

Japanese Law News Monthly Bulletin 2005/11**HEADINGS****FOCUS in November**

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 November: Fake data headache for local govts / Drastic changes sought in screening of building plans to detect sham figures

Stung by a string of falsifications of building earthquake-resistance data, an increasing number of local governments have called for drastic changes to the screening system for building plans, concerned they are incapable of detecting false data. Some building plan screening and permission procedures in which falsified structural strength data prepared by Hidetsugu Aneha, a first-class registered architect in Chiba Prefecture, were left unchecked were directly handled by local government officials, not state-designated building inspection companies. Under the Building Standards Law, building construction plans are required to undergo screening of their earthquake-resistance and other structural integrity data. The procedures are handled by local government officials with architectural expertise or companies authorized by the central government:

<<http://www.yomiuri.co.jp/dy/national/20051130TDY02007.htm>> (30 November)

See also, "Data falsification found in '04"

<<http://www.yomiuri.co.jp/dy/national/20051130TDY01004.htm>> (30 November)

"Architect says 3 firms pushed safety lapses"

<<http://www.yomiuri.co.jp/dy/national/20051125TDY01002.htm>> (25 November)

"4 hotels to shut until quake risk is determined"

<<http://www.asahi.com/english/Herald-asahi/TKY200511240135.html>> (24 November)

"Ministry to probe 2nd firm for overlooking falsification"

<<http://www.yomiuri.co.jp/dy/national/20051123TDY02010.htm>> (23 November)

1. Equity (securities law, corporate law)

"TSE, ministry clash over veto powers"

Tensions are growing between the Tokyo Stock Exchange and the Ministry of Economy, Trade and Industry over a powerful tool to block hostile takeover attempts. TSE officials say listed companies should not issue what is known as golden shares, which grant the holder the right to veto important decisions at shareholders meetings. Officials at the industry ministry argue that such shares be sanctioned under certain conditions:

<<http://www.asahi.com/english/Herald-asahi/TKY200511100140.html>> (11 November)

“FSA clarifies 6-month rule on investments”

Responding to a request from an investment fund headed by investor Yoshiaki Murakami, the Financial Services Agency has moved to clarify a rule concerning voting rights on shares held for less than six months. Under the Securities and Exchange Law, major shareholders acquiring more than 10 percent of a listed company's shares to obtain a majority of voting rights in the company are not allowed to sell their shareholdings within six months of their acquisition, but the FSA has said the rule cannot be applied to investment funds. This was the interpretation of the rule given to the Murakami Fund after the fund sought an explanation from the FSA:

<<http://www.yomiuri.co.jp/dy/business/20051125TDY08010.htm>> (25 November)

2. Debt (insolvency law, banking and finance law)**“Central govt to integrate, privatize state banks”**

The government and ruling coalition parties will integrate five of the eight government-affiliated financial institutions, privatize two and transfer operations of one to an organization to be funded jointly by municipalities... The five financial institutions to be integrated are the Japan Bank for International Cooperation, Japan Finance Corporation for Small Business, National Life Finance Corporation, Agriculture, Forestry and Fisheries Finance Corporation, and Okinawa Development Finance Corporation:

<<http://www.yomiuri.co.jp/dy/national/20051121TDY01006.htm>> (21 November)

3. Goods and Services (contracting, competition law, IP, PL, consumer law)**“FSA to slap insurers with improvement orders”**

The Financial Services Agency will issue business improvement orders to more than 20 nonlife insurers for failing to pay insurance claims... The financial watchdog may issue orders to the firms this week, including major Japanese insurers Tokio Marine & Nichido Fire Insurance Co., Sampo Japan Insurance Inc., Mitsui Sumitomo Insurance Co. and Aioi Insurance Co. All have been found negligent in making payments:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051124a7.htm>> (24 Nov)

“FTC to act against SMBC for swap deals”

Sumitomo Mitsui Banking Corp. is set to face a desist order from the Fair Trade Commission over its alleged practice of forcing corporate borrowers to buy its financial products in return for loans, according to sources. The government competition watchdog considers such actions as violations of the Antimonopoly Law and it plans to make a formal decision shortly to issue the order:

<<http://www.yomiuri.co.jp/dy/business/20051128TDY01002.htm>> (28 November)

4. Labour (employment law, pension system)**“Firms split over putting work time or results first”**

An increasing number of companies have started to change how they measure how long their employees actually work, one of the most contentious issues debated between management and employees... In August, McDonald's Holdings Co. Japan started to measure the working hours of part-time workers at its restaurants to the minute, instead of 30-minute blocks. Previously, overtime up to 29 minutes was unpaid... The company introduced this system after the Labor Standards Supervision Office inspected some of its restaurants and pointed out the previous system violated the Labor Standards Law:
<<http://www.yomiuri.co.jp/dy/business/20051126TDY04002.htm>> (26 November)

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

“Tax relief mulled for low earners”

The Tax Commission will propose later this month that the government give low-income earners tax credits after it transfers income tax revenue sources to local governments as part of the triple reform of local government finances... The commission, an advisory panel to the prime minister, will compile its proposal on taxation system reform for fiscal 2006 on Nov. 25:

<<http://www.yomiuri.co.jp/dy/business/20051116TDY08013.htm>> (16 November)

“Consumption tax debate divides govt, LDP”

A tug-of-war among Cabinet members and Liberal Democratic Party executives over raising the consumption tax rate is rocking the government and ruling parties. Finance Minister Sadakazu Tanigaki and Kaoru Yosano, state minister in charge of financial, economic and fiscal policy, are insistent on a tax hike, while Hidenao Nakagawa, LDP Policy Research Council chairman, and Internal Affairs and Communications Minister Heizo Takenaka are cautious toward the idea:

<<http://www.yomiuri.co.jp/dy/national/20051122TDY03003.htm>> (22 November)

“Govt, LDP row over future of sales tax hike”

<<http://www.yomiuri.co.jp/dy/national/20051109TDY03002.htm>> (9 November)

“Govt to cut IT tax credit, reward cybersecurity”

The government and ruling parties plan to abolish a tax credit for corporate purchases of personal computers, fax machines and other information-technology equipment at the end of the fiscal year... At the same time, however, the government intends to consider introducing a new investment tax credit for companies that take measures to enhance their cybersecurity:

<<http://www.yomiuri.co.jp/dy/national/20051123TDY01002.htm>> (23 November)

“Bill to bill firms for asbestos ills”

The government has compiled a bill calling on companies to pay about 8 billion yen per year and local governments to pay about 1 billion yen per year to fund allowances for people suffering asbestos-linked health problems and for the next of kin of those who died from such maladies. The government plans to submit the bill to the Diet during a regular session next year when a joint task force of the ruling Liberal Democratic Party and New Komeito approves the draft:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051124a3.htm>> (24 Nov)

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

“New legal procedure OK'd in attempted murder case”

A new pretrial procedure that will be required under the planned "citizen judge" system will be applied for the first time in an attempted murder trial that opened in September in Tokyo... The procedure is aimed at expediting the criminal trial process. The step, based on the revised Code of Criminal Procedure set to take effect Tuesday [1 November], will be required under the new quasi-jury system to be introduced in 2009:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051101b1.htm>> (1 November)

“Both sides to reveal evidence before trials under streamlined system”

<<http://www.asahi.com/english/Herald-asahi/TKY200511010131.html>> (1 November)

“Legal revision to speed hand of justice”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051102f2.htm>> (2 November)

“Bureaucrats, prosecutors promoting lay judge system”

With the coming of the lay judge system by May 2009, the Justice Ministry and public prosecutors offices are working to publicize the system, involving top bureaucrats and prosecutors in an advertising campaign... Company employees--the majority of the working population--are likely to be chosen to serve as lay judges. Seeking their cooperation, Kunihiro Matsuo, public prosecutor general, is planning to visit Toyota Motor Corp.'s Tokyo office Wednesday. He will meet Chairman Hiroshi Okuda and ask him to help the firm's employees understand the jury-judge system:

<<http://www.yomiuri.co.jp/dy/national/20051108TDY03004.htm>> (8 November)

“Antiracism laws needed: U.N. rapporteur”

Japan should adopt legislation clearly combating racism, racial discrimination and xenophobia, and exercise a greater political will to fight them, a U.N special rapporteur said Monday [7 November]. “I will propose that in Japan, as elsewhere, that national legislation should be adopted clearly against racism and racial discrimination and xenophobia,” said Doudou Diene of Senegal, who was appointed by the U.N. Commission on Human Rights to investigate contemporary forms of racism and discrimination in various countries:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051109a7.htm>> (9 November)

“Centers get 3,000 inquiries over privacy law”

Further evidence of the public uproar over the new privacy law was produced Monday, with the National Consumer Affairs Center of Japan reporting 3,000 inquiries about the legislation from its full implementation in April through to the end of September. According to a report released by the Tokyo-based center, 3,238 inquiries over the Personal Information Protection Law were received at the center and 112 consumer centers during the period. There were three types of inquiries: calls for advice on how to stop telemarketers, complaints against firms in breach of the law and overreactions to the law's implementation:

<<http://www.yomiuri.co.jp/dy/national/20051109TDY03004.htm>> (9 November)

“Central, local govts split over medical reform”

The Health, Labor and Welfare Ministry's medical system draft reform has developed into a fierce confrontation between the central and local governments. The draft calls for greater involvement in public medical services by local governments, but whether such a system would provide better medical services remains to be seen:

<<http://www.yomiuri.co.jp/dy/national/20051122TDY04002.htm>> (22 November)

“Nishimura held over legal scam”

House of Representatives member Shingo Nishimura, 57, was arrested Monday on suspicion of knowingly allowing an unqualified employee of his law office, who has since left his job, to perform lawyer's duties in his name... According to police and a special investigation squad of the Osaka District Public Prosecutors Office, Nishimura allowed Koji Suzuki, who is not qualified as a lawyer and was arrested on Nov. 18, to engage in 43 traffic accident damages claim cases and other out-of-court settlement negotiations from May 1998 to February 2004:

<<http://www.yomiuri.co.jp/dy/national/20051129TDY01003.htm>> (29 November)

“Nishimura to be probed over Lawyers Law violation”

<<http://www.yomiuri.co.jp/dy/national/20051127TDY02008.htm>> (27 November)

“Nishimura may admit breaching Lawyers Law”

<<http://www.yomiuri.co.jp/dy/national/20051125TDY02008.htm>> (25 November)

7. International Context (constitutional reform, international relations)

[Constitutional Reform]

“DPJ backs revision of war-renouncing Article 9, with caveats”

The Democratic Party of Japan endorsed on Monday [31 October] its proposal for amending the war-renouncing Article 9 of the Constitution so it stipulates that the nation can exercise the right to "restrictive" self-defense. The DPJ proposal came a few days after the ruling Liberal Democratic Party endorsed its draft for a new Constitution:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051101a8.htm>> (1 November)

[International Trade]

“Onus on Japan to ensure U.S. beef safety, report says”

A food safety panel on Monday [31 October] adopted a draft report that, once finalized, will pave the way to ending the two-year-old ban on imports of U.S. and Canadian beef. The government panel said in the report that it is unclear whether the U.S. will be able to take adequate measures to minimize the risk of mad cow disease, whose discovery in the U.S. triggered the ban:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051101a3.htm>> (1 November)

“Japan to dispatch BSE inspectors to U.S.”

The government will dispatch inspectors to U.S. and Canadian meat-processing plants to confirm safety against mad cow disease before Japan resumes beef imports from those countries... The inspectors could leave in early December, and if safety measures are confirmed, the beef imports could resume by the end of the year:

<<http://www.asahi.com/english/Herald-asahi/TKY200511020143.html>> (2 November)

“U.S. beef imports: Ensuring the product is safe to eat must be paramount”

<<http://www.asahi.com/english/Herald-asahi/TKY200511020131.html>> (2 November)

“BSE panel showed strength, independence”

The Food Safety Commission, which recommended on Oct. 31 that the North American beef ban be lifted, has shown a considerable degree of independence from bureaucratic meddling that could have clouded the issue. The draft recommendation report was in response to requests made in May by the Health, Labor and Welfare Ministry and the Agriculture, Forestry and Fisheries Ministry over whether to resume beef trade with Canada and the United States. The beef trade ban has been in place since December 2003:

<<http://www.yomiuri.co.jp/dy/national/20051110TDY04002.htm>> (10 November)

[WWII-Related]

“Govt to pay in leprosy case, pursue appeal”

The government plans to compensate South Koreans and Taiwanese forcibly placed in leprosariums during Japan's colonial rule of their regions, Health, Labor and Welfare Minister Jiro Kawasaki said Tuesday [8 November]. However, the minister added the government would not drop its plan to appeal to the Tokyo High Court over last month's district court ruling in favor of a group of Taiwanese, immediately inviting sharp criticism by the plaintiffs:

<<http://www.yomiuri.co.jp/dy/national/20051109dy03.htm>> (9 November)

“New law needed to compensate former leprosy patients who lived in overseas sanitariums”

<<http://www.asahi.com/english/Herald-asahi/TKY200511080368.html>> (8 November)

“State files appeal on Hansen's ruling”

The government filed an appeal Tuesday against a district court ruling that said the state is legally bound to compensate a group of Taiwanese Hansen's disease sufferers who had been segregated at a sanitarium during Japanese colonial rule. The government, however, will swiftly consider how to provide appropriate compensation to the sufferers inside and outside Japan, and has decided to grant relief to those living in South Korea, Taiwan and four regions in the Pacific, Health, Labor and Welfare Minister Jiro Kawasaki said before the government filed the appeal with the Tokyo High Court:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051109a9.htm>> (9 November)