

# AKTUELLE RECHTSENTWICKLUNG

## Forthcoming Legislation

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### I. TOTAL REVIEW OF THE COMPANY LAW

The sub-committee on company law of the Legislative Advisory Council, which is an advisory body to the Minister of Justice, decided to start a thorough review of company law, namely the system of joint-stock companies. At the first meeting held on 12 April, representatives of the industry as well as the officials of the MITI strongly urged that fundamental changes be made to the existing law<sup>1</sup>. It is expected that the basic contents of the amendment will be determined by July. The Ministry of Justice intends to introduce changes within two years.

Joint-Stock Company Law, which is part of the Commercial Code, has undergone a series of amendments, particularly in the 1990s. The latest changes involve the facilitation of setting up holding companies by share transfer and exchange. Shortly, the system of dividing the company will be introduced. However, the proposed changes this time exceed the scale of such piecemeal reforms; this is intended to be the first major amendment to company law since 1950.

Although the specific contents of the changes are yet to be decided, it has been reported that corporate governance will be the core of the amendment. Firstly, the division of power between the board of directors and the general shareholders meeting will be reviewed. The industry strongly supports the idea of broadening the power of the board. This is to be compensated for by providing for the liability of external directors and an increase in the number of external auditors. The quorum for the general shareholders meeting will also be reviewed. Secondly, the system of executive officers which some listed companies have introduced in the past couple of years will be given a legal basis. At present, there is no provision concerning executive officers and their liability is undetermined. Thirdly, the system of derivative action is to be reviewed. The system underwent a reform in 1993, and since then, the number of such actions has increased. There are views that the current law allows derivative action to be abused, for instance, by allowing those who were not shareholders at the time of the wrongdoing by the director to sue. Also provisions concerning the discharge of the liability of directors require a review.

Changes are also expected in accounting and disclosure. The Japanese system of accounting has become closer to the international standard since April this year,

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1 *Nikkei*, April 13, 2000.

including the introduction of a fully consolidated accounting system and valuation by market price. The proposed amendment is to accommodate these changes and improve the disclosure system.

One of the basic problems with Japanese company law was that regulations were common between listed companies and closed companies. There is a view that there should be separate sets of regulations for listed companies.<sup>2</sup>

Finally, the entire Commercial Code, which is written in traditional Japanese, is expected to be rewritten in modern Japanese.

## II. CROSS-BORDER BANKRUPTCY

It is well-known that Japanese bankruptcy legislation such as the Bankruptcy Law and the Law on Corporate Reorganisation is based upon the strict territorial principle. This means that the procedure initiated in Japan does not have any effect on the assets abroad, and the procedure initiated outside Japan has no effect on assets in Japan.<sup>3</sup> As part of the review of bankruptcy legislation, the Ministry of Justice intends to overhaul the system and scrap the territorial principle. It is intended to develop international parallel bankruptcy procedure. The effect of the procedure in Japan is to extend to assets overseas. For proceedings initiated abroad, it will be possible for the Japanese court to recognise the foreign procedure and allow enforcement in Japan.

The Ministry of Justice is planning to submit a bill this autumn.<sup>4</sup>

## III. CONSUMERS CONTRACT LAW

The much disputed bill on consumers contract law is now being discussed in the Diet. This law covers a wide range of contracts including purchase of financial products and real property. The primary problem is that the proposed law expands instances where a contract can be rescinded which, hitherto, were limited to cases of fraud and duress. This includes cases, for example, where a salesperson gave a definitive statement about the potential profit when selling a financial product. Unlimited discharge clauses as well as other clauses which 'substantially harm the legitimate interest of consumers' are also regarded to be void.

Ever since the original bill was prepared by the government six years ago, it has been under intense debate. The industry felt that consumers were overprotected and feared that the law would make rescission of contracts too easy. A somewhat watered down bill was finally submitted to the Diet this year, but an opposition party has just presented a counter-bill.

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2 *Nikkei*, April 12, 2000.

3 H.Oda, *Japanese Law*, 2<sup>nd</sup> edition, Oxford 1999, pp.452-456.

4 *Nikkei*, February 1, 2000.