

Japanese Law News Monthly Bulletin 2004/9**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. **Oversight and Policy (administrative law, public official law, tax policy)**
5. **Labour (employment law, pension system)**
6. **Social Context (NPO law, civil justice reforms, education)**
7. **Legal Policy (constitutional reform, international relations)**

FOCUS in September: Koizumi forms new Cabinet to push reforms

Prime Minister Junichiro Koizumi formed a new 18-member Cabinet on Monday...To press ahead with his key reform initiative, Koizumi assigned Takenaka to concurrently fill the newly created post of postal reform minister, while making him give up the financial services portfolio to 43-year-old Tatsuya Ito, who was senior vice minister in charge of financial services as well as fiscal and economic policy. Takenaka told reporters the government will forge a specific system and make legal changes for postal reforms in accordance with the basic plan adopted by the Cabinet earlier this month that calls for splitting Japan Post into four companies at the start of a 10-year privatization process in April 2007:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040928a1.htm>> (28 Sep)

<<http://www.yomiuri.co.jp/newse/20040928wo01.htm>> (28 Sep; full text in PDF is available on request)

<<http://www.asahi.com/english/politics/TKY200409280202.html>> (28 Sep)

1. Equity (securities law, corporate law)

"The SESC's inability to crack down on the securities firms was a huge disappointment," said Tomoo Takei, a lawyer representing 20 of the victims in a planned suit against Nomura, Mizuho Investors and Shinko Securities Co. "If the SESC can't act, investors will have to stand up and protect themselves.":

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040901a1.htm>> (1 Sep)

The Tokyo District Court sentenced Koichi Hirata, former president of now-defunct Minami Securities Co., to 11 years in prison Tuesday [28 September] for misappropriating 2.8 billion yen in securities that belonged to his clients and separately swindling money from investors:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040929a3.htm>> (29 Sep)

Initial public offerings are becoming more popular with individual investors as most issues over the past year have made their stock market debut above their offer price:

<<http://www.yomiuri.co.jp/newse/20040930wo12.htm>> (30 Sep; full text in PDF is available on request)

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

Citibank Japan, part of U.S. banking giant Citigroup, has been ordered by regulators to close four key offices in connection with multiple violations of laws and regulations... These acts included providing money to clients who were subsequently prosecuted for stock price manipulation; defrauding customers of more than 1.8 billion yen in foreign currency deposits; lending money to beef up documents to borrow public funds from a municipality; and taking customers' passwords out of the office.

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040918a1.htm>> (18 Sep)

Numerous problems await Tatsuya Ito, newly appointed state minister in charge of financial policy, including the lifting of the freeze on the full introduction of the payoff system, which caps the guaranteed refund on bank deposits:

<<http://www.yomiuri.co.jp/newse/20040929wo12.htm>> (29 Sep; full text in PDF is available on request)

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

The Ministry of Economy, Trade and Industry on Tuesday [31 August] opened an office to advise Japanese companies on how to deal with imported counterfeit products. The new office will be the contact point to allow the ministry to "promptly respond" to counterfeits in cooperation with other government ministries and agencies such as the Ministry of Public Management, Home Affairs, Posts and Telecommunications and the National Policy Agency:

(cited at <<http://www.japantoday.com/e/?content=news&cat=2&id=310633>> visited on 1 September 2004).

The Osaka High Court has ordered a retrial of a case in which a man unsuccessfully sought compensation from the government for damages incurred by the misdelivery of mail, citing a related ruling by the Supreme Court that said the provisions of the Postal Law were unconstitutional:

<<http://www.yomiuri.co.jp/newse/20040902wo33.htm>> (2 Sep; full text in PDF is available on request)

Police searched a Kansai Electric Power Co. branch office Tuesday [28 September] in Fukui Prefecture as part of an investigation into a deadly nuclear plant accident in August:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040929a2.htm>> (29 Sep)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040928a6.htm>> (28 Sep)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040928a7.htm>> (28 Sep)

Consumers and producers have criticized a government plan to loosen testing for mad cow disease, while university students have expressed concern over Japan succumbing to the United States in giving up its blanket testing:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040929a8.htm>> (29 Sep)

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

Now that raucous trade disputes are a thing of the past, some of the biggest remaining obstacles to doing business in Japan are the country's web of bureaucratic regulations. One U.S. school's experience shows the challenges involved. Two decades after Temple University set up its Tokyo campus, the Philadelphia school is the only U.S. university offering full-degree courses. Forty U.S. colleges had Japanese campuses at the height of Japan's late-1980s bubble economy, but most of them lost patience and left:

<from THE WALL STREET JOURNAL, 8 September 2004; full text is available on request)

The main purpose of the Political Funds Control Law was to make flows of political funds transparent to prevent political corruption, and to leave the watchdog role to the public... An increasing number of prosecutors have taken a new approach toward the issue. The message from the prosecutors' office is that any action that inhibits the transparency of political funds and obstructs the disclosure of information to the public is a serious crime, even if it is an unintentional violation of the law:

<<http://www.yomiuri.co.jp/newse/20040902wo36.htm>> (2 Sep; full text in PDF is available on request)

The Supreme Court said Friday [17 September] it will deliver its first judgment on Oct. 15 on the government's responsibility in preventing the outbreak and spread of Minamata mercury-poisoning disease in the 1950s and 1960s:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040918a3.htm>> (18 Sep)

The Tax Commission, an advisory panel to Prime Minister Junichiro Koizumi, will compile a report in November that will recommend scaling down and eventually abolishing a proportional income and individual residential tax-cut scheme:

<<http://www.yomiuri.co.jp/newse/20040922wo14.htm>> (22 Sep; full text in PDF is available on request)

Prime Minister Junichiro Koizumi on Monday [27 September] unveiled a set of measures, including a bill to privatize Japan's postal system to be submitted to the ordinary Diet session next year, as part of his basic policy to further structural reform:

<<http://home.kyodo.co.jp/all/display.jsp?an=20040927135>> (27 Sep; full text in PDF is available on request). See also,

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040908a1.htm>> (8 Sep)

5. Labour (employment law, pension system)

The government plans to submit a bill to the extraordinary Diet session that opens in autumn to reform the civil service system after more than three years of having left the matter up in the air. The reform plan's central points are twofold: adoption of a performance-based promotion system and regulation of re-employment by retired civil servants:

<<http://www.asahi.com/english/opinion/TKY200409070101.html>> (7 Sep)

The Supreme Court granted workers' compensation Tuesday [7 September] to a trading house employee who underwent surgery for a peptic ulcer during an overseas business trip even though he had been diagnosed with the disorder before the trip. Legal experts said it was unusual for courts to recognize such cases as labor - related accidents because peptic ulcers can recur naturally and are difficult to link with working conditions:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040908a4.htm>> (8 Sep)

The Health, Labor and Welfare Ministry's plan to review the list of psychological factors used in judging applications for workers' compensation is an attempt to improve the objective evaluation of such stresses:

<<http://www.yomiuri.co.jp/newse/20040922wo12.htm>> (22 Sep; full text in PDF is available on request)

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

Justice Minister Daizo Nozawa told a regular news conference that he will be more flexible in granting special resident status because "there are many people who wish to stay in Japan." Special resident status is granted for humanitarian reasons:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040901a6.htm>> (1 Sep)

The Justice Ministry will allow the deletion and replacement of original records in family registries as part of a move to remove the distinction between children born out of wedlock and those born to married couples:

<<http://www.yomiuri.co.jp/newse/20040922wo02.htm>> (22 Sep; full text in PDF is available on request)

At least 12 mediators that help arrange adoptions in Japan and abroad are doing so without having registered with local governments as stipulated under the Social Welfare Law... Records of the Health, Labor and Welfare Ministry only list eight intermediaries, but the law does not penalize those that do not register:

<<http://www.yomiuri.co.jp/newse/20040922wo31.htm>> (22 September; full text in PDF is available on request). See also,

<<http://www.yomiuri.co.jp/newse/20040920wo31.htm>> (20 September; full text in PDF is available on request)

A woman filed a lawsuit with the Tokyo District Court against the Tokyo metropolitan government, demanding about 100 million yen in damages for the illness she contracted while living in a house near a facility that deals with noncombustible waste:

<<http://www.yomiuri.co.jp/newse/20040902wo31.htm>> (2 Sep; full text in PDF is available on request)

An out-of-court settlement has been reached regarding the dioxin-contaminated Toyono waste-disposal facility in Nosecho, Osaka Prefecture. The public association managing the facility and the Nosecho and Toyonocho municipal governments agreed to apologize to the owners of the land on which the facility is located and pay them 40 million yen in compensation:

<<http://www.yomiuri.co.jp/newse/20040923wo33.htm>> (23 Sep; full text in PDF is available on request)

7. International Context (constitutional reform, international relations)

[International Security]

Prime Minister Junichiro Koizumi expressed Japan's desire Tuesday [21 September] to become a permanent member of the U.N. Security Council, making his strong pitch for the seat for the first time before the U.N. General Assembly:

<<http://home.kyodo.co.jp/all/display.jsp?an=20040922039>> (22 September; full text in PDF is available on request). See also,

<<http://www.asahi.com/english/nation/TKY200409230128.html>> (23 Sep)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040923a1.htm>> (23 Sep)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040922a5.htm>> (22 Sep)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040922a6.htm>> (22 Sep)

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040921a1.htm>> (21 Sep)

[International Trade]

The focus of attention on Japan's ongoing talks with the Association of Southeast Asian Nations over a comprehensive economic partnership is on whether both sides will be able to devise a scheme for lessening tariffs on parts and products traded among nations in the region:

<<http://www.yomiuri.co.jp/newse/20040906wo12.htm>> (6 Sep; full text in PDF is available on request)

The government is about to propose amending its tax treaty with the Philippines for the first time since the accord took effect in 1980:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nb20040907a5.htm>> (7 Sep)

Japan and Mexico signed a bilateral free-trade agreement Friday [on 17 September], Tokyo's first comprehensive free-trade pact covering a broad range of areas including the politically sticky agricultural sector. The deal, signed by Prime Minister Junichiro Koizumi and President Vicente Fox, is Japan's second FTA, following one inked with Singapore in January 2002:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040919a1.htm>> (19 Sep)

<<http://mdn.mainichi.co.jp/news/archive/200409/18/20040918p2a00m0fp009001c.html>> (18 Sep)

<<http://www.asahi.com/english/politics/TKY200409200111.html>> (20 September)

Prime Minister Junichiro Koizumi and U.S. President George W. Bush agreed Tuesday [21 September] on the importance of resolving the bilateral beef trade dispute as soon as possible, a step that may prompt Japan to lift its ban on U.S. beef:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040923a2.htm>> (23 Sep)

Tokyo is aiming to continue some practices environmentalists say contribute to overfishing. Japan's trade negotiators are baiting their lines in preparation for an international fishing summit. With the local fishing industry sending out a steady stream of distress signals, officials are bracing for a stormy encounter:

<<http://www.asahi.com/english/business/TKY200409230120.html>> (23 Sep)

[Constitutional Reform]

Members of the House of Representatives' constitutional research commission left Sunday [5 September] for Europe to study constitutional issues in the European Union. The lawmakers plan to visit Sweden, Finland, Belgium and France during a 13-day trip to examine the historical background of the establishment of the European Union and why the union has compiled its own constitution:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040906a9.htm>> (6 Sep)

Two Diet panels are set to recommend amending the Constitution in separate final reports due out in May... The two panels, both named the Research Commission on the Constitution -- one in the House of Representatives and the other in the House of Councilors -- are expected to include a statement in their reports on the need for constitutional revision, given that many members of the panels expressed views favoring an amendment:

<<http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20040920a2.htm>> (20 Sep)