

Japanese Law News Monthly Bulletin 2005/12**HEADINGS****FOCUS in December**

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 December: 2005 TOP 10 DOMESTIC & INTERNATIONAL NEWS STORIES from The Yomiuri Shimbun**

**This year, a train accident was selected by readers of The Yomiuri Shimbun as the top domestic news story, the first time such an accident has taken top spot since the crash of a Japan Airlines jumbo jet on Mt. Osutaka, Gunma Prefecture, in 1985. In international news, natural disasters, the death of a pontiff and terrorism headed the list.**

1. 107 killed in train derailment: On the morning of April 25, a seven-car train on the JR Fukuchiyama Line derailed and crashed into a condominium building in Amagasaki, Hyogo Prefecture, killing 107 people and injuring 555. An interim report compiled by the Construction and Transport Ministry's Aircraft and Railway Accident Commission cited speeding as the direct cause of the accident, noting that the train entered a curve at more than 110 kph when the speed limit was 70 kph for that section of track. The driver of the train earlier in the day had made operational errors, including overshooting the stopping point of a platform by 70 meters....

5. Quake-resistance data scandal: A string of scandals concerning falsified earthquake-resistance data came to light in mid-November, seriously damaging the reputation of the construction industry and the public's trust in building safety.

6. Asbestos deaths: On June 29, leading machinery maker Kubota Corp. announced that a number of its workers at construction material factories had died from mesothelioma and other diseases believed to have been caused by asbestos...

7. Postal privatization bills enacted: A set of postal privatization bills became law following their passage at the House of Councillors plenary session on Oct. 14. Although many Liberal Democratic Party lawmakers opposed the bills during the ordinary Diet session, most of the postal "rebels" eventually voted for the bills during the special Diet session following the dissolution of the House of Representatives and the subsequent general election on Sept. 11.

<http://www.yomiuri.co.jp/dy/national/20051230TDY10001.htm> (30 December)

## 1. Equity (securities law, corporate law)

“TSE system flaws need swift fix”

The market turbulence following a massive erroneous sell order of shares Thursday by Mizuho Securities Co. was partly due to flaws of the Tokyo Stock Exchange's trading system. The sell order of shares of the outsourcing and job replacement firm J-Com Co. by Mizuho Securities, the brokerage arm of the nation's second-largest bank, Mizuho Financial Group Inc., is the second major glitch in the bourse's operations in a little over a month. On Nov. 1, all trading on the exchange was halted from 9 a.m. until 1:30 p.m. because of a software upgrade problem:

<<http://www.yomiuri.co.jp/dy/business/20051213TDY08008.htm>> (13 December)

“Problems threaten faith in TSE”

<<http://www.yomiuri.co.jp/dy/business/20051214TDY08005.htm>> (14 December)

“TSE unveils interim response to order fiasco”

<<http://www.yomiuri.co.jp/dy/business/20051216TDY08007.htm>> (16 December)

“Panel eyes defenses against hostile takeovers”

An Economy, Trade and Industry Ministry research group will propose that the government establish a system to enable a firm that becomes the target of a hostile takeover bid to immediately learn who is purchasing its shares... The research group under the head of the Economic and Industrial Policy Bureau, which has been studying hostile takeover bids and methods to defend against them is expected to release its proposal on rules for business acquisitions:

<<http://www.yomiuri.co.jp/dy/business/20051214TDY08009.htm>> (14 December)

“Securities firms move to put windfall into fund to fix glitches”

Some securities companies, stung by criticisms of unethical profiteering, are trying to unload billions of yen earned from what was essentially a typing error by Mizuho Securities Co. compounded by a computer glitch at the Tokyo Stock Exchange... If the profits are "donated" to Mizuho Securities or the TSE, the transfers are expected to be subject to tax:

<<http://www.asahi.com/english/Herald-asahi/TKY200512150411.html>> (15 December)

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

“Supreme Court ruling blow to moneylenders”

Thursday's Supreme Court ruling that disallowed moneylending at rates of interest above that set by the Interest Limitation Law, came as a major blow to consumer credit firms that have profited from a legal loophole. Outstanding lending extended by the nation's five major consumer loan firms had reached 6.3 trillion yen as of March. Most of this lending has been made under so-called revolving repayment contracts, available from automated teller machines, which allow consumers to borrow money, up to a preset ceiling level, on top of loans they may already have taken out:

<<http://www.yomiuri.co.jp/dy/national/20051220TDY04004.htm>> (20 December)

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

“Matsushita Electric accused of covering up heater death”

Matsushita Electric Industrial Co. was secretly changing defective parts of its kerosene heaters under the pretense of a free servicing campaign two months before the company's April announcement that its heaters had caused fatal carbon monoxide emissions... The firm is suspected of trying to deal with the problem secretly because it had recognized the gravity of the situation after the first fatal accident caused by the heater occurred in January:

<<http://www.yomiuri.co.jp/dy/national/20051211TDY02010.htm>> (11 December)

“Govt proposes new laws for building approval”

The Construction and Transport Ministry is considering transferring much of the authority to supervise state-designated private construction-inspection organizations to local government level. It is hoped this will allow for closer checks on private certifiers and their confirmation of construction plans for buildings, according to sources. The move comes in response to recent revelations that private certifiers--including eHomes Inc., based in Shinjuku Ward, Tokyo--failed to detect fabricated earthquake-resistance data provided by Hidetsugu Aneha, who has lost his architect's license:

<<http://www.yomiuri.co.jp/dy/national/20051213TDY01005.htm>> (13 December)

“Panel calls for ban on asbestos use in buildings”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051213a4.htm>> (13 Dec)

“Architects face changes / Falsification scandal shows need to reform licensing”

<<http://www.yomiuri.co.jp/dy/national/20051208TDY03002.htm>> (8 December)

“Supreme Court sides with tenant”

The Supreme Court on Friday overturned a high court decision allowing a landlord to deduct money from a rental deposit to cover the cost of repairing damage to an apartment that had occurred through normal wear and tear... Reversing the Osaka High Court ruling in a case filed by a man living in Osaka Prefecture, Nakagawa said the landlord could not deduct the repair bill from the deposit. The Supreme Court remanded the case to the Osaka High Court:

<<http://www.yomiuri.co.jp/dy/national/20051217TDY02007.htm>> (17 December)

“Ruling requires transparency in leases”

<<http://www.yomiuri.co.jp/dy/national/20051217TDY02004.htm>> (17 December)

“Home sellers to be obliged to give quake, asbestos info”

The construction ministry intends to oblige property owners and real estate agents to ensure documents containing important information about homes - including condominiums - for sale state whether the properties have undergone an asbestos inspection and, if they were built before 1981, an earthquake-resistance inspection. The Construction and Transport Ministry will revise ordinances related to the Real Estate Business Law in time to put the new law into practice in fiscal 2006:

<<http://www.yomiuri.co.jp/dy/national/20051218TDY02011.htm>> (18 December)

“Bill to ban large commercial complexes from opening in suburban areas”

Sparking howls of protests from the retail industry, the government and ruling coalition decided Wednesday to ban commercial complexes with a floor space exceeding 10,000 square meters from opening in suburban areas. The planned bill to revise the City Planning Law would force, in principle, large commercial facilities, such as supermarkets, restaurants, movie theaters and entertainment complexes, to open only in commercial and other designated districts of urban areas:

<<http://www.asahi.com/english/Herald-asahi/TKY200512220258.html>> (22 December)

“Fuso subsidiary Pabco raided on inspection scam”

Police Thursday [22 Dec] raided five plants and offices of auto body maker Pabco Co., a wholly owned subsidiary of Mitsubishi Fuso Truck & Bus Corp., for allegedly systemically cheating on vehicle inspections by padding trucks' maximum loading capacity. The same day, the Land, Infrastructure and Transport Ministry filed a criminal accusation with Kanagawa Prefectural Police against Pabco on suspicion of violating the Road Trucking Vehicle Law. The law sets punishment of up to six months of imprisonment or a fine of up to 300,000 yen for offenders of its vehicle inspection regulations:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051223a6.htm>> (23 Dec)

“Contractors collude to end lawbreaking”

Major construction firms will work together to eliminate bid-rigging because the revised Antimonopoly Law that takes effect Jan. 4 mandates harsher penalties for offenders... The joint action was decided after a series of talks on the revised law held since last fall by Kajima Corp., Taisei Corp., Obayashi Corp., Shimizu Corp. and other major general contractors:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051230a1.htm>> (30 Dec)

“4 biggest contractors agree to end bid-rigging”

<<http://www.asahi.com/english/Herald-asahi/TKY200512300067.html>> (30 Dec)

“Trial begins in massive bid-rigging scandal”

<<http://www.yomiuri.co.jp/dy/national/20051217TDY02008.htm>> (17 December)

#### **4. Labour (employment law, pension system)**

“Kubota plans compensation over asbestos”

Kubota Corp. President Daisuke Hatakake said Sunday the firm would provide compensation on equal terms as its employees to bereaved families and patients of an asbestos-related disease who lived near its former plant in Amagasaki, Hyogo Prefecture:

<<http://www.yomiuri.co.jp/dy/national/20051226TDY02011.htm>> (26 December)

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

“Web site use during elections eyed”

A Liberal Democratic Party working group has come up with a proposal to allow candidates to set up and update campaign Web sites after an election is officially

announced or an electoral race kicks off. The Democratic Party of Japan is enthusiastic about the use of Web sites in election campaigns, while New Komeito also supports the idea:

<<http://www.yomiuri.co.jp/dy/national/20051217TDY03005.htm>> (17 December)

“Tightening rules on reporting political funds”

To ensure transparency, income and expenditure reports on political funds currently submitted separately to the Internal Affairs and Communications Ministry and local electoral committees should be disclosed together and more speedily. The Political Funds Control Law stipulates that annual reports on income and expenditure of political funds must be submitted to the ministry by the end of March the following year if a political organization’s activities encompass two prefectures or more... However, there is no rule as to when such reports are made public:

<<http://www.yomiuri.co.jp/dy/national/20051228TDY04002.htm>> (28 December)

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

“Top court ruling boost for rights”

Wednesday[7 Dec]’s Supreme Court ruling drastically reduced the prerequisites for joining a lawsuit filed by residents demanding that approval for construction work to elevate rail tracks of Odakyu Electric Railway Line be rescinded. The judgment effectively allows all residents who might have been affected by the construction work to become plaintiffs, opening up the possibility of changing the way future lawsuits against administrative authorities are conducted:

<<http://www.yomiuri.co.jp/dy/national/20051209TDY03002.htm>> (9 December)

“Ministry to initiate drastic nursing home reforms”

The Health, Labor and Welfare Ministry said Tuesday [13 Dec] it would drastically reform nursing care medical treatment facilities, one of the services covered by the nursing care insurance program:

<<http://www.yomiuri.co.jp/dy/national/20051216TDY04003.htm>> (16 December)

“Colleges to get more autonomy”

The Education, Science and Technology Ministry decided Friday to allow national universities to obtain long-term funding from private financial institutions next year...

The ministry hopes the move will encourage the universities, which became independent corporations in April 2004, to work on innovative projects... The ministry will soon revise the relevant regulations in the National University Corporation Law:

<<http://www.yomiuri.co.jp/dy/national/20051218dy01.htm>> (18 December)

“New legal center has staff problems”

The Japan Legal Support Center, which is to be established in April to provide general civil and criminal services such as legal counseling, selecting defense counsels and subsidizing lawyers' expenses, will go into operation in October. The center will be one of the key judicial reforms along with the lay judge system. But how to obtain

cooperation from bar associations and secure lawyers to staff the center remain unsolved problems:

<<http://www.yomiuri.co.jp/dy/national/20051223TDY03002.htm>> (23 December)

## **7. International Context (constitutional reform, international relations)**

[Constitutional Reform]

“LDP, DPJ to push vote on Constitution”

The ruling bloc and the Democratic Party of Japan have agreed in principle to submit a bill to a regular session of the Diet next year authorizing a referendum on revising the Constitution... Senior members of constitutional research panels of the Liberal Democratic Party, its coalition ally, New Komeito, and the DPJ reached the accord at an unofficial meeting Tuesday in Tokyo with Taro Nakayama, an LDP lawmaker and chairman of the House of Representatives special committee on the Constitution:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20051222b4.htm>> (22 Dec)

[International Security]

“New SDF law to upgrade role of PKOs”

The Self-Defense Forces’ international cooperative peace operations, which presently are a secondary duty of the SDF, will be upgraded to a primary duty after national defense under the revised Self-Defense Forces Law, according to a draft of the bill obtained by The Yomiuri Shimbun. The government plans to submit the bill together with a bill to upgrade the Defense Agency to a ministry to an ordinary Diet session next year after the Liberal Democratic Party and New Komeito finalize coordination of the upgrade plan:

<<http://www.yomiuri.co.jp/dy/national/20051208TDY01002.htm>> (8 December)

[International Trade]

“U.S. beef in stores this month”

The government's decision to lift a two-year-old ban on Canadian and U.S. beef imports has aroused mixed feelings, of suspicion and pleasure, among consumers. The beef will be on sale at stores before the end of the month, and at gyudon and yakiniku restaurants in the new year. But there are still concerns about Canadian and U.S. beef among many consumers, which North American cattlemen may have to struggle to overcome:

<<http://www.yomiuri.co.jp/dy/national/20051213TDY03001.htm>> (13 December)