

Japanese Law News Monthly Bulletin 2005/5**HEADINGS****FOCUS in May**

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 May: “Bid-rigging still a fact of life”

The arrest of 14 managers from 11 companies Thursday for allegedly rigging bids for government steel bridge projects revealed once more just how deeply ingrained the practice is in the industry. In addition to eight companies under investigation over bid-rigging after the Fair Trade Commission filed criminal complaints with prosecutors, 41 companies allegedly took part in the practice in fiscal 2003, and 39 firms allegedly did so in fiscal 2004.

<<http://www.yomiuri.co.jp/newse/20050528wo22.htm>> (28 May; full text in PDF is available on request)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050529a3.htm>> (29 May)

See also, “Prosecutors ask over 10 company officials to show up for questioning”

<<http://home.kyodo.co.jp/all/display.jsp?an=20050526025>> (26 May; full text in PDF is available on request);

“Prosecutors to search 47 firms over bid-rigging”

<<http://www.yomiuri.co.jp/newse/20050523wo21.htm>> (23 May; full text in PDF is available on request);

“FTC files criminal complaints against 8 firms over bid-rigging”

<<http://home.kyodo.co.jp/all/display.jsp?an=20050523079>> (23 May; full text in PDF is available on request);

“Major contractor execs expected to admit graft”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050515a2.htm>> (15 May)

“Questions arise over Haneda bidding process”

<<http://www.asahi.com/english/Herald-asahi/TKY200505110140.html>> (11 May)

1. Equity (securities law, corporate law)

“By ousting Kanebo, TSE means business”

The Tokyo Stock Exchange sent out a stern warning Thursday [12 May] to companies and investors with its decision to delist Kanebo Ltd. That is, market order will be maintained without exception. Kanebo will be dropped from the bourse because it falsified its financial statements, inflating its earnings by 215 billion yen over a five-year span to March 2004:

<<http://www.asahi.com/english/Herald-asahi/TKY200505140149.html>> (14 May)

<<http://www.asahi.com/english/Herald-asahi/TKY200505160098.html>> (16 May)
<<http://www.yomiuri.co.jp/newse/20050514wo12.htm>> (14 May; full text in PDF is available on request)

“Odakyu group admits falsifying statements”

The Tokyo Stock Exchange plans to ask Odakyu Electric Railway Co. and its three group companies to disclose more information after the four companies announced Wednesday [18 May] that they falsified their financial statements. The TSE will decide whether to delist the four First Section companies after they report details of their internal investigations:

<<http://www.asahi.com/english/Herald-asahi/TKY200505200161.html>> (20 May)

“Lower house approves new M&A bills”

The House of Representatives on Tuesday [17 May] approved a set of five bills that propose measures to fend off corporate hostile takeover bids and the abolition of limited-liability company status. The bills have been sent to the House of Councillors for approval. The lower house Judicial Affairs Committee approved the bills after revising them by deleting some restrictions on lawsuits by shareholders and deciding on a supplementary resolution:

<<http://www.yomiuri.co.jp/newse/20050518wo02.htm>> (18 May; full text in PDF is available on request)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20050518a1.htm>> (18 May)

“Guidelines drafted on takeover defenses”

The government has drafted a set of guidelines on measures to fend off hostile takeover attempts in a corporate world unaccustomed to such predatory action. The report was released on Friday by the Ministry of Economy, Trade and Industry and the Justice Ministry. The guidelines will not be legally binding. Rather, they will serve as a yardstick for companies in deciding what defensive measures to implement:

<<http://www.asahi.com/english/Herald-asahi/TKY200505280151.html>> (28 May)

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

“New system to aid indebted companies”

The Economy, Trade and Industry Ministry is planning a new system to help rebuild heavily indebted companies in place of the Industrial Revitalization Corporation of Japan, which stopped support for such companies in March, according to sources. There have been many cases in which corporate revival plans have faced difficulty in being drawn up due to friction among creditors:

<<http://www.yomiuri.co.jp/newse/20050513wo11.htm>> (13 May; full text in PDF is available on request)

“Bill readied to make banks reimburse stolen money”

The ruling Liberal Democratic Party will submit a bill to the current Diet session stipulating that financial institutions must totally reimburse deposits illegally withdrawn with forged or stolen bank cards, unless the depositor has committed provable errors.

The policy for the bill was decided Thursday [19 May]. The bill is considered certain to pass and would probably take effect by the end of this year:

<<http://www.asahi.com/english/Herald-asahi/TKY200505210200.html>> (21 May)

See also, "Bill eyed to protect cash-card crime victims" <<http://www.yomiuri.co.jp/newse/20050512wo23.htm>> (12 May; full text in PDF is available on request)

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

"Seriously ill patients anxiously await court verdict"

A 51-year-old man lay dying of liver cancer in Saitama Prefecture, unable to work nor afford prolonged hospital stays... The Saitama man was the first customer of Risk Management Institute Co., a year-old Tokyo-based company that deals in so-called viatical settlement transactions. Under these deals, a broker like Risk Management usually pays a lump sum to buy a life insurance policy from a person in need of quick cash. The company then becomes the beneficiary, pays the premiums and collects the insurance benefits once the policy seller dies:

<<http://www.asahi.com/english/Herald-asahi/TKY200505070164.html>> (7 May)

"Bill to free up local brand names"

Producers may be better able to advertise their products as local specialties after a bill aimed at revising the Trademark Law is passed in the current Diet session. Currently, using the names of regions in product names, such as Yubari melon from Hokkaido and Nishijin brocade from Kyoto, is limited to particular items. However, the Economy, Trade and Industry Ministry's Patent Office aims to increase the number of producers that can adopt local names in the titles of their products by easing restrictions under the current law, with the aim of revitalizing local economies:

<<http://www.yomiuri.co.jp/newse/20050517wo13.htm>> (17 May; full text in PDF is available on request)

"Co-op union moves to change 'outdated' law"

The Japanese Consumers' Co-operative Union (JCCU) on Tuesday [17 May] decided to demand an overall revision of the 57-year-old Consumers' Livelihood Co-operative Society Law, calling it obsolete for today's socioeconomic climate. The revision would abolish the restriction on each Co-op shop's commercial territory, among other reforms.

<<http://www.yomiuri.co.jp/newse/20050518wo12.htm>> (18 May; full text in PDF is available on request)

"Publisher runs afoul of property rights issue"

It's one thing to have a great idea, and quite another to register it. Chances are, someone else has thought of it. With 1.8 million trademarks registered in Japan, businesses trying to contrive catchy names for new products would find that eight in 10 candidates are already taken, says a corporate legal expert. But what about exclusive and commercial use of generic, even trendy, words like "NPO" and "Volunteer" for magazine titles? The Japan Patent Office, which in 2003 granted the words trademark protection, has now withdrawn that privilege on grounds their exclusive use is not in the public interest:

<<http://www.asahi.com/english/Herald-asahi/TKY200505200170.html>> (20 May)

“FSA warns Michinoku over data leak”

The Financial Services Agency on Friday ordered Michinoku Bank Ltd. to improve its operations to comply with a new law concerning the protection of personal information, making it the first such entity to receive a warning due to leakage of information. The FSA also was expected to issue the Aomori-based regional bank with a business improvement administrative order to tighten its compliance with relevant laws:

<<http://www.yomiuri.co.jp/newse/20050521wo13.htm>> (21 May; full text in PDF is available on request)

“New law to thwart Net fraud”

The government is considering enacting a new law to require sellers to provide contact information in an effort to prevent counterfeit and pirated products from being auctioned on the Internet, according to government sources. The envisaged law also would allow people who bought bogus products to demand that operators of online auction sites remove such products:

<<http://www.yomiuri.co.jp/newse/20050525wo31.htm>> (25 May; full text in PDF is available on request)

“Meat boss gets seven years for bilking state amid BSE scare”

The Osaka District Court sentenced a former meat-packing company executive Friday to seven years in prison for swindling the government out of more than 5 billion yen by abusing a beef-buyback program. The program was introduced in October 2001, a month after the first outbreak in Japan of mad cow disease, formally known as bovine spongiform encephalopathy:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050528a2.htm>> (28 May)

“Property piracy treaty needed to draft plan”

A government council studying intellectual property policy will call for a treaty in its draft proposal to avoid the international spread of imitation and pirated goods. The draft proposal also includes a goal to double to 120,000 in 10 years the number of experts, such as lawyers and patent attorneys, who support the intellectual property system:

<<http://www.yomiuri.co.jp/newse/20050531wo11.htm>> (31 May; full text in PDF is available on request)

4. Labour (employment law, pension system)

“Panel urges gender equality policies”

Japan should revise its policies on gender equality to improve the share of women in leadership posts in all sectors to at least 30 percent by 2020 and remove all discrepancies between the sexes in all levels of education by 2015, according to a government expert panel's interim report. More support is needed for women who want to re-enter the workforce after staying home to raise children, as well as promote an overhaul of the employment structure for both men and women to make careers and housework compatible, such as introducing shorter work hours, the report says:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050517f2.htm>> (17 May)

“Auditors tell mayor to reclaim 13.8 billion yen in pension perks”

Auditors here have advised Mayor Junichi Seki to seek the return of 13.8 billion yen in secret retirement allowances paid out to retired city officials and teachers over the past five years. Auditors said the allowances were disbursed in an underhanded manner and, therefore, illegal. They set a three-month deadline for repayment.

<<http://www.asahi.com/english/Herald-asahi/TKY200505180124.html>> (18 May)

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

[Tax Policy]

“Govt faces balancing act to reform tax system”

While families with children may be eligible for a new tax deduction, many corporate employees likely will face cuts to tax exemptions when the government reviews the deduction system. The Tax Commission, an advisory panel to the prime minister, is expected to propose a review of the tax deduction system in a report on wholesale reform of income tax to be released next month:

<<http://www.yomiuri.co.jp/newse/20050505wo12.htm>> (5 May; full text in PDF is available on request)

“China, Japan agree on terms to tax firms”

The National Tax Agency announced Wednesday [25 May] that Japanese and Chinese tax authorities have agreed to take steps to ensure Japanese companies operating in China do not pay double tax. It was the first time the Chinese government has reached such an agreement with another country's tax authorities:

<<http://www.yomiuri.co.jp/newse/20050527wo11.htm>> (27 May; full text in PDF is available on request)

[Immigration]

“Govt to open door wider for foreign doctors, nurses”

The Justice Ministry has decided to lift work restrictions on foreign doctors and nurses with Japanese professional qualifications as part of efforts to increase the number of foreign workers with technical expertise in Japan. The Immigration Control and Refugee Recognition Law will be revised within this fiscal year to accommodate the policy change. Regulations that allow foreign doctors and dentists to work up to six years as interns after graduation and nurses up to four years will be changed:

<<http://www.yomiuri.co.jp/newse/20050509wo01.htm>> (9 May; full text in PDF is available on request)

“Asylum seekers get provisional break with strings attached”

The revised version of the Immigration Control and Refugee Recognition Law took effect Monday [16 May] in what was described by Justice Ministry officials as the first major amendment of Japan's refugee recognition system since the law debuted in 1982. With this revision, people seeking asylum will now be given permission for a

three-month provisional stay if they apply for refugee status within six months of entering Japan:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050517a3.htm>> (17 May)

“Amnesty slams Japan on refugees”

Amnesty International on Wednesday highlighted Japan's failure to meet international standards on refugees even though attention was drawn to the issue a year ago. In its annual report, the human rights group outlined concerns regarding the detention of asylum-seekers and cited examples of mentally ill refugees being detained without appropriate medical care:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050526a5.htm>> (26 May)

[Environmental Law]

“Diet puts teeth into dumping law”

The Diet enacted revisions to the waste disposal law on Wednesday that impose heavy penalties on violators, including fines of up to 100 million yen for attempts to export waste without official approval. The revised law, passed by a House of Councilors plenary session, is aimed at stemming the rise in the unauthorized export of waste that is causing trouble overseas:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050512b1.htm>> (12 May)

“Isahaya Bay injunction overturned by high court”

In a new development in the court battle over a large-scale government land reclamation project at Isahaya Bay, Nagasaki Prefecture, the Fukuoka High Court on Monday [16 May] revoked a district court order requested by fishermen for the suspension of the project... The district court accepted the claim by a group of 106 fishermen operating in the bay, located at the edge of the Ariake Sea, that the project had caused a deterioration in seawater and resulted in poor catches and a drop in cultivated laver harvests:

<<http://www.yomiuri.co.jp/newse/20050517wo31.htm>> (17 May; full text in PDF is available on request)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050517a1.htm>> (17 May)

<<http://www.asahi.com/english/Herald-asahi/TKY200505170140.html>> (17 May)

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

“Nursing-care revision needs shot of adrenaline”

Despite being approved by the House of Representatives' Health, Labor and Welfare Committee, discussions over a bill to revise the Nursing-Care Insurance Law have failed to grab the bull by the horns. It is hoped the House of Councilors will delve deeper into the bill's issues, which include what to do with the benefits to be paid to those in need of light nursing care:

<<http://www.yomiuri.co.jp/newse/20050503wo33.htm>> (3 May; full text in PDF is available on request)

“Law on treatment of prisoners OK'd”

The House of Councillors unanimously passed a bill Wednesday [18 May] creating a new law regarding the treatment of inmates in prisons that gives consideration to human rights and obliges inmates to take correctional education depending on their crimes. The new law, which will go into effect in fiscal 2006, will replace the 1908 Prison Law that sets out rules for the treatment of prisoners:

<<http://www.yomiuri.co.jp/newse/20050519wo01.htm>> (19 May; full text in PDF is available on request)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050519a3.htm>> (19 May)

“Courts back victims' rights; lawyers don't”

Since autumn, the Tokyo High Court has overturned two lower court sentences and handed down death penalties, prompting some to question whether the sentences were justified as only one victim was killed in each case. The trend shows society is hardening its attitude against crime and is more concerned with public safety and victims' rights than with the morality of what is one of the most difficult questions in criminal trials:

<<http://www.yomiuri.co.jp/newse/20050520wo35.htm>> (20 May; full text in PDF is available on request)

“Bar association compiles bill to suspend the death penalty”

The Japan Federation of Bar Associations proposed Saturday [28 May] suspending executions while the Diet discusses whether capital punishment should be maintained. In a draft bill revealed at a public meeting in Tokyo, the largest lawyers' group in Japan urged both chambers of the Diet to set up study panels to research international trends over capital punishment and the possibility of ending the death penalty:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050529a8.htm>> (29 May)

7. International Context (constitutional reform, international relations)

[International Relations]

“China urges movement on trilateral FTA”

China called on Japan and South Korea on Saturday [6 May] to expedite a trilateral study on a possible three-way free trade agreement, Japanese officials said. Beijing's proposal was conveyed by Chinese Foreign Minister Li Zhaoxing to his Japanese and South Korean counterparts, Nobutaka Machimura and Ban Ki Moon, during a meeting on the sidelines of an Asia-Europe meeting in Kyoto, the officials said:

<<http://www.yomiuri.co.jp/newse/20050508wo11.htm>> (8 May; full text in PDF is available on request)

“Japan, Malaysia agree on basic FTA”

Prime Minister Junichiro Koizumi and visiting Malaysian Prime Minister Abdullah Ahmad Badawi on Wednesday [25 May] reached a basic free trade agreement that will lead to the lifting of tariffs on mining and industrial products, including automobiles, steel and agricultural and marine products within 10 years after it goes into effect. The

two leaders plan to enact the agreement next spring. It will be signed at a summit meeting of East Asian leaders scheduled for December:

<<http://www.yomiuri.co.jp/newse/20050526wo41.htm>> (26 May; full text in PDF is available on request)

<<http://www.asahi.com/english/Herald-asahi/TKY200505260120.html>> (26 May)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050526a3.htm>> (26 May)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050523a1.htm>> (23 May)

<<http://www.asahi.com/english/Herald-asahi/TKY200505230114.html>> (23 May)

[WWII-Related]

“War papers describe how law muzzled free speech”

Classified Japanese government documents recently discovered in the United States show how a notorious wartime law aimed at suppressing freedom of speech was enacted, according to the Japanese professor who found the documents. The classified papers of the then Home Affairs Ministry contain detailed information covering the process through which the provisional law regulating speech, publication, assembly and society was drawn up and put into effect in December 1941 -- right after Japan launched its war against the Allied Powers:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050504a4.htm>> (4 May)

“A-bomb victims can request benefits from abroad, court rules”

The Hiroshima District Court ruled Tuesday that atomic-bomb survivors living abroad do not have to visit Japan to apply for medical benefits and funeral assistance, overruling a decision by the Hiroshima Municipal Government to reject such applications. In handing down the ruling, presiding Judge Akio Nose said, "Atomic-bomb survivors who live abroad can directly apply for benefits even if they are outside Japan." The court also invalidated provisions of the Atomic Bomb Survivors' Support Law that make it mandatory for hibakusha to be in Japan when they apply for benefits:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050511a3.htm>> (11 May)