

Japanese Law News Monthly Bulletin 2005/7**HEADINGS****FOCUS in July**

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 July: “Hundreds of deaths spur ministry plan to ban all asbestos use by 2008”

The health ministry said Friday [8 July] it plans to ban all use of asbestos by 2008 after recent announcements that hundreds of workers at various companies have died from diseases related to the toxic unburnable mineral. The domestic use of asbestos is banned in principle, except in cases where there are no substitutes. Asbestos is therefore still used to make gaskets for machinery, insulating plates for switchboards, seals for chemical plants and industrial rope:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050709a2.htm>> (9 July)

<<http://www.asahi.com/english/Herald-asahi/TKY200507110083.html>> (11 July)

See also, “’70s report on asbestos deaths ignored”

<<http://www.asahi.com/english/Herald-asahi/TKY200507180221.html>> (18 July)

“Asbestos litigation seen crippling economy”

<<http://www.yomiuri.co.jp/dy/world/20050719TDY03001.htm>> (19 July)

“Asbestos remains in bodies of 650 train cars used daily”

<<http://www.asahi.com/english/Herald-asahi/TKY200507210200.html>> (21 July)

“Industry groups pressed to abolish asbestos use”

<<http://www.asahi.com/english/Herald-asahi/TKY200507210199.html>> (21 July)

“Ministries to seek complete asbestos halt”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050721a2.htm>> (21 July)

“Redress mulled for asbestos victims”

<<http://www.asahi.com/english/Herald-asahi/TKY200507230173.html>> (23 July)

“Ministry neglected asbestos monitoring”

<<http://www.yomiuri.co.jp/dy/national/20050729TDY02007.htm>> (29 July)

“Law may cover cost of asbestos ills”

<<http://www.yomiuri.co.jp/dy/national/20050730TDY02009.htm>> (30 July)

1. Equity (securities law, corporate law)

“Firms face growing pressure to act more responsibly”

While calls for corporate social responsibility are increasing, cases of companies involved in illegal environmental contamination have come to light one after another. In February, it was revealed that a plant at JFE Steel Corp.'s East Japan Works in Chiba

discharged water with an illegally high alkaline level and also falsified water quality data. In March, the Chiba municipal government ordered the company to improve the situation:

<<http://www.yomiuri.co.jp/dy/business/20050701TDY04003.htm>> (1 July)

“Poison pill defense not liked by all”

Poison pill measures were adopted at annual shareholders meetings last month at eight companies despite the objections of some major institutional investors. The poison pill strategy involves the issuance of warrants for new shares to fight hostile takeover bids. Some of the shareholders, after carefully examining the proposed systems, said poison pills could be abused by managers to protect their personal interests:

<<http://www.yomiuri.co.jp/dy/business/20050708TDY08010.htm>> (8 July)

“LDP panel issues M&A proposals”

A Liberal Democratic Party panel released proposals Thursday [7July] on fair merger and acquisition deals, with the aim of reforming the takeover bid system and bringing it into line with an era of hostile takeover attempts. The proposals recommend that companies facing predatory takeover bids be given the right to question bidders, the takeover bid period be extended, and bidders be allowed to abandon their takeover attempt and reduce their offer price. The ruling coalition party's committee on corporate governance intends to submit a bill to revise the Securities and Exchange Law to the next ordinary Diet session:

<<http://www.yomiuri.co.jp/dy/business/20050708TDY08009.htm>> (8 July)

See also, “New laws needed for hostile M&As”

<<http://www.yomiuri.co.jp/dy/business/20050706TDY08009.htm>> (6 July)

“Ex-Kanebo execs arrested over scandal”

The former president and two former executives of Kanebo Ltd. were arrested Friday [29 July] by the Tokyo District Public Prosecutors Office in connection with a window-dressing scandal engulfing the struggling company. Prosecutors arrested former Kanebo President Takashi Hoashi, 69, former Vice President Takashi Miyahara, 63, and former Chief Financial Officer Kenzaburo Shimada, 59, on suspicion of falsifying the company's securities statements in violation of the Securities and Exchange Law:

<<http://www.yomiuri.co.jp/dy/national/20050730TDY01004.htm>> (30 July)

See also, “Kanebo exposes cosy auditor-firm ties”

<<http://www.yomiuri.co.jp/dy/national/20050731TDY03002.htm>> (31 July)

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

“Lenders must reveal what's paid”

The Supreme Court ruled Tuesday [19 July] that moneylenders must disclose debt records to borrowers and that refusal to do so is an illegal act that constitutes a responsibility to pay compensation. The No. 3 Petty Bench of the top court overturned an Osaka High Court ruling that had rejected a plaintiff's demand for redress from a

consumer loan firm that had charged her interest above the legal rate. It sent the case back to the high court to decide on the amount of redress the woman should receive:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050720a2.htm>> (20 July)

“Ministry plans to seize illegal profits to pay back crime victims”

The Justice Ministry plans to make it easier to seize illegally gained profits from loan sharks, fraudsters and extortionists, and distribute the funds to their often-intimidated victims. The ministry submitted the plan to the Legislative Council, an advisory body to the justice minister, on Thursday [21 July]. If the council approves the plan, bills to create the system will be submitted to a Diet session as early as in autumn:

<<http://www.asahi.com/english/Herald-asahi/TKY200507230178.html>> (23 July)

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

“Complaints to be filed over rail vehicle weight fraud”

The Construction and Transport Ministry will likely file criminal complaints with the Osaka and Ishikawa prefectural police against Toyo Trailer Co. and Komatsu Ltd. on suspicion of violating the Road Transport Vehicle Law by illegally acquiring inspection certificates for railway maintenance vehicles... The firms allegedly falsified the deadweights of the vehicles so they could obtain official inspection certificates. They then sold them to JR firms:

<<http://www.yomiuri.co.jp/dy/national/20050710TDY02008.htm>> (10 July)

“Temblor prompts review of elevator safety measures”

Following Saturday's powerful earthquake that rocked the Kanto region and temporarily trapped people inside 46 elevators, the Construction and Transport Ministry on Monday [25 July] will require new elevators to be equipped with a safety function that brings an elevator to the nearest floor after a large quake, ministry officials said. The ministry will soon revise enforcement regulations of the Building Standard Law and review the safety standard:

<<http://www.yomiuri.co.jp/dy/national/20050726TDY03004.htm>> (26 July)

“Japan Highway vice president held over bid-rigging”

Prosecutors on Monday [25 July] arrested Michio Uchida, vice president of Japan Highway Public Corp., for allegedly helping to rig bids for bridge projects ordered by the highway body... Uchida, 60, is suspected of helping his colleagues violate the Antimonopoly Law in a case involving the construction of an elevated bridge in Shizuoka Prefecture in May 2004, and of breach of trust for causing the government-run highway operator to make up to 50 million yen in unnecessary payments:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050726a1.htm>> (26 July)

See also, “JH's vice president arrested”

<<http://www.yomiuri.co.jp/dy/national/20050726TDY01004.htm>> (26 July)

“Japan Highway retiree, four bridge execs held in bid-rigging”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050713a2.htm>> (13 July)

“MMC sues 7 ex-execus over defect cover-ups”

Mitsubishi Motors Corp. on Friday filed a lawsuit in the Tokyo District Court against its former chairman, Hirokazu Nakamura, and six other former executives, seeking 1.13 billion yen in compensation for damaging the automaker's reputation by covering up defects of its products:

<<http://www.yomiuri.co.jp/dy/national/20050730TDY02006.htm>> (30 July)

“Ministry eyes 7-fold rise in open bidding projects”

The Construction and Transport Ministry plans to expand the number of public works projects subject to competitive open bidding by reducing the minimum estimated value of contracts subject to this rule from 730 million yen to 200 million yen... The new policy was mapped out on the advice of outside experts by a ministry committee studying measures to prevent bid-rigging:

<<http://www.yomiuri.co.jp/dy/national/20050730TDY02011.htm>> (30 July)

4. Labour (employment law, pension system)**“51 more deaths tied to asbestos”**

Fifty-one current and former employees of three shipbuilding firms died of mesothelioma, a type of cancer, and other diseases apparently caused by asbestos, according to separate announcements made by the firms Wednesday [13 July]. At Ishikawajima-Harima Heavy Industries Co. and its affiliates, of the 23 former employees entitled to receive workers compensation for asbestos-related diseases between 1988 and 2005, 20 have died:

<<http://www.yomiuri.co.jp/dy/national/20050714TDY02002.htm>> (14 July)

5. Oversight and Policy (administrative law, public official law, tax policy)**“Top court: scrap Kani election”**

The Supreme Court on Friday [8 July] upheld a lower court ruling that nullified the results of a 2003 city assembly election in Kani, Gifu Prefecture, over faulty electronic voting machines. All but one of the 25 members of the Kani municipal assembly will now lose their posts. The local election administration commission must now hold another election within 50 days:

<<http://www.asahi.com/english/Herald-asahi/TKY200507090154.html>> (9 July)

“Supreme Court throws out Tokyo election suit”

The Supreme Court dismissed a lawsuit Tuesday [19 July] by a group of lawyers seeking to invalidate the outcome of the November 2003 general election in Tokyo's No. 4 district. The group claimed that the allocation of House of Representatives seats failed to reflect population density:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050720a5.htm>> (20 July)

See also, “Top court to rule on suits to void poll”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050714a9.htm>> (14 July)

“METI uncovers more abuses”

Economy, Trade and Industry Minister Shoichi Nakagawa said Friday [22 July] two more cases of public fund misuse involving its officials have been confirmed and he will thus cut his own salary for another month in August. The fresh cases follow an alleged case of misuse last month in which a ministry official used funds for personal stock trading:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050723a3.htm>> (23 July)

“Postmasters warn Diet: Kill bills”

With only a week or so to go before the crucial vote on the postal services privatization bills, postmasters are pressuring upper house members to kill the bills, by threatening to pull the support of postal workers in future elections.

<<http://www.yomiuri.co.jp/dy/national/20050731TDY03001.htm>> (31 July)

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

[Human Rights]

“Privacy law amendments to be shelved amid tensions”

Amid fallout from the close vote on postal privatization bills in the Diet Tuesday, the ruling parties will abandon plans to submit a bill to the current parliamentary session to revise privacy law... The ruling parties will instead consider submitting the bill at an extraordinary Diet session in autumn:

<<http://www.yomiuri.co.jp/dy/national/20050710TDY02012.htm>> (10 July)

“Discrimination in Japan 'deep and profound': U.N. rapporteur”

Discrimination in Japan is "deep and profound," with the government leadership lacking a recognition of the depth of the problem and the public having a "strong xenophobic drive," a U.N. special rapporteur said Monday in wrapping up a nine-day visit in Japan. Doudou Diene of Senegal, special rapporteur of the U.N. Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, called for stronger political will at the highest level to combat the issue and for Japan to enact a national law condemning racism:

<<http://home.kyodo.co.jp/modules/fstStory/index.php?storyid=191340>> (11 July)

“Tokyo still weak on human-trafficking: U.N. investigator”

The government will have to do much more than just revise a few laws to combat human-trafficking, the U.N. special rapporteur on the problem said Wednesday [13 July]. Sigma Huda, of the U.N. Commission on Human Rights, was in Tokyo on an unofficial visit to meet with nongovernmental groups, lawyers and government officials to learn more about Japan's antitrafficking steps:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050714b1.htm>> (14 July)

“Lawyers stand firm, boycott refugee appeal hearings”

A group of lawyers representing refugee applicants began boycotting appeals hearings Wednesday [13 July] as promised, after the Justice Ministry's Immigration Bureau

rejected their requests for greater information disclosure. The boycott began with the first appellate hearing for a Myanmarese asylum-seeker. Since June, the lawyers have filed four requests with the ministry for a range of information on their clients, including statements made by the asylum-seekers in their first examinations, during which attorneys are not allowed to be present:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050714a7.htm>> (14 July)

“LDP to put off human rights bill”

The ruling party will shelve its plan to submit a controversial human rights bill to this Diet session, sources said, citing intra-party differences over key provisions. The bill would establish a new commission that would act swiftly to deal with rights infringements. In addition to the long-standing controversy over proposed media controls, the ruling coalition is split over allowing non-Japanese residents to join the nation's roughly 14,000 government-appointed human rights volunteers:

<<http://www.asahi.com/english/Herald-asahi/TKY200507270130.html>> (27 July)

[Others]

“Judges to play doctors?”

A law concerning treatment and care for the criminally insane--those who have committed serious crimes, but cannot be indicted or have been acquitted due to their mental state--came into effect Friday [15 July]. The law stipulates that people found to be criminally insane must be hospitalized when it has been formally decided that they require special treatment:

<<http://www.yomiuri.co.jp/dy/national/20050718TDY03003.htm>> (18 July)

“Upper house passes reading bill”

A bill aimed at encouraging people to read more by outlining the responsibilities of the central and local governments was passed in the House of Councillors on Friday [22 July]. The law, which promotes interest in printed material such as books and newspapers, is designed to improve students' language skills by improving teaching quality. The law is to be enacted shortly:

<<http://www.yomiuri.co.jp/dy/national/20050723TDY02012.htm>> (23 July)

See also, “Deeds not words needed for print law”

<<http://www.yomiuri.co.jp/dy/national/20050725TDY02003.htm>> (25 July)

“Female monarch an option in succession: gov't panel interim report”

A government-appointed panel proposed Tuesday allowing females to ascend the imperial throne as an option to ensure "stable succession," given that no male heir has been born into the royal family for the last 40 years. In an interim report, the advisory panel to Prime Minister Junichiro Koizumi paved the way for a revision of the Imperial House Law, which currently allows only males to reign:

<<http://home.kyodo.co.jp/modules/fstStory/index.php?storyid=194232>> (26 July)

“Non-Japanese lawyer rejected for arbitration [sic: conciliation (*chotei*)”

The Kobe Family Court has refused the assignment of a South Korean lawyer to an arbitration [sic: conciliation (*chotei*)] committee by a bar association in Hyogo

Prefecture because she is not Japanese, it was learned Saturday [30 July]. The Hyogo Prefecture Bar Association recommended South Korean lawyer Yang Yongja, 47, as an arbitration [sic: conciliation (*chotei*)] committee member in October 2003. However, the family court said it would not recommend the lawyer to the Supreme Court:

<<http://www.yomiuri.co.jp/dy/national/20050731TDY02009.htm>> (31 July)

7. International Context (constitutional reform, international relations)

[National Security]

“LDP panel approves ‘self-defense military’”

A Liberal Democratic Party commission approved a set of outlines Thursday [7 July] that include revising pacifist Article 9 of the Constitution to stipulate Japan's right to possess a "self-defense military," lawmakers said. Article 9 currently states that Japan will never maintain "land, sea, and air forces, as well as other war potential." The word "military" has never been officially used to describe the Self-Defense Forces, mainly out of consideration to Japan's neighbors:

<<http://www.asahi.com/english/Herald-asahi/TKY200507090150.html>> (9 July)

“DPJ exec calls for Cabinet PKO unit”

Seiji Maehara of the Democratic Party of Japan has proposed setting up a military unit under the Cabinet specializing in U.N.-authorized international cooperation and peacekeeping operations... Maehara, the Defense Agency chief in the DPJ's shadow Cabinet, said a unit comprising troops on loan from the Self-Defense Forces should be placed under the Cabinet Office and be separate from the SDF:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050717a9.htm>> (17 July)

“Attack-contingency manuals approved”

The Cabinet approved attack-contingency manuals Friday [22 July] from Fukui and Tottori -- the first prefectures to submit public evacuation and rescue plans, government officials said.

Other prefectures are expected to follow Fukui and Tottori's lead in line with legislation that took effect in September on protecting civilians in the event of an attack on Japan:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050723a4.htm>> (23 July)

“Missile defense set to start 1 year earlier”

The government is seeking to put a missile defense system in place at the end of fiscal 2005, when the revised Self-Defense Forces Law takes effect--a move that will launch the system one year earlier than initially planned... The move reflects the government's decision that it is necessary to create a missile shield as soon as possible as North Korean and Chinese ballistic missiles pose a real threat to other nations:

<<http://www.yomiuri.co.jp/dy/world/20050723TDY01005.htm>> (23 July)

[International Trade]

“Australia warns against beef tariff hike”

Australia has asked Japan not to penalize its industry for filling a supply gap in beef imports due to the U.S. beef ban by imposing a 50 percent safeguard tariff... Under a 1993 World Trade Organization safeguard or snapback measure, Japan can automatically increase its tariff if there is a year-on-year increase of more than 17 percent in beef imports on a cumulative quarterly basis. This would result in an 11.5 percentage point rise, from 38.5 percent to 50 percent--a measure the government enacted in 2003 as beef imports surged a year after a mad cow disease scare:

<<http://www.yomiuri.co.jp/dy/business/20050709TDY08012.htm>> (9 July)

“U.S. warns of congressional anger over beef imports”

U.S. Agriculture Secretary Mike Johanns warned Japan on Friday [15 July] that Congress may lose patience and step up retaliatory pressure after its August recess if Tokyo fails to lift the 19-month-old import ban on American beef. Johanns told reporters he conveyed the warning to agriculture minister Yoshinobu Shimamura during talks Wednesday [13 July] on the sidelines of a World Trade Organization meeting in Dalian, China:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050717a1.htm>> (17 July)

“Retaliatory tariffs eyed for U.S. imports”

The government may impose retaliatory tariffs on U.S. products in September to counter the antidumping provisions in the U.S. Byrd Amendment... The government is considering a 15 percent retaliatory tariff on about 10 U.S. products, including bearings and steel, the officials said. It would be the first time Japan has imposed retaliatory tariffs on imports:

<<http://www.yomiuri.co.jp/dy/business/20050729TDY08004.htm>> (29 July)

[WWII-Related]

“Ruling upheld nixing redress over Unit 731 germ warfare - Appeal to top court vowed”

The Tokyo High Court on Tuesday [21 July] upheld a lower court decision denying Chinese plaintiffs compensation for germ warfare atrocities committed in China by the Imperial Japanese Army during the war. The lawsuit, filed in 1997 and 1999 by a combined 180 plaintiffs -- survivors and relatives of deceased victims -- had demanded 10 million yen in damages for each plaintiff and an apology from the Japanese government:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050720a1.htm>> (20 July)

See also, “Chinese take redress case to top court”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050722a9.htm>> (22 July)