

Japanese Law News Monthly Bulletin 2005/3**HEADINGS****FOCUS in March**

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 March: “High court rules in favor of Livedoor”

The Tokyo High Court on Wednesday [23 March] upheld a lower court decision barring Nippon Broadcasting System Inc. from issuing warrants for new shares to Fuji Television Network Inc. to block a takeover bid by Livedoor Co. "The claim that Livedoor is playing money games by making a hostile takeover bid is not justified. NBS' decision to issue warrants is an abuse of the current management's powers and an utterly unfair action," presiding Judge Sueo Kito said:

<<http://www.yomiuri.co.jp/newse/20050324wo11.htm>> (24 March; full text in PDF is available on request). See also,

<<http://www.yomiuri.co.jp/newse/20050317wo11.htm>> (17 March; full text in PDF is available on request);

<<http://www.yomiuri.co.jp/newse/20050312wo12.htm>> (12 March; full text in PDF is available on request)

1. Equity (securities law, corporate law)**“Off-hours trading targeted”**

The Cabinet on Friday finalized a bill to revise the Securities and Exchange Law that includes measures to keep a tighter rein on off-hours trading on the Tokyo Stock Exchange. The bill is seen as a move to limit the acquisition of a large amount of shares through off-hours trading following Livedoor Co.'s purchase of Nippon Broadcasting Inc. shares through this method:

<<http://www.yomiuri.co.jp/newse/20050312wo11.htm>> (12 March; full text in PDF is available on request)

<<http://www.yomiuri.co.jp/newse/20050303wo13.htm>> (3 March; full text in PDF is available on request)

“TSE to limit splits to curb price jumps”

In the wake of wide share price fluctuations attributed to large-scale stock splits, the Tokyo Stock Exchange on Monday set new guidelines to restrict the tactic. Aggressive splits by Livedoor Co., for example, led to a substantial increase in the relative share prices and, as a result, a rise in market capitalization. The new guidelines call for listed companies to refrain from stock splits that lower the minimum investment to 10,000 yen

or less. Listed companies are also requested to refrain from stock splits within six months of issuing bonds with share warrants, which can be converted into new shares:

<<http://www.asahi.com/english/business/TKY200503080118.html>> (8 March; full text in PDF is available on request)

“FSA may scrap exemptions on stock sale reporting rules”

The Financial Services Agency is mulling another change to the Securities and Exchange Law that would yank exemptions on the reporting of major share transactions:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20050317a1.htm>> (17 March)

“Sumitomo Trust adds 100 bil. yen claim to suit”

Sumitomo Trust & Banking Co. on Monday added a demand for 100 billion yen in compensation from three companies, including UFJ Holdings Inc., to its lawsuit seeking the suspension of merger talks by UFJ Holdings and Mitsubishi Tokyo Financial Group Inc. in the event the suspension is denied by the Tokyo District Court. The amount demanded includes potential lost revenue, calculated on the assumption of a merger of Sumitomo Trust and UFJ Trust Bank, and expenses already incurred in the merger:

<<http://www.yomiuri.co.jp/newse/20050308wo12.htm>> (8 March; full text in PDF is available on request)

“Govt to stall on provision for takeovers”

The government will freeze for a year the implementation of a provision that will permit mergers involving the use of cash and shares in foreign companies as compensation to provide Japanese companies with time to prepare defensive measures... The government plans to submit the bill containing the provision to the current Diet session, the sources said, adding that growing concerns over takeovers of domestic companies by foreign firms had prompted the action. After the bill is passed by the Diet, a provision easing restrictions on mergers with foreign firms and the acquisition of Japanese companies will take effect in fiscal 2007, but all other sections of the envisaged law will come into effect in fiscal 2006:

<<http://www.yomiuri.co.jp/newse/20050312wo01.htm>> (12 March; full text in PDF is available on request)

“Shareholder demands lawsuit over Tepco sale of NBS stock”

An individual shareholder of Tokyo Electric Power Co. has asked Tepco to file a lawsuit against its executives for selling its shares in Nippon Broadcasting System Inc. at below market price to Fuji Television Network Inc., the shareholder's lawyer said Monday. In a letter sent to Tepco, the investor charges that the low-priced deal was unjustifiable and damaged Tepco and its shareholders:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050315a2.htm>> (15 March)

“All METI officials must now report stock deals”

Economy, Trade and Industry Minister Shoichi Nakagawa said Tuesday he will oblige his ministry's 8,000 officials to submit reports on stock deals. The directive comes in the wake of Monday's criminal accusation filed against a ministry official over suspected insider trading:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050316a7.htm>> (16 March)

“Cabinet OKs bill to delay M&A reform”

The Cabinet approved a set of bills Friday to update Japan's corporate law, with one of them featuring a one-year delay for easing restrictions on foreign companies involved in mergers and acquisitions of Japanese firms:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20050319a1.htm>> (19 March)

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

“UFJ executives face jail for obstructing gov't inspections”

Prosecutors demanded Tuesday that three former top officials of the scandal-tainted UFJ Bank be jailed and that the bank be fined [100 million yen] as an entity for obstructing government inspections:

<<http://mdn.mainichi.co.jp/news/20050322p2a00m0dm004000c.html>> (22 March)

“5 more firms broke shareholding rule”

In addition to Seibu Railway Co., at least five other listed companies falsified the names of shareholders in their financial statements to inflate the number, thereby avoiding being delisted or demoted by the Tokyo Stock Exchange:

<<http://www.yomiuri.co.jp/newse/20050324wo33.htm>> (24 March; full text in PDF is available on request). See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050324a8.htm>> (24 March)

“FSA preparing guide for cross-sector financial conglomerates”

The Financial Services Agency will draw up guidelines for supervising cross-sector financial conglomerates in June in the face of increasing reorganization by banks, brokerages and insurers:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20050330a2.htm>> (30 March)

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

“FTC rules Intel broke antitrust law”

The Fair Trade Commission has ruled that semiconductor giant Intel is in violation of the Antimonopoly Law for its method of selling central processing units to computer makers. The commission will soon issue an advisory telling Intel to end the practice:

<<http://www.yomiuri.co.jp/newse/20050305wo11.htm>> (5 March; full text in PDF is available on request)

“Three execs charged over Roppongi Hills revolving-door death”

Tokyo prosecutors indicted three former company executives Wednesday in connection with the death of a 6-year-old boy who was crushed in an automatic revolving door at the Roppongi Hills complex last March:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050317a2.htm>> (17 March)

“New court to boost IP rights”

The Intellectual Property High Court is to be established Friday as the nation's first court specializing in lawsuits related to patents and copyright. The court has attracted attention over whether it can unify rulings and its judges can show improved technical expertise to meet the high expectations of industry:

<<http://www.yomiuri.co.jp/newse/20050329wo34.htm>> (29 March; full text in PDF is available on request)

4. Labour (employment law, pension system)

“NO JOB SECURITY/ Too high a cost: Three out of 13 accidents at ETC tollgates resulted in the deaths of tollkeepers who are not guaranteed workplace safety because of a loophole in labor laws”

The Electronic Toll Collection system may be a boon for motorists in a hurry, but tollkeepers who have to cross ETC lanes to do their job risk being run over and killed. In fact, three tollkeepers have died in such circumstances since March 2001 when the system was introduced to ease congestion at tollgates. Incredibly, a blind spot in labor laws means the expressway operator is not obliged to ensure worker safety:

<<http://www.asahi.com/english/nation/TKY200503050168.html>> (5 March; full text in PDF is available on request)

“Ruling bloc, DPJ to mull Diet pension action”

The ruling bloc and the Democratic Party of Japan agreed Friday to meet informally to discuss how the Diet will address pension reform and other social security programs. The DPJ said it hoped for a "definite plan" on a framework for pension reform to be created by fall. But the ruling bloc said it merely wants to decide on the "course" of pension reforms by then:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050312a5.htm>> (12 March)

5. Oversight and Policy (administrative law, public official law, tax policy)**“Is the postal-reform debate missing the real point?”**

The postal reform tug-of-war between Prime Minister Junichiro Koizumi and his foes in the Liberal Democratic Party is heating up as his self-imposed March 15 deadline for submitting privatization bills to the Diet nears:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050305f1.htm>> (5 March)

“Can farming go corporate?”

The government will allow private companies to rent farmland from April, lifting restrictions on such firms entering the agriculture business as producers. The Agriculture, Forestry and Fisheries Ministry has submitted revision bills for the Agricultural Land Law and a law aimed to bolster the nation's agriculture management to the current ordinary Diet session:

<<http://www.yomiuri.co.jp/newse/20050316wo12.htm>> (16 March)

“Govt draft calls for tough gas emissions measures”

A government task force approved Tuesday a draft plan for measures to reduce greenhouse gas emissions that significantly strengthen existing measures for fighting global warming, aiming at fulfilling the nation's obligations under the Kyoto Protocol:

<<http://www.yomiuri.co.jp/newse/20050330wo02.htm>> (30 March)

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

“Lawyers call for taping of interrogations”

Should criminal interrogations remain closed-door procedures or become more transparent? A number of lawyers are calling for the introduction of audiovisual recording of interrogations in preparation for the lay judge system that is expected to start by May 2009. Prosecutors strongly oppose such a move:

<<http://www.yomiuri.co.jp/newse/20050301wo27.htm>> (1 March; full text in PDF is available on request)

“Number allowed to pass new bar exam upped”

The Justice Ministry decided Monday to allow between 900 and 1,100 of about 2,300 graduates from new law schools to pass the 2006 bar examination. The examinees will be the first batch of graduates from 66 law schools that opened in April last year, and the 2006 exam will be the first under a new bar exam system:

<<http://www.yomiuri.co.jp/newse/20050302wo01.htm>> (2 March; full text in PDF is available on request)

“Cabinet OKs correctional education for inmates”

The Cabinet endorsed a bill Friday that would make correctional education mandatory and would establish a panel to monitor the treatment of prison inmates. Under the existing law, inmates typically engage in manual labor and may opt for correctional programs. The government hopes to obtain Diet approval for the bill during the current session:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050312a6.htm>> (12 March)

“FOI laws seen needing revision for fairness”

There have been increasing calls for revision of the Freedom of Information Law to allow judges to examine restricted records and documents in a closed court, even if bureaucrats refuse to release information publicly:

<<http://www.yomiuri.co.jp/newse/20050322wo02.htm>> (22 March; full text in PDF is available on request). See also,

<<http://www.yomiuri.co.jp/newse/20050301wo01.htm>> (1 March; full text in PDF is available on request)

“Privacy law”

The privacy law goes into effect Friday [1 April]. The new personal information protection law requires businesses with private data holdings on at least 5,000 individuals to inform those people about the purpose of keeping the data and to protect that information:

<<http://www.asahi.com/english/Herald-asahi/TKY200503300157.html>> (30 March)

7. International Context (constitutional reform, international relations)

[Constitutional Reform]

“Clampdown on freedom eyed in LDP's Constitution”

A Liberal Democratic Party panel is considering restricting such basic freedoms as that of assembly and expression in its draft proposal for a new Constitution... According to the sources, the idea was included in a list of discussion points compiled by Hajime Funada, who heads the subpanel of the LDP's constitutional drafting committee in charge of studying issues related to the rights and obligations of citizens:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050301a3.htm>> (1 March)

“Panel supports revising supreme law”

A House of Representatives constitutional study panel Tuesday unveiled a draft of its final report in which the majority of panel members support revising Article 9 of the Constitution to have the existence of the Self-Defense Forces stipulated in the supreme law:

<<http://www.yomiuri.co.jp/newse/20050330wo01.htm>> (30 March; full text in PDF is available on request)

[Immigration Law]

“Immigration chief blames his own in trafficking”

The real problem behind Japan's dismal anti-human trafficking record are “weak-kneed” immigration officials who bend to the whims of politicians and businesses that hire foreign women for illicit purposes... The government will tighten requirements this month for entertainment visas, which are often issued to women who end up forced to work in the sex industry. But Hidenori Sakanaka indicated in an interview with The Asahi Shimbun that the problem does not rest solely with visa procedures:

<<http://www.asahi.com/english/politics/TKY200503010175.html>> (1 March; full text in PDF is available on request)

[International Relations]

“Machimura plays down Constitution barring U.N. bid”

Foreign Minister Nobutaka Machimura dismissed public concern Saturday that the pacifist Constitution has to be revised to pave the way for the country to become a permanent U.N. Security Council member. “Japan can fully serve as a permanent U.N. Security Council member even on the assumption that we maintain the current Constitution,” Machimura said at a town meeting on U.N. reform attended by several hundred people:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050306a6.htm>> (6 March)

“Japan-U.S. declaration on Taiwan angers China”

China has strongly objected to the joint security agreement recently announced by Japan and the United States, which listed “a peaceful resolution of issues on the Taiwan Strait”

as a common strategic goal for the first time. The agreement is likely to further cool Beijing's relations with Japan in particular, as the two nations are currently embroiled in a territorial dispute over the Senkaku Islands--called Daioyu in China:

<<http://www.yomiuri.co.jp/newse/20050308wo42.htm>> (8 March; full text in PDF is available on request). See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050307a1.htm>> (7 March)

“Takeshima Day bill passed”

The Shimane Prefectural Assembly passed an ordinance Wednesday designating Feb. 22 as a commemorative day for Takeshima island, over which both Japan and South Korea claim sovereignty. South Korea strongly protested the ordinance:

<<http://www.yomiuri.co.jp/newse/20050317wo01.htm>> (17 March; full text in PDF is available on request)

“Takeshima row could hold up FTA talks with S. Korea: Machimura”

Japan believes that it will be difficult to quickly resume stalled talks on inking a free trade agreement with South Korea this year due to a heated territorial row over a disputed island:

<<http://asia.news.yahoo.com/050322/kyodo/d88vpmno2.html>> (22 March; full text in PDF is available on request)

“Thai FTA accord in sight”

Japan and Thailand are expected to reach basic agreement as early as next week on agricultural, forestry and fishery products, moving closer to the conclusion of a bilateral free trade agreement (FTA). Sources say the deal could be clinched at vice-ministerial level talks in Thailand next week, or at a ministerial meeting in Tokyo next month:

<<http://www.asahi.com/english/Herald-asahi/TKY200503240133.html>> (24 March)