

Information Technology and Company Law in Japan

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I. INTRODUCTION

In November 2001, the Commercial Code (hereafter the "ComC") and the Limited Liability Companies Act (hereafter the "LLCA") were amended by the Act Amending a Part of the ComC, etc.¹ In order to cope with the development of information technology as well as international shareholding and enterprises' activities, electronic documents, electronic voting, and electronic communications between a company and its shareholders have become available.

These developments were much influenced by the opinions of the business community. For example, the Japan Federation of Economic Organizations (JFEO; *Keidanren*) delivered an opinion that it should be allowed to send notices and agendas

¹ *Shôhō tō no ichibu wo kaisei suru hōritsu* (Law 128/2001).

of the general meeting and to vote via the Internet.² The JFEO pointed out that electronic shareholder communication would lead to a reduction of costs and economy of time.³

II. ELECTRONIC DOCUMENTS

1. *Before the 2001 Amendments*

The official interpretation of the Ministry of Justice⁴ pointed out that any registers, minutes, accounts, or accounting books by the ComC to be kept by a company can be kept in electro-magnetic forms on the condition that the records must be transformed into legible form upon request in a reasonable period. It also suggested that electronic signatures are acceptable if the documents are made and stored in electro-magnetic forms.

2. *Commercial Books*

The amendments have made it clear that a merchant⁵ may prepare and keep accounting books and a balance sheet in the form of electro-magnetic records (Art. 33-2 para. 1 ComC). An “electro-magnetic record” is defined by an ordinance of the Ministry of Justice⁶ as a record that is produced by electronic, magnetic, or any other means unrecognizable by natural perceptive function, and is used for data processing by a computer. When a balance sheet has been prepared in an electro-magnetic record,⁷ the producer should take the equivalent measures for hand-written signatures as provided in the Ordinance of the Ministry of Justice (Art. 33-2 para. 2 ComC).⁸

2 The summary of the opinions gathered by the JFEO is available at <http://www.keidanren.or.jp/japanese/policy/2000/022/part2.html>. The JFEO also requested allowing companies to make public notices required under the current ComC via electronic media in order to reduce the costs.

3 According to the JFEO (*supra* note 2), it costs 46 million yen and takes two months for one of the listed companies to send notices to convene a general meeting. In addition, it costs 32 million (excluding calculation fee for dividends) yen and takes one and a half months to send the notice of resolutions.

4 MINISTRY OF JUSTICE, Preliminary Announcement of the Deregulation Measures (10 March 1995).

5 Any proprietors, partnerships, or companies are merchants.

6 Art. 2 of the ComC Enforcement Ordinance (hereafter the “ComCEO”) [*Shôhō shikkô deshō kisoku*], Ordinance of the Ministry of Justice 22/2002 defines that an “electro-magnetic record” is any information recorded in a file on magnetic disk or other devices on which certain information can be recorded securely in a similar manner.

7 Where a balance sheet has been prepared in writing, the person who has prepared the balance sheet should sign it (Art. 33 para. 4 ComC).

8 Art. 4 of the ComCEO stipulates that the equivalent measures are electronic signatures as provided in Art. 2 para. 1 of the Act regarding to Electronic Signatures and Electronic Certi-

Any shareholder holding at least 3% of the total voting rights of the shareholders (in the case of a joint stock company) or any member holding at least one-tenth of the total voting rights of the members (in the case of a limited liability company) may request the company to allow inspection or reproduction of the accounting books and materials. Where such accounting books and materials have been prepared in electro-magnetic form, the shareholder (member) may request the company to allow him to inspect or copy, at the main office of the company, the content of the information recorded in the electro-magnetic record and displayed in the manner provided in an ordinance of the Ministry of Justice⁹ (Art. 293-6 para. 1 ComC; Art. 44-2 para. 1 LLCA). In the same manner, any shareholder of the parent company holding at least 3% of the total voting rights of the shareholders (in the case of a joint stock company) or any member of the parent company holding at least one-tenth of the total voting rights of the members (in the case of a limited liability company) may request, with an approval by the court, a subsidiary to allow inspection or reproduction of the accounting books and materials to the extent necessary for the shareholder (member) to exercise the shareholders' (members') rights (Art. 293-8 para. 1 ComCode; Art. 44-3 LLCA).

3. *The Articles of Association*

The Articles of Association can also be prepared in the form of an electro-magnetic record (Art. 63 para. 3 and Art. 166 para. 3 ComC; Art. 6 para. 3 LLCA). In this case, all the promoters (in the case of a joint stock company) or all the members (in the case of a limited liability company) should take the equivalent measures to a hand-written signature provided in an ordinance of the Ministry of Justice (Art. 166 para. 3 and Art. 33-2 ComCode; Art. 6 para. 2 LLCA).

In cases where the Articles of Association have been prepared in an electro-magnetic record, any shareholder (member), fractional shareholder, creditor (including bondholder), or stock option holder may, at any time during business hours, request the company to allow him to inspect the content of the information recorded in the electro-magnetic record and displayed in the manner provided in an ordinance of the Ministry of Justice, to provide the information recorded in the said electro-magnetic record in the

fication Services (Law 102/2000). Art. 2 para. 1 of the Act regarding Electronic Signatures and Electronic Certification Services stipulates that an "electronic signature" is defined as a measure taken with regard to information that can be recorded in an electro-magnetic record (any record which is produced by electronic, magnetic, or any other means unrecognizable by natural perceptive function, and is used for data-processing by a computer). At the same time, an electronic signature should be measured to indicate that the person who took the measure created the information and to verify whether or not any alteration has been made to the information.

⁹ Art. 7 of the ComCEO requires a company to display the content of the information recorded in the electro-magnetic record on paper or the screen of an output device.

electro-magnetic formats provided in an ordinance of the Ministry of Justice¹⁰ or to deliver a writing containing the content of the information (Art. 263 para. 2 ComC; Art. 28 para. 3 LLCA).¹¹ As some people might be unfamiliar with electro-magnetic devices or computer and telecommunication systems, a paper-based writing showing the content of the information should also be available.

4. *Lists and Registers*

Some of the documents to be prepared by joint stock companies or limited liability companies can be prepared and kept in the form of electro-magnetic records. Such documents include the register of shareholders (Art. 223 para. 2 ComC), bond register (Art. 317 para. 2 ComC), register of members (Art. 28 para. 3 LLCA), register of fractional shares (Art. 220-2 para. 2 ComC), register of stock options (Art. 280-31 para. 5 ComC), and so on.

The same rules as those mentioned in section 2 above (Commercial Books) apply to the shareholders' (members') and creditors' right to access the register of shareholders (members), register of stock options, bond register or register of fractional shares (Art. 263 para. 3 ComC; Art. 28 para. 3 LLCA),¹² the fractional shareholders' right to access the register of fractional shares (Art. 263 para. 4 ComC), and the stock options holders' right to access the register of stock options (Art. 263 para. 5 ComC) in cases where such registers have been prepared and kept in electro-magnetic form.

5. *Accounting Documents and Audit Reports*

A joint stock company or a limited liability company should prepare accounting documents (*keisan shorui*)¹³ as well as their annexes. Such accounting documents, their annexes, and the audit reports¹⁴ should also be available for the inspection by the share-

10 The ComCEO stipulates that "electro-magnetic formats" are the formats that a company has designated among the formats stipulated in Art. 5 of the ComCEO (Art. 9). Art. 5 para. 1 of the ComCEO provides two alternatives: the method using an electronic data processing system connecting a sender's computer and a recipient's computer with telecommunication lines, via which the information is transmitted and the information is recorded in a file in the computer used by the recipient; and the method to deliver a file, as provided in Art. 2, in which the information is recorded. Either method should enable the recipient to produce a writing by outputting the record in the file (Art. 5 para. 2).

11 The same applies to the right of the shareholders of the parent company (Art. 263 para. 6 ComC; Art. 28-2 LLCA).

12 The same applies to the right of the shareholders of the parent company (Art. 263 para. 6 ComC; Art. 28-2 LLCA).

13 Accounting documents are a balance sheet, a profit and loss statement, a business report, and a proposal on disposition of the profit or loss.

14 For "large" companies as defined in the Act providing the Exception to the ComC Concerning Audit etc. of Joint Stock Companies (*Kabushiki kaisha no kansa tō ni kansuru shōhō no tokurei ni kansuru hōritsu*, Law 22/1974 as amended, hereafter the "Audit Act"),

holders and creditors of the company as well as the shareholders of the parent company. Accounting documents and copies of the audit reports should be delivered with the notice to convene a shareholders' general meeting (Art. 283 para. 2 ComC).

The amended ComC makes it clear that a company may prepare accounting documents in the form of electro-magnetic records. Similarly, company auditors and external accounting auditor(s) may prepare their audit report in electro-magnetic form (Art. 281 para. 3 and Art. 281-3 para. 3 ComC; Art. 13 para. 5 and Art. 14 para. 5 Audit Act; Art. 43 para. 4 LLCA).

The rules mentioned in section 3 above (Articles of Association) apply to the shareholders' (members') or creditors' right with regard to accounting documents and audit reports (Art. 282 para. 2 ComC; Art. 43-2 para. 2 LLCA).

6. *Minutes*

Minutes of shareholders' meeting (Art. 244 para. 4 ComC), members' meeting (Art. 41 LLCA), bondholders' meeting (Art. 339 para. 4 ComC) and meeting of the board of directors (Art. 260-4 para. 4 ComC) may be prepared as an electro-magnetic record.

The same rules as those mentioned in section 2 above (Commercial Books) apply to the cases where a shareholder (member), a shareholder (member) of the parent company, bondholders, or the bond-managing company seeks to inspect or make extracts from the minutes (Art. 244 para. 6, Art. 263 para. 2 and Art. 339 para. 6 ComC; Art. 28-2 para. 1 and Art. 41 LLCA).

7. *Other Documents*

Under the ComC or the LLCA, companies should prepare some written contracts, plans, and reports and make them available for inspection by the shareholders and the creditor of the company where they are going to become a party of a corporate merger or division and where they have finished such fundamental changes. Similar information should also be open to the shareholder in cases where share exchange (*kabushiki kōkan*) or share transfer (*kabushiki iten*) is going to take place and has taken place. Those documents may be prepared in electro-magnetic forms (Art. 354 para. 2, Art. 366 para. 2, Art. 408-2 para. 2, Art. 414-2 para. 2 ComC; Art. 63 para. 1 LLCA).

The same rules as those mentioned in section 3 above (Articles of Association) apply to the right to access the above-mentioned documents (Art. 354 para. 3, Art. 366 para. 2, Art. 408-2 para. 3, Art. 414-2 para. 2 ComC; Art. 63 para. 1 LLCA).

both the Board of Auditors and the external Accounting Auditor audit the company's accounts and submit their reports to the directors. Copies of such reports should be sent to the shareholders.

III. ELECTRONIC NOTICES

1. *Notices Calling a Shareholders' General Meeting or a Bondholders' Meeting*

All joint stock companies are required by the ComC to hold an ordinary general meeting annually (Art. 234 para. 1 ComC). Notices of general meetings (including extraordinary general meetings) should be sent to each shareholder at least two weeks prior to the day designated for the meeting (Art. 231 para. 2 ComC). Thus, the ComC before the 2001 amendments neither explicitly required notices in writing nor specified the means of sending notices. However, it was well accepted for a long time that notices to convene a general meeting should be in writing, including fax and telex, because the law requires stating the agenda and, in some cases, the gist of the proposals. The prevailing view has deemed it logical that such notices should be in paper-based form in order to state the agenda and the gist of proposals on it.

The prevailing opinion was made, however, long before the popularity of the Internet and e-mail, and companies can now state their agenda in the notices sent via e-mail. Then it might well be said even before the 2001 amendments¹⁵ that there were no reasons that companies should not be allowed to send notices to individual e-mail addresses where the recipient shareholder has consented to receive notices in such a manner so long as any shareholder has a right to request the company to send notices in writing.

After the 2001 amendments, a company is explicitly allowed to give a notice to call a shareholders' general meeting in electro-magnetic format¹⁶ in accordance with the provisions in a Cabinet Ordinance,¹⁷ provided that the recipient shareholder has con-

15 If the court does not accept this interpretation, a shareholder, including one who receives a notice in a lawful manner, a director, and an auditor may apply to the court for cancellation of a resolution at the general meeting (Art. 247 para. 1 ComC). The court may, however, dismiss the application if the fact of violation is recognized as unimportant and having no influence on the resolution (discretionary dismissal of action) (Art. 251 ComC). Even if sending notices in e-mail was not legally allowed under the former Act, the case would be one of discretionary dismissal.

16 The methods using an electro-magnetic data processing system or otherwise using information and telecommunication technology as provided for in an ordinance of the Ministry of Justice (Art. 130 para. 3 ComC). Art. 5 of the ComCEO defines "electro-magnetic formats" (see *supra* note 10).

17 The Cabinet Ordinance Providing for the Procedures, etc., for Consent with Regard to the Provision of Information in Electro-magnetic Formats in Accordance with the Related Provisions in the ComC and the LLCA [*Shohô oyobi yûgen kaisha-hô no kankei kitei ni motozuku denji-teki hôhō ni yoru jôhō no teikyô tō ni kansuru shōdaku no tetsuzuki tō wo sadameru seirei*], Cabinet Ordinance 20/2002 (hereafter the "Cabinet Ordinance"), provides that a company, etc., should advise, in accordance with the provisions in an ordinance of the Ministry of Justice, the type and detail of the electro-magnetic formats intended to be used and obtain a consent in a writing or electro-magnetic format from a shareholder in advance where the company, etc., intends to give information, notices, or make requests to a shareholder to make something known in an electro-magnetic format (Art. 6 para. 1, Art. 8

sent to receive notices in such a manner (Art. 232 para. 2 ComC).¹⁸

The same rules apply to notices to call a bondholders' meeting (Art. 322 para. 3 and Art. 232 para. 2 ComC).

2. *Other Notices Made by a Company to Its Shareholders*

Under the amended ComC and the amended LLCA, a company or a bond-managing company may give a notice in electro-magnetic format in accordance with the provisions in the Cabinet Ordinance, provided that the recipient has consented to receive notices in such a manner (Art. 204-2 para. 6 and Art. 224 para. 2 ComC; Art. 24 para. 4 LLCA).

3. *Notices Made by a Shareholder to the Company*

The 2001 amendments have allowed a shareholder or a member to give a notice or make a request to the company in electro-magnetic format in accordance with the provisions in the Cabinet Ordinance,¹⁹ provided that the company has consented to receive notices or requests in such a manner (Art. 204-2 para. 2 and Art. 222-5 para. 3 ComC; e.g. Art. 37 para. 3 and Art. 41 LLCA). Where a shareholder gives a consent to receive a notice to call a shareholders' general meeting in electro-magnetic format, the company cannot refuse to consent to receive notices from its shareholder without just grounds until the conclusion of such a shareholders' general meeting (Art. 204-2 para. 3 ComC). The similar rules are applied to a member of a limited liability company and a bondholder of a joint stock company.

para. 1 and Art. 10 para. 1). The "types and detail of the electro-magnetic format" are the electro-magnetic formats used by the sender and the method of recording in a file (Art. 6 ComCEO). The company, etc., that once had obtained such a consent should not give information, notices, or make requests in an electro-magnetic format after the shareholder has advised the company, etc., in a writing or an electro-magnetic format that he would not like to be given or requested in an electro-magnetic format until he gives a consent again (Art. 6 para. 2, Art. 8 para. 2 and Art. 10 para. 2).

18 In June 2002, very few listed companies — such as *NEC Software* and *Nihon Densan* — not only allowed electronic voting but also sent the notice to convene a general meeting via e-mail to their shareholders who wanted to receive the notice in such a manner.

19 The Cabinet Ordinance provides that a shareholder should advise, in accordance with the provisions in an ordinance of the Ministry of Justice, the type and detail of the electro-magnetic formats intended to be used and obtain a consent in a writing or electro-magnetic format from the company in advance where the shareholder intends to give information or notices in an electro-magnetic format (Art. 5 para. 1, Art. 7 para. 1 and Art. 11 para. 1). The shareholder that once had obtained such a consent should not give information or notices in an electro-magnetic format after the company has advised the shareholder in a writing or an electro-magnetic format that it would not like to be given in an electro-magnetic format until the company again gives its consent (Art. 5 para. 2, Art. 7 para. 2 and Art. 11 para. 2).

IV. ELECTRONIC VOTING

1. *Written Vote*

In “large” companies (as defined in the Audit Act²⁰) which have no less than 1000 shareholders who are entitled to vote at the general meeting, any shareholders who do not attend the meeting may, in principle,²¹ vote in writing (Art. 21-3 para. 1 Audit Act).²² Such “large” companies should send the shareholders the voting form and a reference document (*sankô shorui*)²³ with the notice to convene the general meeting.

The 2001 amendments have made it possible for other types of companies to adopt the written vote system by the resolution of the board of directors (in the case of a joint stock company) or the members’ general meeting (in the case of a limited liability company) (Art. 239-2 para. 1 ComC; Art. 38-3 para. 1 LLCA).

A reference document can be delivered with the notice to call a shareholders’ general meeting in electro-magnetic format, in accordance with the provisions in Art. 232 para. 2 ComC, to the shareholders who have consented to receive notices in such manner though such a document should be delivered in writing to the shareholder where he so requests (Art. 239-2 para. 3 and Art. 239-3 para. 2 ComC; Art. 21-2 para. 2 Audit Act).

2. *Electronic Voting*

After the 2001 amendments, a company may introduce the electronic voting system by the resolution of the board of directors (in the case of a joint stock company) or the members’ general meeting (in the case of a limited liability company) (Art. 239-3 para. 1 ComC; Art. 38-4 para. 1 LLCA). Under the electronic voting system, a company has to deliver a reference document to its shareholders (Art. 239-3 para. 2 ComC; Art. 38-4 para. 2 LLCA). An electronic vote is made, in accordance with the provisions in the Cabinet Ordinance and with the consent of the company, by recording the necessary

20 Art. 1 of the Audit Act provides that a “large” company is a company whose capital is at least 500 million yen or whose total amount of the liability is at least 20 billion yen as well as a company whose capital is not more than 100 million yen.

21 A “large” company which solicits all the shareholders a proxy according to the Soliciting Proxy Regulation is not obliged to allow written votes (Art. 26 Audit Act, supplementary provisions of 1981), but is obliged to send a reference document to the shareholders. However, the company may leave out the same information stated in the proxy documents from the reference document (Art. 12 para. 2 ComCEO).

22 Written voting was introduced because proxy solicitation by a company was insufficient for protecting shareholders’ interests. It was a common opinion until the mid-’70s that resolutions were not voidable even when the representative has departed from the shareholders’ instructions. In addition, the provision requiring a representative to follow the instructions given by the shareholder had been deleted for the Securities and Exchange Act.

23 A reference document should contain information necessary for the shareholders to make a vote according to an ordinance of the Ministry of Justice (Articles 12 to 18 ComCEO). The ordinance also covers the form of written votes (Articles 19 through 21 ComCEO).

information in the electro-magnetic voting form provided for by the company (Art. 239-3 para. 5 ComC; Art. 38-4 para. 2 LLCA).²⁴

Electronic voting may also be introduced to a bondholders' meeting by the resolution of the board of directors (Art. 321-3 para. 1 ComC).

3. *Votes by Proxy*

While shareholders can attend the general meeting by themselves, they are entitled to vote at a meeting by appointing a proxy to attend, speak, and vote at the meeting on their behalf (Art. 239 para. 2 ComC). When a shareholder is going to vote by proxy, he or his proxy should submit a document certifying the power of representation (Art. 239, proviso to para. 2 ComC). However, a shareholder may submit such a certificate in electro-magnetic form in accordance with the provisions in the Cabinet Ordinance, provided that the company has consented to receive notices or requests in such a manner (Art. 239 para. 3 and Art. 222-5 para. 3 ComC). Where a shareholder has given a consent to receive a notice to call a shareholders' general meeting in electro-magnetic format, the company cannot refuse to consent to receive such a certificate in electro-magnetic format from its shareholder without just grounds until the conclusion of such a shareholders' general meeting (Art. 239 para. 3 and Art. 204-2 para. 3 ComC).

4. *Resolution in Electro-magnetic Formats*

A resolution in writing or electro-magnetic format is deemed to be made where all the members have consented to the proposals in writing or electro-magnetic format (Art. 253 ComC; Art. 42 para. 2 LLCA). With regard to a limited liability company, in addition, a resolution can be passed in writing or electro-magnetic format (as defined in Article 130 para. 3 of the ComC), provided that all the members have agreed to such a resolution (Art. 42 para. 1 LLCA). The Cabinet Ordinance requires the person who intends to convene a members' meeting and make a resolution in an electro-magnetic format to advise the type and detail of the electro-magnetic format to all the members, and obtain in advance a consent in writing or electro-magnetic format (Art. 14 LLCA).

V. DISCLOSURE OF ANNUAL ACCOUNTS ON THE INTERNET

Though the directors are required to publish the balance sheet or a summary²⁵ thereof in accordance with the provision in the Articles of Association without delay (Art. 283

24 According to a survey, 63 listed companies, including *Sony*, *NTT DoCoMo*, *Matsushita*, *NEC*, *Hitachi*, and *KDDI*, allowed their shareholders to vote electronically in June 2002 general meetings (Shôji Hômu, No. 1634, p. 54).

25 The Audit Act requires a "large" company to publish the profit and loss statement or a summary thereof in addition (Art. 16 para. 2).

para. 3 ComC), it has been said that more than 99% of the joint stock companies have not followed these requirements. This is partly because there has been no effective enforcement and partly because it costs too much for smaller companies to publish the balance sheet in the Official Gazette or the daily newspaper designated in the Articles of Association.

Accordingly, the amended Acts provide an alternative for a company to make the information to be contained in the balance sheet (and the profit and loss statement) open for the public in electro-magnetic format as provided in an ordinance of the Ministry of Justice (Art. 283 para. 5 ComC; Art. 16 para. 3 Audit Act). The Commercial Code Enforcement Ordinance provides the use of web pages of the company on the Internet as the designated electro-magnetic format.²⁶

VI. FUTURE POSSIBLE DEVELOPMENT

The Preliminary Draft of the Bill Amending a Part of the ComC etc. (18 April 2001) (hereafter the "Preliminary Draft") made some proposals which are not included in the final draft.

First, the Preliminary Draft proposed to allow a company to make public notices in electro-magnetic format (No. 25, 1, (1)). At the same time, it included a proposal to exempt a company from the obligation to request individually its known creditors to make an objection known to the company with regard to corporate mergers and divisions, provided that the company makes both a public notice in the Official Gazette and in the electro-magnetic format as provided in the Articles of Association to request its creditors to make an objection known²⁷ (No. 25, 1, (2)). This proposal was rejected on the grounds of adequate protection of creditors and the public because some of the creditors or the public might be unfamiliar with electro-magnetic means. However, the JFEO has strongly requested allowing such an alternative.²⁸

Second, the Preliminary Draft announced that they were discussing the admissibility of a shareholders' general meeting using a teleconference system, though no amend-

26 The ComCEO stipulates that the electro-magnetic format should be the formats provided in Art. 5 para. 1, No. 1 (see *supra* note 10) using an automatic transmission device connected to the Internet, which makes the information recorded in a file on a computer used by the company available for the inspection by the recipient of the information via telecommunication lines, and records the information in a file on a computer used by the recipient of the information (Art. 10).

27 Under the present Act, a company is exempted from the obligation to request individually its known creditors to make an objection known to the company with regard to corporate merger and division, provided that the company makes both a public notice in the Official Gazette and in a daily newspaper designated in the Articles of Association to request its creditors to make an objection known.

28 See *supra* note 2.

ments have been made with regard to a virtual general meeting using such a system. Thus, the possibility of a virtual general meeting is still open for discussion.

It has been the common view in Japan that a company may use two or more sites for the general meeting if the company with its best efforts cannot find a place large enough for all attending shareholders, as long as shareholders at any sites can participate in the discussion. In practice, the sites are linked with cables or other telecommunication devices so that every shareholder can watch the report and discussion on TV or other screen and speak or make a motion.

From this point of view, it is not always important that all the shareholders physically attend at one place to discuss, but that all shareholders may participate in the discussion. It may well be thought that it does not matter whether the company prepares the site or not.

A company should hold the general meeting at the address of the principal office of the company or at some place adjacent thereto unless the Articles of Association provide otherwise (Art. 233 ComC). It may be interpreted, however, that there is no problem with allowing shareholders to speak or make a motion via the Internet or other telecommunication devices once the Articles of Association provide for this.

Accordingly, there are no reasons to deny the possibility of allowing the shareholders to participate in the discussion at the general meeting via Internet with real time video broadcasting and interactive features as long as the company can identify a speaker as one of its shareholders.

This conclusion may well be supported by the following interpretation concerning board of directors meetings. Directors are not the organ of a company, but the board of directors exists in Japan because the legislators thought that good and prudent managerial decisions would be made after the discussion at the actual board meeting. At the same time, directors are expected to watch and control each other in the process of making decisions at the meeting. Accordingly, it is commonly accepted that no written votes are allowed at the meeting of the board of directors.²⁹ Nevertheless, it has been a well-accepted opinion,³⁰ which is now supported by an official interpretation made by the Ministry of Justice,³¹ that teleconferencing is allowed in situations where everyone can hear and see each other.³²

29 Judgment of 27 November 1969 of the Supreme Court, *Minshû*, Vol. 23, p. 2301.

30 A. TAKEUCHI, "Board of Directors", *Hôgaku Kyôshitsu*, 96 (September 1988) 46.

31 MINISTRY OF JUSTICE, *Reasons to Maintain the Current System: Response to the Request to Deregulate* (19 April 1996).

32 According to the well-accepted view, teleconferencing by telephone without any screen does not meet this requirement.

ZUSAMMENFASSUNG

Mit Blick auf die neuen elektronischen Informations- und Kommunikationstechnologien gibt der Beitrag einen knappen Überblick über die neuesten gesellschaftsrechtlichen Entwicklungen im Recht der Aktiengesellschaft und der Gesellschaft mit beschränkter Haftung in Japan. Seit der Reform des Handelsgesetzes und des Gesetzes über die Gesellschaft mit beschränkter Haftung vom November 2001 ist es japanischen Kapitalgesellschaften erlaubt, ihre Geschäftsbücher in elektronischer Form zu führen. Gleiches gilt für die Satzung der Gesellschaft, vorausgesetzt, daß diese mit einer elektronischen Unterschrift versehen wird, die der persönlichen gleichwertig ist. Mitteilungen an die Aktionäre, insbesondere die Einladung zur Hauptversammlung, können in elektronischer Form versandt werden, vorausgesetzt, der betreffende Aktionär hat seine Zustimmung erteilt. Diese können sich in gleicher Weise an die Gesellschaft wenden. Insbesondere ist eine elektronische Stimmabgabe für die Hauptversammlung zulässig.

(Die Redaktion)