

# AKTUELLE RECHTSENTWICKLUNG

## Forthcoming Legislation

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### I. THE BILL ON THE PARTIAL AMENDMENT OF THE COMMERCIAL CODE

As has been reported before, the Commercial Code<sup>1</sup> is to be totally amended next year. The primary focus of the amendment is company law.

The Legislative Advisory Council has been working on this amendment since January 2001. An interim draft<sup>2</sup> was published in April, and views from various quarters have been invited. In the light of the deepening economic crisis in Japan it was decided that part of the draft which requires urgent attention be submitted to Parliament as a separate Bill this year. This Bill<sup>3</sup> was submitted to Parliament on 10 October and is expected to come into effect on 1 April 2002, once it is endorsed by Parliament.

The basic issues covered in this bill are as follows:

#### 1. *Stock Options*

Stock option was introduced in 1997, but there were various restrictions and the system was not necessarily user friendly. The Bill removes the restriction on the scope of those who are entitled to a stock option – at present it is limited to directors and employees of the given company. The ceiling for the number of shares available for the purpose of granting stock option – 10 % of issued shares – is to be removed as well. Matters to be approved by the general shareholders' meeting will also be simplified.

#### 2. *Types of Shares*

Companies will be allowed to issue different types of shares in which the right to vote is restricted. At present, shares without a vote has to give the shareholder preference in receiving dividends. It will be possible to issue ordinary shares without a vote by this amendment. The total amount of such shares however, cannot exceed one half of the total number of issued shares.

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1 *Shôhō*, Law No. 48/1899, last amended by Law No. 79/2001.

2 *Shôji Hômu* No. 1593 (2001) 28.

3 Available at <[www.moj.go.jp/HOUAN/SYOUHO3/refer02.pdf](http://www.moj.go.jp/HOUAN/SYOUHO3/refer02.pdf)> (in Japanese).

### 3. *Compulsory conversion of Shares*

In cases where the company has issued several different types of shares, it will be made possible for the company to convert a particular type of share to another type of share if grounds provided by the articles of incorporation emerge.

### 4. *Additional Issue of Shares*

Currently, in closed companies (companies in which transfer of shares is subject to a Board decision) there is a ceiling for the number of additional shares that can be issued. This restriction is to be removed. For the issuing of additional shares at an especially beneficial price, a qualified majority vote of the general shareholders' meeting is required. This resolution will be made valid for one year.

### 5. *Electronisation of Corporate Documents*

It will be possible to prepare documents such as Articles of Incorporation and Balance Sheets in an electronic form. Communication between the company and shareholders, e.g. notice of a shareholders' meeting, can also be made in an electronic form.

## II. LAW ON THE PROMOTION OF JUDICIAL REFORM

The Bill was submitted to Parliament on September 28. The basic goals of the reform include the development of a judicial system which is easily accessible to the people, and which can perform its function in a more speedy and effective way under fair and just procedure. In civil procedure, improvement of the procedure to cope with cases which require highly specialised knowledge and expertise, expansion of ADRs etc. are envisaged. In criminal procedure, improvement to the system of state-paid defence counsel and the introduction of a system akin to the German lay assessors are planned. Concerning the judicial system as a whole, a substantial increase in the number of lawyers and the introduction of a graduate law school system are key measures.

This Law merely provides for the basic ideas and established the Office for the Promotion of Judicial Reform; details of the reform will follow.