

Japanese Law News Monthly Bulletin 2005/10**HEADINGS****FOCUS in October**

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 October: “Diet approves postal bills/Upper house passage gives Koizumi a major victory”

In a major victory for Prime Minister Junichiro Koizumi, the Diet passed a set of postal privatization bills Friday after the House of Councillors voted for the bills at a plenary session on the day. With the establishment of new six laws relating to the privatization, Japan Post will split into four private entities under a holding company in October 2007: <<http://www.yomiuri.co.jp/dy/national/20051015TDY01003.htm>> (15 October)

“Postal bills leave many points undecided”

<<http://www.yomiuri.co.jp/dy/national/20051016TDY03003.htm>> (16 October)

“Postal privatization--A new era dawns”

<<http://www.yomiuri.co.jp/dy/national/20051016TDY03004.htm>> (16 October)

“Postal bills become law”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051015a1.htm>> (15 October)

“Postal reform just the start”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?ed20051025a1.htm>> (25 October)

“Talks begin on merging govt banks”

The government started deliberating a plan Saturday [22 October] to integrate at least six of the eight government-affiliated financial institutions into a single entity, following postal privatization reform... As for the remaining two, Shoko Chukin Bank will be privatized and Japan Finance Corporation for Municipal Enterprises will be converted into an institution jointly capitalized by local governments. Postal privatization is described as reforming the flow of funds into state coffers, whereas the government sees integrating the institutions, which control the so-called exit of such funds, as a major step toward realizing small government:

<<http://www.yomiuri.co.jp/dy/national/20051023TDY01005.htm>> (23 October)

1. Equity (securities law, corporate law)

“FSA to strengthen measures to prevent auditing fraud”

The Financial Services Agency will tighten regulations on certified public accountants (CPAs) to prevent them from forming "cozy" relations and falsifying statements with the companies they audit... The agency will limit the maximum period for CPAs to audit the same client company to five years from the current seven:

<<http://www.asahi.com/english/Herald-asahi/TKY200510050185.html>> (5 October)

“Three ChuoAoyama CPAs face trial for fraud”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051004a9.htm>> (4 October)

“Govt locks door on foreign broadcast takeovers”

In a response to the rapidly developing Rakuten-TBS standoff, the government is considering restricting foreign investment in holding companies that have broadcasting companies under their wings... On the same day, a bill limiting indirect foreign ownership of broadcasters through Japanese entities passed the House of Councillors and will come into effect next year:

<<http://www.yomiuri.co.jp/dy/business/20051027TDY01002.htm>> (27 October)

“TBS: Rakuten's move a hostile takeover bid”

<<http://www.yomiuri.co.jp/dy/business/20051020TDY08006.htm>> (20 October)

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

“New law lets folks bank at the grocery”

The Diet on Wednesday [26 October] passed a revised Banking Law that will enable companies, from car dealers to department stores, to act as bank agents handling deposits, loans and other services. The Financial Services Agency estimates that about 500 companies, including supermarkets, convenience stores, hotels, travel agencies and real estate companies, will become bank agents after the revised law takes effect next April:

<<http://www.asahi.com/english/Herald-asahi/TKY200510270179.html>> (27 October)

“Ex-chief of bank acquitted on remand”

The Nagoya High Court on Friday [28 October] acquitted the former president of Hokkoku Bank of breach of trust in a trial remanded from the Supreme Court. Last year, the Supreme Court reversed lower court rulings that sentenced Yasumori Honjin, 63, to a suspended prison term for conspiring with executives of the Ishikawa prefectural credit guarantee association to make the association incur 80 million yen in losses by covering a bad loan made by the Kanazawa-based regional bank. Presiding Judge Makoto Kawahara ruled that executives of the association had committed breach of trust, but said the executives' reaction to Honjin's request possibly was excessive, and Honjin had not conspired with them. He voided the Nagoya District Court's decision of a 2-1/2-year prison term suspended for four years:

<<http://www.yomiuri.co.jp/dy/national/20051029TDY02010.htm>> (29 October)

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

“Ministry moving to regulate real estate deals”

The absence of uniform rules governing the rapidly growing securitization of real estate products, including real estate investment trusts (REITs), has prompted the Construction and Transport Ministry to map out rules to protect real estate investors... This is

because the current laws governing such products differ depending on the type of securitized products and the criteria on information disclosure is ambiguous:

<<http://www.yomiuri.co.jp/dy/national/20051024TDY01006.htm>> (24 October)

4. Labour (employment law, pension system)

“Pension systems: Integration of the two systems is an urgent task”

The ruling coalition of the Liberal Democratic Party and New Komeito is moving on the issue of integrating the two separate public pension programs for corporate employees and civil servants. It has proposed reopening stalled talks with the opposition camp on pension reform so that the systems are integrated in two years. A considerable gap exists between the pension systems for corporate and government employees in terms of both premiums and benefits. Government officials enjoy a much better deal:

<<http://www.asahi.com/english/Herald-asahi/TKY200510180085.html>> (18 October)

“Japan, Canada reach pension deal”

Japan and Canada have effectively agreed to end the double payment of pension premiums by their citizens... The two governments reached an in-principle accord in Ottawa... The agreement will take effect within a few years, freeing Japanese living in Canada and Canadians living in Japan from paying pension premiums to both governments:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051020b2.htm>> (20 October)

“Pressure mounts over pensions / Lawmakers battling to win public trust in reforming own scheme”

With the agreement by the ruling and opposition parties to abolish the Diet members' pension scheme, lawmakers now face a battle to win back public trust in their reform efforts after years of inaction on the issue. Japan's political center of Nagatacho has recently been overcome with an usually gloomy mood due to strong public criticism of lawmakers' generous pension benefits:

<<http://www.yomiuri.co.jp/dy/national/20051025TDY04004.htm>> (25 October)

“Ruling parties back down on lawmakers pension plan”

<<http://www.yomiuri.co.jp/dy/national/20051020TDY02003.htm>> (20 October)

“Lawmakers' pension appears doomed”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051020a8.htm>> (20 October)

“Work starts on ending lavish pensions for lawmakers”

<<http://www.asahi.com/english/Herald-asahi/TKY200510200102.html>> (20 October)

“Panel OK's abolition of pol pension system”

<<http://www.yomiuri.co.jp/dy/national/20051006TDY03005.htm>> (6 October)

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

“Govt gets tough on Kyoto pact”

So as to be able to meet its commitments under the Kyoto Protocol to curtail emissions of greenhouse gases, the government decided Tuesday to revise energy-saving standards

for home appliances and fuel efficiency standards for heavy vehicles in fiscal 2006... Under the Energy Conservation Law, standards have been based on the "front-runner approach," under which manufacturers of domestic appliances are urged to produce products with an energy-efficiency rating on par with the best products currently on the market. Currently, 18 home appliances, including air conditioners and refrigerators as well as passenger vehicles are subject to the regulation:

<<http://www.yomiuri.co.jp/dy/business/20051005TDY08013.htm>> (5 October)

“Revised political fund bill contains many loopholes”

During the three-year period ending in 2004, there were only eight cases in which political donations from industrial associations and political organizations affiliated with labor unions would have contravened regulations stipulated in a bill passed Tuesday by the House of Representatives to revise the Political Funds Control Law, it has been learned. The finding, based on political funds reports submitted to the Internal Affairs and Communications Ministry, shows that even the envisaged revised law would do little to close loopholes and correct other problems with the legal regulations on political donations:

<<http://www.yomiuri.co.jp/dy/national/20051020TDY02007.htm>> (20 October)

“More waste at social security agency”

Government auditors have found another potential waste of taxpayers' money in the Social Insurance Agency, which has come under fire over the past few years for budgetary oversights... This time, an audit has found potential carelessness in contracts the agency signed with NTT Data Corp. and two other companies to develop and manage online computer systems used for paying pensions and collecting insurance premiums:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051024a7.htm>> (24 October)

“Subsidies languishing in 33 public corporation funds”

The Board of Audit said Tuesday [25 October] it had found 33 public-interest corporation funds, funded mainly by government subsidies, that are rarely, and in at least one case never, used. Following the announcement, the corporations reviewed their funds and returned 2.38 billion yen to state coffers:

<<http://www.yomiuri.co.jp/dy/national/20051027TDY02008.htm>> (27 October)

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

“‘Conspiracy’ offense bill submitted to Diet”

The Cabinet has approved and submitted to the Diet a bill to create “conspiracy offenses” punishable by prison terms, despite protests the legislation would infringe upon freedom of thought. The bill to revise the Anti-Organized Crime Law would make plotting to commit an illegal act a criminal offense, even if the plan is not carried out. The proposed legislation has created such a backlash that it has been shelved twice in the Diet:

<<http://www.asahi.com/english/Herald-asahi/TKY200510050227.html>> (5 October)

“EDITORIAL/ ‘Conspiracy offense’ bill”

<<http://www.asahi.com/english/Herald-asahi/TKY200510130075.html>> (13 October)

“Lawyers, banks at odds over privacy law”

Lawyers are finding themselves the victims of red tape after the April enactment of the Personal Information Protection Law. The law has begun conflicting with the Lawyers Law, causing banks and consumer credit companies to deny information on clients unless lawyers provide complicated paperwork and proof they were acting on a client's behalf:

<<http://www.yomiuri.co.jp/dy/national/20051013TDY04001.htm>> (13 October)

“Justice system flawed by presumed guilt”

Japan's criminal justice system lacks a fundamental notion that is manifest in other parts of the democratized world: the presumption of innocence, according to human rights advocates. Suspects are still forced to make false confessions during interrogations in which legal representation is banned, and custody can last up to 23 days before charges are filed, lawyers and people who claim to have or were determined to have been falsely accused told a recent public meeting in Tokyo held by the Japan Federation of Bar Associations:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051013f1.htm>> (13 October)

“Tottori rights law a first but irks critics”

The Tottori Prefectural Assembly approved an ordinance Wednesday [12 October] that the local government claims will protect people from racial discrimination and other human rights violations but critics say will allow authorities to employ rules arbitrarily to protect people in power. It is the first time a local government has introduced such an ordinance. It may prime the pump for the human rights bill the central government tried to push through the Diet earlier this year but put on hold amid criticism over its potential to restrict media activities, among other flaws:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051013a1.htm>> (13 October)

“Tottori Prefectural Assembly approves rights ordinance”

<<http://www.yomiuri.co.jp/dy/national/20051013TDY02007.htm>> (13 October)

“Govt to punish cheating researchers / Academics who misuse subsidies to be barred from grants for up to 5 years”

Seven government bodies including the Education, Science and Technology Ministry, the Health, Labor and Welfare Ministry and the Cabinet Office are to punish researchers who lie to obtain government subsidies or who misuse them. Researchers who illegally receive subsidies from any of the government's 36 funds will be prohibited from applying for future government subsidies for a period of up to five years. Cheating researchers also will be required to repay illegally awarded grants with punitive additional charges:

<<http://www.yomiuri.co.jp/dy/national/20051015TDY02008.htm>> (15 October)

“Bar associations to put goodwill in writing”

Several hundred thousand Japanese-Americans live in the sun-kissed 50th U.S. state of Hawaii, and about 1.5 million Japanese tourists visit every year. Yet, there has been little in the way of legal support for those tourists if they run into trouble in Hawaii, or

for Hawaiians of Japanese ancestry who need legal assistance in Japan. Until now, that is. Bar associations in Tokyo and Hawaii are set to sign a goodwill agreement Friday that could pave the way for legal support services for Japanese in Hawaii. The agreement, the first of its kind involving bar associations from Japan and Hawaii, will be signed by the Daiichi Tokyo Bar Association and the Hawaii State Bar Association: <http://www.asahi.com/english/Herald-asahi/TKY200510190112.html> (19 October)

“Korean national barred from serving on arbitration panel”

Amid cries of discrimination, a Supreme Court policy has effectively barred non-Japanese from serving on arbitration committee members of lower courts. Observers were surprised by the top court's policy that was disclosed recently because no legal revisions explicitly ban foreigners from such positions. However, the Supreme Court asked the Hyogo prefectural bar association to retract its nomination of Yang Young Ja, a South Korean lawyer. The court said only Japanese citizens should be allowed in positions where they exert direct authority over Japanese residents: <http://www.asahi.com/english/Herald-asahi/TKY200510240145.html> (24 October)

“Juvenile crimes leave courts with headache”

The defense attorneys of minors are seeking to ensure that partitions are installed in courtrooms to conceal defendants from the public gallery, citing the need to protect young offenders' identities... The argument has arisen--should the principle of open court, stated in Article 82 of the Constitution be emphasized, or should trials involving juvenile defendants be held in camera as an exception to the rule to protect such youths?: <http://www.yomiuri.co.jp/dy/national/20051026TDY04003.htm> (26 October)

“Young court mediators in short supply”

Eighteen months have passed since the introduction of a mediator system in family court cases involving divorces and custody fights. The system, in which lay citizens are appointed by the Family Court to attend court proceedings dealing with family matters and offer their opinions, has been lauded for encouraging parties involved in delicate cases to open up and share their innermost feelings with the mediators, who may not be as intimidating as the court officials. However, one shortcoming of the system has been the dearth of young mediators--less than 7 percent are under 50: <http://www.yomiuri.co.jp/dy/national/20051027TDY02005.htm> (27 October)

7. International Context (constitutional reform, international relations)

[Constitutional Reform]

“LDP top law draft reveals discord”

Discussions in the Liberal Democratic Party on Friday [28 October] to finalize a draft for a new constitution unexpectedly brought to light differences between former Prime Minister Yasuhiro Nakasone, Prime Minister Junichiro Koizumi and former Prime Minister Yoshiro Mori. While Nakasone, among others, placed priority on the party's

more traditional traits, Koizumi and Mori were concerned that reviving such aspects would attract criticism from the public and other parties.

<<http://www.yomiuri.co.jp/dy/national/20051030TDY03002.htm>> (30 October)

See also, “DPJ, LDP closer on Article 9”

<<http://www.yomiuri.co.jp/dy/national/20051007TDY03003.htm>> (7 October)

“Top law referendum debate begins”

<<http://www.yomiuri.co.jp/dy/national/20051007TDY01003.htm>> (7 October)

“DPJ backs collective security activities”

<<http://www.yomiuri.co.jp/dy/national/20051005TDY02012.htm>> (5 October)

[International Trade]

“Panel's BSE report supports lifting of ban on U.S., Canadian beef”

Japan set in motion procedures to lift a ban on U.S. and Canadian beef imports after a study panel said young cattle from the two countries have a very low risk of mad cow disease infection. The panel of experts on the disease, set up by the Food Safety Commission, said Tuesday [4 October] the low risk among slaughtered cattle aged 20 months or younger can be ensured if dangerous parts that could transmit the disease are removed.

The commission will likely issue a formal report based on the panel's opinions as early as in November, paving the way for the government to resume beef imports from the two nations as early as December:

<<http://www.asahi.com/english/Herald-asahi/TKY200510050225.html>> (5 October)

“No gain without pain in WTO farm talks”

The Doha Round of World Trade Organization negotiations has entered a crucial stage as member states attempt to overcome their differences on the farm sector, the focal point of the round. Despite many member countries, including Japan and the United States, announcing their proposals for agriculture, there has been little progress toward narrowing differences:

<<http://www.yomiuri.co.jp/dy/business/20051018TDY04002.htm>> (18 October)

[International Security]

“Law planned on U.S. forces' realignment”

The government started internal talks Thursday [27 October] on a special law to speed up legal procedures necessary for the realignment of U.S. forces in Japan, a day after reaching agreement with the United States on relocation of U.S. bases in Japan... Relocation of U.S. bases often takes a long time as it requires talks with residents and following procedures for obtaining approval from local authorities in line with laws and ordinances:

<<http://www.yomiuri.co.jp/dy/national/20051028TDY01003.htm>> (28 October)

[WWII-Related]

“Courts split over Yasukuni”

In legal battles over the constitutionality of Prime Minister Junichiro Koizumi's visits to Yasukuni Shrine, the Tokyo, Osaka and Takamatsu high courts recently each handed down different judgments. The lawsuits were filed by bereaved families of war dead and religious activists who argue that Koizumi's visits infringe on their right to freedom of religion and have caused psychological damage. The plaintiffs demanded compensation from the government and the prime minister:

<<http://www.yomiuri.co.jp/dy/national/20051014TDY03003.htm>> (14 October)

“Redress again rejected as another high court weighs in on Yasukuni”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051006a3.htm>> (6 October)

“High courts not on same page on Yasukuni visits”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051005f1.htm>> (5 October)

“PM's visits to Yasukuni ruled illegal”

<<http://www.yomiuri.co.jp/dy/national/20051001TDY01001.htm>> (1 October)

“Shrine visits draw mixed rulings”

<<http://www.yomiuri.co.jp/dy/national/20051001TDY02008.htm>> (1 October)

“Expedite leprosarium case”

Seemingly contradictory decisions on compensation for leprosy sufferers from South Korea and Taiwan handed down by the Tokyo District Court on Tuesday [25 October] highlight the vagueness of the law on compensating former leprosarium residents. While the court ruled in favor of plaintiffs from Taiwan, it rejected the demands of plaintiffs from South Korea. The plaintiffs, who entered leprosariums in South Korea and Taiwan in the prewar period, had demanded compensation from the Japanese government over its quarantine policy in line with the law:

<<http://www.yomiuri.co.jp/dy/national/20051029TDY04002.htm>> (29 October)

Court split in rulings on leprosy suits

<<http://www.yomiuri.co.jp/dy/national/20051026TDY01003.htm>> (26 October)