

Japanese Law News Monthly Bulletin 2005/4**HEADINGS****FOCUS in April**

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 April: “Step closer toward Japan-Australia FTA”

Heading down what Japan's agricultural sector fear could be a bumpy road, Prime Minister Junichiro Koizumi and Australian Prime Minister John Howard on Wednesday announced a joint feasibility study into a free trade agreement between the two countries... Koizumi announced Japan was willing to work toward an FTA with Australia during a visit to Canberra in May 2002. But objections from the Japanese agriculture sector have been a key sticking point in moving closer to an agreement and ensured the two leaders adopted a cautious tone:

<<http://www.yomiuri.co.jp/newse/20050421wo15.htm>> (21 April; full text in PDF is available on request). See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?eo20050430a1.htm>> (30 April)

1. Equity (securities law, corporate law)

“Kanebo committed 200 billion yen accounting fraud”

Kanebo Ltd. announced Wednesday an internal probe has discovered the firm had a negative net worth on a consolidated basis for five years through fiscal 2003, some of which it failed to report, and plans are afoot to sue former management. The length of time the firm had negative net worth violates Tokyo Stock Exchange listing rules:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050414a2.htm>> (14 April)

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

“False claims highlight lack of legal awareness”

A Tokyo District Court ruling handed down in March in a case involving a fictitious claim for fees made by a dating-service Web site at a summary court under the small claims system has highlighted the need for more public awareness on the dangers of legal battles... The small claims system was introduced in 1998 when the Civil Procedure Code was revised with the aim of increasing the public's access to legal help. Under the system, a ruling is handed down the day after a hearing to help ensure that debts are collected promptly. After the revision, lawsuits that could be handled under the system were limited to cases involving claims of up to 300,000 yen, but the amount

was increased to up to 600,000 yen in April 2004. The number of lawsuits heard in summary courts increased from about 8,300 cases in 1998 to about 18,100 in 2003:

<<http://www.yomiuri.co.jp/newse/20050414wo24.htm>> (14 April; full text in PDF is available on request)

“New law to recover laundered funds”

The Justice Ministry will create a law and revise relevant legislation to recover 5.1 billion yen generated by a crime syndicate through illegal moneylending that was seized by Swiss authorities, and plans to distribute the money among crime victims... This is the first case in which criminal assets transferred abroad and confiscated by a foreign government will be returned to Japan in accordance with a bilateral agreement. The government's plan to distribute criminal profits to victims also is unprecedented:

<<http://www.yomiuri.co.jp/newse/20050423wo22.htm>> (23 April; full text in PDF is available on request)

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

“Diet passes tougher Antimonopoly Law”

The Diet enacted a measure Wednesday to revise the Antimonopoly Law, imposing higher penalties for companies that engage in bid-rigging and other illegal trade practices. The House of Councillors passed the new law by a majority during a plenary session after prolonged debate centered around opposition to the revision from economic circles:

<<http://www.yomiuri.co.jp/newse/20050421wo16.htm>> (21 April; full text in PDF is available on request)

4. Labour (employment law, pension system)

“Guiding Japan/ Pension reform should emphasize fairness to all”

Political debate on reforming the social security system, including the public pension program, will intensify with the agreement in March by the five major parties to form a deliberative council:

<<http://www.asahi.com/english/Herald-asahi/TKY200504110103.html>> (11 April; full text in PDF is available on request). See also,

<<http://www.asahi.com/english/Herald-asahi/TKY200504110106.html>> (11 April)

“Top court awards common-law wife pension”

The Supreme Court ruled Thursday that a dead man's mutual-aid pension should be paid to his common-law wife rather than his legal wife, from whom he had been estranged for the last 23 years of his life. “The marriage between the late husband and his wife was ruined to the extent of being irrecoverable, while his relationship with the other woman had almost the same status as matrimony,” presiding Judge Tokuji Izumi said in ruling in favor of the common-law wife:

<<http://www.yomiuri.co.jp/newse/20050422wo33.htm>> (22 April; full text in PDF is available on request)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050422a5.htm>> (22 April)

“MHI to compensate for overwork”

Mitsubishi Heavy Industries Ltd. has agreed to pay more than 100 million yen in compensation to a former head of its research and development center in Nagasaki for overwork and other health-related conditions, his lawyer said. According to an out-of-court settlement, Mitsubishi Heavy also agreed to apologize to Yoshio Kayo, 59, for violating health care regulations and promised to protect the health care rights of workers:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050428a9.htm>> (28 April)

“Ex-miners sue over lung diseases”

About 140 people -- former coal miners and relatives of deceased mine workers -- filed lawsuits Wednesday against the central government and four coal mining companies, demanding about 1.42 billion yen in damages for lung diseases caused by coal dust, lawyers said. The four defendant firms listed in the suits filed with the Fukuoka and Kumamoto district courts are Sumitomo Coal Mining Co., Nittetsu Mining Co., Mitsui Matsushima Co. and its subsidiary Matsushima Coal Mining Co:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050428b2.htm>> (28 April)

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

“Govt submits postal bills to Diet”

The government on Wednesday [27 April] night submitted a set of bills to privatize Japan Post immediately after it endorsed the postal privatization bills at an extraordinary Cabinet meeting. In the afternoon, the government and the ruling coalition drew up an agreement on the six bills that includes a stipulation to allow crossholding of shares among privatized firms:

<<http://www.yomiuri.co.jp/newse/20050428wo01.htm>> (28 April; full text in PDF is available on request) See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050428a1.htm>> (28 April)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050420a6.htm>> (20 April)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050405a1.htm>> (5 April)

<<http://www.asahi.com/english/Herald-asahi/TKY200504050166.html>> (5 April)

“Postal reform: What, when and how”

The Cabinet's endorsement of the postal privatization bills Wednesday [27 April] provides the opportunity to ask a few questions about the proposed reforms. How will the nation's postal services change under the reforms? Can we expect better service at post offices? In autumn 2005, post offices will start selling investment trusts, almost two years ahead of the partial privatization that will begin in April 2007:

<<http://www.yomiuri.co.jp/newse/20050429wo14.htm>> (29 April; full text in PDF is available on request)

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

“Plaintiff wins lawsuit over nationality”

The Tokyo District Court ruled Wednesday [13 April] it was unconstitutional for the government to refuse Japanese nationality to a 7-year-old boy of Japanese-Filipino parenthood born out of wedlock and later recognized by his Japanese father on the ground his parents were not married. Recognizing the Japanese nationality of the boy, presiding Judge Toshihiko Tsuruoka said a provision of the Nationality Law--under which a child born to a Japanese father and non-Japanese mother can obtain Japanese nationality only provided his or her parents are married--violates the Constitution that provides for equality for all:

<<http://www.yomiuri.co.jp/newse/20050414wo31.htm>> (14 April; full text in PDF is available on request)

<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050414a3.htm> (14 April)

“Top court rules video-link trials constitutional”

The Supreme Court on Thursday [14 April] dismissed the appeal of a 35-year-old man convicted of raping a woman in Aichi Prefecture, denying his assertion that testimony via a video link was unconstitutional. It was the first case in which the constitutionality of video-link testimony had gone before the country's top court:

<<http://www.yomiuri.co.jp/newse/20050415wo23.htm>> (15 April; full text in PDF is available on request)

“Transplant law revision stuck in ethical minefield”

Looking to speed up revisions to the Organ Transplantation Law, a ruling coalition team working to amend the law on Thursday proposed giving patients and their relatives the right to reject a diagnosis of brain death. The ad hoc committee on brain death--established by ruling party lawmakers in March--has held discussions to ease the nation's regulations on organ donation, which are said to be the toughest in the world:

<<http://www.yomiuri.co.jp/newse/20050427wo32.htm>> (27 April; full text in PDF is available on request)

7. International Context (constitutional reform, international relations)

[Constitutional Reform]

“Parties divided over environmental rights”

Around the world, when there have been discussions to revise constitutions to incorporate the people's right to a clean environment into a national charter, it has been overwhelmingly favored by the public. But similar aspirations have produced a split among political parties in this country:

<<http://www.yomiuri.co.jp/newse/20050405wo02.htm>> (5 April; full text in PDF is available on request)

“LDP's new Constitution will widen SDF's role”

The Liberal Democratic Party on Monday [4 April] unveiled a rough outline of its planned constitutional amendment, which says the Self-Defense Forces should be

defined as a military tasked with defending Japan and joining international peacekeeping efforts. The outline was mapped out by 10 subcommittees of an LDP panel for drafting a new Constitution:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050405a2.htm>> (5 April)

“Upper house ends top law study”

The House of Councillors concluded a five-year study on the Constitution on Wednesday with the release of a report stating the majority of parties support the incorporation of environmental protection and privacy rights into a revised Constitution. The report of the upper house Research Commission on the Constitution said a proposal to include the new rights in a revised constitution won the support of the three larger parties--the Liberal Democratic Party, Minshuto (Democratic Party of Japan) and New Komeito--but failed to gain the support of Japanese Communist Party and the Social Democratic Party, both of which are reluctant to change the Constitution.

<http://www.yomiuri.co.jp/newse/20050421wo04.htm>

<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050421a2.htm>

<http://www.asahi.com/english/Herald-asahi/TKY200504210131.html>

“Basic law reform bogged down”

The Research Commissions on the Constitution of both chambers of the Diet have finalized their reports, and attention is now shifting to how pro-amendment political parties will achieve their goals after five years of discussions on the supreme law. The House of Councillors report in particular is extremely cautious about constitutional revision, reflecting the desire of committee members not to antagonize political forces opposing reform of the basic law. The report is also defensive in tone as it calls for maintaining the two-chamber system:

<<http://www.yomiuri.co.jp/newse/20050422wo01.htm>> (22 April; full text in PDF is available on request)

[International Relations]

“Malaysia FTA hits roadblock over cars”

Negotiations over a free trade agreement between Japan and Malaysia have hit a speed bump over cars, a focal point of the talks, due to Kuala Lumpur's determination to continue protecting its local industry:

<<http://www.yomiuri.co.jp/newse/20050406wo11.htm>> (6 April; full text in PDF is available on request)

“Tokyo to let Japan firms test-drill in contested seas: Applicants seek rights to gas fields eyed by China”

Japan said Wednesday [13 April] it has begun processing applications that would allow domestic companies to test-drill in contested waters in the East China Sea where China plans to launch full-scale drilling for natural gas. The move comes on the heels of heated anti-Japanese demonstrations in various cities across China and could exacerbate the already strained political relations with its largest trading partner:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050414a1.htm>> (14 April)