yomiuri.co.jp/newse/20050105wo05.htm>> (5 January; full text in PDF is available on request)

[Immigration Law]

“Immigration Control and Refugee Recognition Law - Govt to make airlines check passports”

In an antiterrorism measure, the government plans to require airline companies to confirm the authenticity of passports before passengers enter Japan:

<<http://www.yomiuri.co.jp/newse/20050116wo01.htm>> (16 January; full text in PDF is available on request)

“Trafficking victims to get residency”

Japan will grant victims of human-trafficking special residency status if they are found to have overstayed their visas and accelerate measures to crack down on perpetrators of the crime... The actions will be stipulated in state-proposed revisions to the Immigration Control and Refugee Recognition Law:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050119a7.htm>> (19 January)

“Japan defies U.N., deports refugees: Kurd asylum-seekers flown to Turkey”

Acting with uncharacteristic speed, the Justice Ministry bundled a Kurdish father and his son, both U.N.-recognized refugees, onto a plane and sent them back to Turkey on Tuesday, a day after they visited the Immigration Bureau to extend their provisional release:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050119a1.htm>> (19 January)
See also, <<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050121f2.htm>>
("Tokyo under fire for deporting refugees" 21 January)

[Environmental Law]

"Ministry now cracking down on illegal waste with rankings"

The environment ministry is developing uniform waste-disposal standards to say goodbye to bad rubbish disposal companies, starting in fiscal 2005. The ministry plans to rate industrial-waste firms according to the new system and then treat the good ones preferentially:

<<http://www.asahi.com/english/nation/TKY200501070154.html>> (7 January; full text in PDF is available on request)

"Huge CO2 emission cuts proposed"

The government is to propose a massive reduction in carbon dioxide emissions in advanced nations to levels one-fourth of those in 2002 by 2050, government sources said Tuesday. The proposal will be made in the government's long-term energy policy outlines to be compiled later this year. The government has set 2050 and 2100 as target years for reductions in emissions, to arrest global warming and deal with the depletion of oil and other fossil fuels:

<<http://www.yomiuri.co.jp/newse/20050112wo01.htm>> (12 January; full text in PDF is available on request)

"Govt to push firms over energy saving"

The Economy, Trade and Industry Ministry is to obligate manufacturers that ship commodities and products to implement energy-saving goals for their transport:

<<http://www.yomiuri.co.jp/newse/20050128wo11.htm>> (28 January; full text in PDF is available on request)

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

"Govt, lawyers compromise on reforming prisons"

A compromise between the Justice Ministry and the Japan Federation of Bar Associations has paved the way for the first full-scale revision in nearly a century of the Prison Law, a bill for which will be submitted to the Diet this month:

<<http://www.yomiuri.co.jp/newse/20050103wo32.htm>> (3 January; full text in PDF is available on request). See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050117a2.htm>> ("Prison Law - Mandatory inmate rehab eyed" 17 January)

"NPA to inform officers of sex offenders' details"

In a bid to prevent those guilty of committing sex crimes from reoffending, the National Police Agency plans to establish a system under which police officers nationwide will be told the offenders' addresses:

<<http://www.yomiuri.co.jp/newse/20050107wo01.htm>> (7 January; full text in PDF is available on request). See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050112a4.htm>> (“Let cops know addresses of sex offenders, Koizumi says” 12 January)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050118a7.htm>> (“Publicizing sex offenders' details 'difficult problem'” 18 January)

7. International Context (constitutional reform, international relations)

[International Security]

“Expanded PKO role eyed for SDF”

A draft bill the government wants the Diet to approve as a permanent law would enable the deployment of the Self-Defense Forces for logistic support in multinational peacekeeping operations without need of U.N. resolutions

<<http://www.yomiuri.co.jp/newse/20050112wo02.htm>> (12 January; full text in PDF is available on request)

“Defense plan prepared for remote islands”

The Defense Agency has prepared a plan to defend the southern remote islands off Kyushu and Okinawa from possible invasion amid rising security concerns about China, according to documents obtained Saturday by Kyodo News. The agency compiled the plan in November on the assumption of an invasion of the islands located within a 1,000-km zone between the southern end of Kyushu and Taiwan.

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050116a2.htm>> (16 January)

[Territorial Disputes]

“No progress on N. isles dispute”

The foreign ministers of Japan and Russia, in their first meeting of the year in Moscow on Friday, once again failed to make a breakthrough in the countries' long-standing dispute over the northern territories, as both sides continued to stick to their own principles.

<<http://www.yomiuri.co.jp/newse/20050116wo41.htm>> (16 January; full text in PDF is available on request)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050115a1.htm>> (15 January)

[WWII Related Issues]

“LDP pressure led to cuts in NHK show”

The public Japan Broadcasting Corp. (NHK) apparently caved in to the demands of two conservative politicians and drastically revised a 2001 program dealing with sexual violence in World War II. Footage of a mock trial that found the emperor responsible for the Japanese military's sex-slave system was cut. And parts of the testimony given by a former “comfort woman” from China were also omitted. The edited version has led to a lawsuit. But The Asahi Shimbun has learned that two members of the Liberal Democratic Party-Shoichi Nakagawa, minister of economy, trade and industry, and Shinzo Abe, acting LDP secretary-general-were the ones who prompted the revisions:

<<http://www.asahi.com/english/politics/TKY200501120160.html>> (12 January; full text in PDF is available on request)

“Seoul had plan to pay colonial redress”

South Korea had planned to deal with redress demands from its citizens who suffered under Japan's 1910-1945 colonial rule, according to declassified diplomatic documents made public Monday. In an official reply in May 1964 to what was then South Korea's Economic Planning Agency, the South Korean Foreign Ministry said the issue of compensation for individual victims was settled in talks held in November 1962, the documents show... The reply said South Korea -- not Japan -- is responsible for paying individuals seeking compensation:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050118a1.htm>> (18 January)

“List details deaths of 3,500 POWs held by Japan”

A Japanese citizens' group recently released a list of about 3,500 Allied prisoners of war who died after being captured by the Japanese military during World War II, disclosing their names, nationality and cause of death. It is the first time such a list has been released to the public, said Taeko Sasamoto, one of the cofounders of POW Research Network Japan. The list reveals that 3,526 POWs died in Japanese custody:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050118a4.htm>> (18 January)

“Fund for 'comfort women' to draw to a close in 2007”

A fund to compensate women who were forced to serve as sex slaves for the military during the war will be abolished in 2007, former Prime Minister Tomiichi Murayama said Monday [24 January]. The fund, technically a government-approved foundation based in Tokyo, will complete its compensation programs in March 2007 in the Philippines, South Korea, Taiwan, the Netherlands and Indonesia, Murayama told a news conference:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050125a3.htm>> (25 January)