

Japanese Law News Monthly Bulletin 2005/9**HEADINGS****FOCUS in September**

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 September: “Small govt means welfare cuts?”

The general election that asked the public its opinion of shrinking government is over, and now another argument--this one over cutting back social welfare--is about to start. The recent House of Representatives election ended in an overwhelming victory for the ruling parties--the Liberal Democratic Party and New Komeito--giving them more than two-thirds of the seats in the lower house. With most pending government-sponsored bills all but guaranteed to be passed into law, expectations are high for the promotion of bold structural reforms:

<<http://www.yomiuri.co.jp/dy/national/20050923TDY04003.htm>> (23 Sep)

See also, “LDP OKs postal reform; dissent a notable no-show”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050923a2.htm>> (23 Sep)

“Govt banks target of next reform wave”

<<http://www.yomiuri.co.jp/dy/national/20050923TDY08001.htm>> (23 Sep)

1. Equity (securities law, corporate law)

“TSE pushes auditors over compliance”

The Tokyo Stock Exchange is to ask accounting firms and self-employed certified public accountants who audit the accounts of listed companies to conform with compliance rules... The exchange made the decision in the wake of Tuesday's arrest of four CPAs suspected of window-dressing Kanebo Ltd.'s accounts. It will convey its request to about 100 accounting firms and about 80 independent CPAs:

<<http://www.yomiuri.co.jp/dy/business/20050917TDY08014.htm>> (17 Sep)

“Tsutsumi family in legal battle over Kokudo shares”

Four relatives of disgraced business tycoon Yoshiaki Tsutsumi filed a lawsuit Friday, saying they are the true owners of about half of the Kokudo Corp. shares held by Tsutsumi. Among the four relatives are Tsutsumi's elder brother, Seiji Tsutsumi, former chairman of the Seibu department store, and hotel operator Yuji Tsutsumi, their younger brother. The suit was filed at the Tokyo District Court:

<<http://www.asahi.com/english/Herald-asahi/TKY200509170136.html>> (17 Sep)

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

“Four CPAs arrested over Kanebo scandal”

Four certified public accountants at a Japanese unit of the PricewaterhouseCoopers Group were arrested Tuesday for allegedly collaborating with former executives at Kanebo Ltd. to falsify accounting reports. The special investigation department of the Tokyo District Public Prosecutor's Office also searched the offices of ChuoAoyama PricewaterhouseCoopers in Chiyoda Ward, Tokyo, and the suspects' homes jointly with the Securities and Exchange Surveillance Commission, prosecutors said:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050914a1.htm>> (14 Sep)

See also, “CPAs implicated in another Kanebo scam”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050915a3.htm>> (15 Sep)

“Accountants face Kanebo fraud charge”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050912a3.htm>> (12 Sep)

<<http://www.yomiuri.co.jp/dy/national/20050911TDY02013.htm>> (11 Sep)

“Ashikaga Bank sues auditors”

Ashikaga Bank filed suit Friday [16 September] against accounting firm ChuoAoyama PricewaterhouseCoopers, demanding 1.1 billion yen in compensation over the auditors' alleged assistance to former bank executives in window-dressing its fiscal 2000 accounts. In the suit filed at the Utsunomiya District Court, the Utsunomiya-based bank claimed ChuoAoyama's certified public accountants instructed the executives about how to window-dress the accounts to cover dividend payments of 1.1 billion yen to holders of preferred shares:

<<http://www.yomiuri.co.jp/dy/national/20050917TDY02006.htm>> (17 Sep)

Toto operator hid 15 bil. yen bank debt

The Board of Audit has ordered the National Agency for the Advancement of Sports and Health, operator of the toto soccer lottery, to correct its financial statements, saying the independent administrative institution failed to report a debt of 15.4 billion yen... The agency, which has suffered from declining sales of toto, did not include its debt to Resona Bank in the financial statement's balance sheets, mentioning the debt only in footnotes:

<<http://www.yomiuri.co.jp/dy/national/20050930TDY02003.htm>> (30 Sep)

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

“Report highlights JR West's negligence”

An interim report on the April 25 JR Fukuchiyama Line derailment released Tuesday reveals that West Japan Railway Co. was negligent regarding safety issues, and the train had been driven recklessly. The report submitted to Construction and Transport Minister Kazuo Kitagawa by the Aircraft and Railway Accidents Investigation Commission said JR West's train crew manual did not include instructions on how to operate equipment to prevent an accident from causing a chain reaction of further accidents:

<<http://www.yomiuri.co.jp/dy/national/20050907TDY02009.htm>> (7 Sep)

“Airlines allowed to outwing criminal responsibility when parts fall off planes”

When a JALways Co. aircraft engine caught fire Aug. 12, hundreds of metal fragments rained over the city of Fukuoka. While two people on the ground suffered minor injuries, aviation experts say it's fortunate no one was seriously hurt or even killed... The incident raises an intriguing issue: In the world of aviation, it appears inflicting harm is one thing, while assigning blame is quite another... No criminal charges are likely to be pressed due to a lack of specific domestic legislation to deal with damage or injury caused by parts falling off aircraft:

<<http://www.asahi.com/english/Herald-asahi/TKY200509100159.html>> (10 Sep)

“Mitsubishi Fuso tries to move past recall woes”

Mitsubishi Fuso Truck & Bus Corp. will finish reporting product recalls to the Construction and Transport Ministry by the end of the month. The recalls come in the wake of more than 100 cases in which the automaker concealed vehicle faults since March last year.

<<http://www.yomiuri.co.jp/dy/national/20050909TDY02003.htm>> (9 Sep)

“MMC still mired in 3 court cases”

Mitsubishi Motors Corp. and former Mitsubishi group officials remain mired in legal problems over a series of cover-ups of defective vehicles... Court proceedings for the three cases started in September last year at the Yokohama District Court and the Yokohama Summary Court, with the defendants pleading not guilty to most charges... The court proceedings are only at their halfway points with prosecutors having finished presenting evidence or lawyers just having started presenting testimonies. It is likely to be at least another year before court rulings are handed down:

<<http://www.yomiuri.co.jp/dy/national/20050928TDY03005.htm>> (28 Sep)

“Legal action big risk for NHK”

NHK, in its recently announced corporate renewal plan, has decided to resort to legal action against those who refuse to pay viewing fees. The about-face by the public broadcaster illustrates that the current viewing-fee system has fallen into systemic fatigue. Article 32 of the Broadcast Law obliges those with televisions to be party to a contract with NHK, for which they have to pay viewing fees. But the law has no punishment for those who refuse to pay:

<<http://www.yomiuri.co.jp/dy/national/20050923TDY04004.htm>> (23 Sep)

“Sagawa caught out over illegal contracts”

Major door-to-door delivery firm Sagawa Express Co. has been warned by the Health, Labor and Welfare Ministry for writing illegal contracts... The Kyoto-based company violated the Temporary Staffing Services Law by subcontracting collection and delivery services to firms, although it actually provided workers from different companies with which it had business deals. The law prohibits the practice because although the companies writing such contracts can cut labor costs, responsibility for labor management and health and safety issues is unclear:

<<http://www.yomiuri.co.jp/dy/national/20050923TDY02001.htm>> (23 Sep)

“Independent body to umpire public works bidding”

An outside body will be set up to supervise competitive bidding for public contracts between public and private sector entities as part of reforms aimed at boosting the efficiency of public services... The entity, which will be established in the Cabinet Office, will have the authority to supervise the selection of public service projects subject to the new competitive bidding system called market testing and the bidding process. It also will recommend corrective measures to government offices if it finds problems in the process...:

<<http://www.yomiuri.co.jp/dy/business/20050925TDY08004.htm>> (25 Sep)

See also, “Six more Japan Highway execs tied to bid-rigging”

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050923a3.htm>> (23 Sep)

“FTC to name JH officials involved in bid-rigging”

<<http://www.yomiuri.co.jp/dy/national/20050922TDY02010.htm>> (22 Sep)

“FTC raps amakudari ties”

In an unprecedented intervention in the business of a private company, the Fair Trade Commission will demand 45 bridge contractors accused of rigging bids for Japan Highway Public Corporation projects curb their use of former JH officials in their dealings with the corporation... The bridge builders, which allegedly systematically rigged bids on JH projects, used former officials of the highway corporation in their dealings with JH. The officials were hired as part of the practice of amakudari (literally, “descent from heaven”):

<<http://www.yomiuri.co.jp/dy/national/20050928TDY01001.htm>> (28 September)

4. Labour (employment law, pension system)

“Small firms to be paid for OK'ing maternity leave”

The government has decided to pay small and midsize companies a 1 million yen grant if they allow employees to take child care leave... The plan will be applied to corporations with fewer than 100 employees that have not allowed workers to take leave to raise a child. The government will provide the companies with 1 million yen for the first employee to take maternity leave, and 600,000 yen for the second. The measure will be effective for five years starting fiscal 2006, financed by the employment insurance fund:

<<http://www.yomiuri.co.jp/dy/national/20050925TDY02002.htm>> (25 Sep)

“Public servant's suicide costs state 72 million yen”

The Kofu District Court ordered the government Tuesday to pay 71.8 million yen in damages to the parents of a Social Insurance Agency employee who committed suicide in 1999 after becoming depressed from excessive work. Shinji Yokomori, 23, jumped off an apartment building near his home in Tokyo's Sugunami Ward in April 1997 after becoming depressed:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050928a3.htm>> (28 Sep)

“Justices cut own retirement pay”

The Supreme Court decided Wednesday [28 September] to cut retirement allowances for its 15 justices by about two-thirds. It will be the first reduction since 1966. The top court also decided to reform the pay system for the 3,200 judges nationwide, following the government's reform of its pay structure for regular bureaucrats in line with recommendations by the National Personnel Authority. The Justice Ministry is planning to submit bills to revise relevant legislation to the Diet during the current legislative session. The changes are to be introduced in April:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050929b3.htm>> (29 Sep)

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

“Supreme Court rules that expats' right to vote violated”

A provision of the Public Offices Election Law that keeps Japanese citizens living abroad from voting for individual candidates in Diet elections is unconstitutional, the Supreme Court ruled Wednesday. Under the law revised in 1998, eligible voters living overseas are allowed to vote under the proportional representation segment of national elections but cannot cast ballots for specific candidates in single-seat districts:

“<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050915a1.htm>” (15 Sep)

See also, “Japanese expats win right to vote”

<<http://www.asahi.com/english/Herald-asahi/TKY200509150137.html>> (15 Sep)

“State must compensate voters abroad / Election law ruled illegal by top court”

<<http://www.yomiuri.co.jp/dy/national/20050915TDY01004.htm>> (15 Sep)

“Asbestos sufferers' support to be extended”

A proposed law will extend the period of compensation currently received by those who suffer asbestos-linked illnesses. The Environment Ministry and the Health, Labor and Welfare Ministry have compiled an outline of the law and started discussions with the ruling parties. According to the outline, the family of a worker whose compensation period expires five years after he or she dies will continue to receive financial support:

<<http://www.yomiuri.co.jp/dy/national/20050917TDY02002.htm>> (17 Sep)

“Govt to end fixed tax deductions by 2007”

The government and ruling parties decided Tuesday to abolish a fixed rate cut in income tax and individual residential tax in 2007. The plan will be included in fiscal 2006's tax reform, which will be compiled at the end of the year. Since indicators point to an economic recovery and the Liberal Democratic Party won an overwhelming victory in the House of Representatives election this month with calls for fiscal reform, the government decided that the time is right for a tax increase:

<<http://www.yomiuri.co.jp/dy/business/20050922TDY08007.htm>> (22 Sep)

See also, “Special tax breaks likely to end in '07”

<<http://www.asahi.com/english/Herald-asahi/TKY200509150135.html>> (15 Sep)

“Top court drops appeal over '03 vote disparity”

The Supreme Court dismissed appeals Tuesday filed by lawyers seeking to invalidate the results in several constituencies in the November 2003 House of Representatives election. The lawyers claimed the seat distribution did not reflect population density.

Presiding Justice Toyozo Ueda of the Third Petty Bench said the lawsuits had lost their merit due to Prime Minister Junichiro Koizumi's dissolution of the Lower House on Aug. 8 and the subsequent Sept. 11 election:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050928a4.htm>> (28 Sep)

“Statute foils abused deportee's redress”

The Tokyo High Court on Wednesday repealed a lower court ruling ordering the state to pay a deported Iranian man 600,000 yen in compensation for abuse he suffered from guards at Fuchu Prison in western Tokyo. The Tokyo District Court had found the forcible use of a psychotropic agent on Bahman Daneshian, 38, illegal, ordering the state to pay the compensation:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050901b1.htm>> (1 Sep)

“Tokyo High Court rejects Turkish Kurd's appeal for asylum”

The Tokyo High Court on Wednesday dismissed an appeal filed by a Kurdish asylum seeker to revoke a Justice Ministry decision to deny him refugee status... In handing down the decision, presiding Judge Yoshinori Ishikawa said he supported the first ruling, which stated that the situation in Turkey had changed with the spread of democracy there:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050929a3.htm>> (29 Sep)

“Georgia State ruled subject to litigation”

The legal immunity granted to foreign governments in Japanese courts does not apply in a lawsuit filed by a Japanese woman demanding compensation after she was fired by the U.S. state of Georgia's Tokyo office, the Tokyo District Court said Thursday [27 September] in an interlocutory judgment. The Georgia State government had asked the court to reject the woman's demand, citing the 1928 Supreme Court decision under the prewar Constitution that exempted foreign governments from court processes regarding civil lawsuits:

<<http://www.yomiuri.co.jp/dy/national/20050930TDY01003.htm>> (30 September)

“Corruption endemic at labor bureaus”

At least 70 million yen of taxpayers' money was misappropriated at the Health, Labor and Welfare Ministry's six prefectural labor bureaus in 2004... According to the Board of Audit, officials of Tokyo and Hokkaido labor bureaus misappropriated more than 10 million yen of public money for private purposes. These cases may be subject to criminal investigations:

<<http://www.yomiuri.co.jp/dy/national/20050928TDY01005.htm>> (28 September)

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

“Privacy law gets in way of parties' cold-calling”

Cold-calling by parties trying to wind in voters for Sunday's election has hit a snag, with firms and organizations refusing to hand out lists of their members' names and telephone numbers. Citing the Personal Information Protection Law--which came into effect in April--many firms and organizations are refusing to give the parties the lists.

When they do, some voters have asked the parties how they got hold of their personal information:

<<http://www.yomiuri.co.jp/dy/national/20050910TDY03003.htm>> (10 Sep)

“Judge backtracks, gives sentence he said was too light”

A judge who earlier criticized as too lenient the prosecution's demand for a three-year prison sentence for a driver accused in a fatal hit-and-run accident, ended up handing down the same sentence Friday... In previous hearings, Higami told the prosecutor to explain why he was demanding a sentence of three years' imprisonment, saying it was too light:

<<http://www.yomiuri.co.jp/dy/national/20050910TDY02008.htm>> (10 Sep)

“TMI Associates forms tie-up with U.S. firm”

Japanese law firm TMI Associates and Morgan, Lewis & Bockius LLP of the United States announced Wednesday the formation of Morgan Lewis-TMI, the first equitable legal partnership of its type in Japan:

<<http://www.yomiuri.co.jp/dy/business/20050929TDY08009.htm>> (29 Sep)

“English translation of 180 laws in works”

A government panel has proposed that about 180 Japanese laws be translated into English by the end of fiscal 2009 to facilitate foreign direct investment. The panel is tasked with promoting the translation of domestic legislation into other languages. The government plans to endorse the council's recommendations at a meeting of ministry and agency officials Friday, and it will then seek public comments for a month:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050929b8.htm>> (29 Sep)

7. International Context (constitutional reform, international relations)

[Constitutional Reform]

“LDP wants five rights added to new Constitution”

A Liberal Democratic Party panel drafting a new Constitution wants to include five new rights, including on the environment and on information, in the final version to be unveiled in November, LDP lawmakers said. The panel wants the new national charter to spell out that the people have the right to live in a favorable environment and to have access to information on activities of the central and local governments, the lawmakers said. The other three new rights would be the right to protect personal information, an intellectual property right and one concerning the physically and mentally disabled and crime victims:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050928f2.htm>> (28 Sep)

[International Trade]

“Thailand FTA boosts Asia ties”

Thursday's basic bilateral free trade agreement with Thailand is a boost for the trade policy of Japan's government, which is looking to enhance economic cooperation with

its Asian neighbors... Thailand is the largest of Japan's four Asian FTA partners, and an expansion of trade and investment between Japan and Thailand is expected as a result of the pact. However, the agreement is best viewed as a provisional one because tariffs on assembled vehicles exported from Japan to Thailand will remain high for the next few years. The two governments will discuss liberalizing these tariffs in 2009. The two sides already have agreed to eliminate tariffs on auto parts by 2011:

<<http://www.yomiuri.co.jp/dy/business/20050903TDY08007.htm>> (3 Sep)

See also, "Thai FTA defers sticking points"

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050902a1.htm>> (2 Sep)

[International and National Security]

"Japan urges states to ratify CTBT"

Japan called on China, the United States and other nuclear states Thursday [22 September] to take "the decisive step" of ratifying a global pact banning all nuclear testing "at the earliest possible date.":

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050924b3.htm>> (24 Sep)

"LDP OKs bill to extend antiterror law"

The Liberal Democratic Party approved a bill Tuesday to extend the special counterterrorism law for another year, keeping the Maritime Self-Defense Force in the Indian Ocean to provide fuel to the U.S.-led naval forces there. The Cabinet is expected to endorse the bill next Tuesday and submit it to the Diet for debate during the current special session. The counterterrorism law, which will expire Nov. 1, was first enacted in October 2001, following the terrorist attacks on the United States on Sept. 11 the same year. The legislation was extended for two years in October 2003:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050928a7.htm>> (28 Sep)

[Territorial Disputes]

"Japan wants to expand coral under disputed EEZ islets"

Japan plans to study how it could expand coral reefs around a pair of Pacific Ocean outcroppings at the center of a territorial dispute with China... The three-year research plan is the latest in a series of steps by Japan to fortify the tiny islets, which it uses as the basis for extending its exclusive economic zone, which is larger than Japan itself, far into the Pacific:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050901a3.htm>> (1 Sep)

[WWII-Related]

"Court: Hibakusha can seek benefits from abroad"

Upholding a lower court ruling, the Fukuoka High Court said Monday that atomic-bomb survivors living overseas should be able to apply for monthly benefits without visiting Japan. The court's decision against the Nagasaki city government stems from an earlier decision that supported claims by a South Korean hibakusha and his

bereaved family members. A-bomb victims who live in Japan are eligible for health and other benefits under the Atomic Bomb Survivors' Support Law:

<<http://www.asahi.com/english/Herald-asahi/TKY200509260328.html>> (26 Sep)

“A-bomb 'rescue workers' sue for victims' rights”

A group of seven people who allegedly entered Hiroshima soon after the city's atomic bombing filed a lawsuit Friday against the city government, demanding it reverse its decision to reject their application for recognition as atomic bomb victims and pay about 15 million yen in compensation. According to the suit filed with the Hiroshima District Court, the seven Hiroshima residents, aged 62 to 74, applied from 1996 to 2004 for recognition as atomic bomb victims. One said she entered the city after the 1945 bombing as a rescue worker, while another said she was taken there by a rescue worker:

<<http://www.yomiuri.co.jp/dy/national/20050930TDY02009.htm>> (30 September)