

## 5. Commercial Law

Moves toward realizing a revision of the stock corporation act (The Commercial Code, Book II, Chapter IV), which was briefed in the previous issue, have gone a step further in the year under review.

Upon receiving the “draft outline for a partial revision of the Commercial Code”, on Nov. 19, 1980, the Commercial Law Section of the Legal Council, an advisory body to the Minister of Justice, studied the draft amendment (outline) concerning the parts calling for a revision of the Commercial Code and on Dec. 17 discussed the “draft outline on the debenture system accompanied by preemptive rights to new shares.”

On the basis of the above discussions, the Commercial Law Section on Dec. 24 further studied the “draft of the bill calling for a partial revision of the Commercial Code, etc.” prepared by the secretariat, and decided on the “draft amendment to a part of the Commercial Code, etc.” This draft was submitted to the general meeting of the Legal Council on Jan. 26, 1981, and upon further deliberation submitted to the Justice Minister as an “Outline of the Draft Bill for Partial Amendment of the Commercial Code.”

The outline draft decided upon by the Commercial Law Section this time was related, in the first place, to a partial amendment of the Commercial Code and secondly to a partial amendment of the act for special exceptions to the Commercial Code concerning audit, etc. of stock corporations.

The major points of the proposed revision in the first part were made up of 1) shares, 2) shareholders' meetings, 3) directors, 4) the board of directors, 5) overseers, 6) prohibition of granting benefits concerning the exercise of shareholder's rights, 7) accounting, and 8) debentures accompanied by preemptive rights to new shares. Thus, considerably important parts of the existing stock corporation act were to be amended. Listed briefly below are the points of those revisions as well as the points of revision

concerning the act on auditing exceptions in the second part of the draft outline.

### (1) Shares.

The draft outline firstly deals with shares. The existing Commercial Code provides that the minimum face value of par value shares should be ¥500 (although the shares issued by corporations established before the revision of 1950 were either ¥20 or ¥50). The face values as such are markedly low compared with the depreciation in the monetary value since then.

In order to correct this defect, the outline draft provides that the minimum face value of a share with a par value of a newly established corporation shall be ¥50,000 and that the minimum issue price of the share without par value shall be ¥50,000. At the same time, it adopts a unit share system for existing listed corporations directing that the face value of par value shares shall be ¥50,000 as a unit. Accordingly, a shareholder whose shares do not run up to a unit will be restricted in the exercise of his *Gemeinnützige rechte* or management and related rights such as his voting right. The unit share system, however, is not applicable to proprietary rights such as the right to dividends.

### (2) Shareholders' meetings.

The draft plan stipulates the obligations of directors as well as overseers to answer the questions of shareholders, and the proposal right of the qualified shareholders. This is aimed at activating general shareholders' meetings by strengthening the power of shareholders at a shareholders' meeting.

Also worthy of notice is the selection of an inspector to examine the legality of the decision making process at a shareholders' meeting and the clarified powers of the chairman.

### (3) Directors.

It must be noted that disqualifications for directors are prescribed for the first time.

Approval of competitive transactions by a director is left to the decision of the board of directors instead of that of a shareholders' meeting. Indirect transactions have come to be included

in the scope of the restrictions between the corporation and its directors to be regulated.

(4) Board of directors.

In order to strengthen the authority of the board of directors, four items are left to the exclusive jurisdiction of the board of directors. All directors are also granted the power to convene a directors' meeting, and directors are obligated to make a report on the state of corporate business affairs and assets to the board of directors every three months.

It is also stipulated that the voting right of an interested director shall be eliminated at the board of directors' meeting. It is also worthy of note that the inspection of the minutes of board of directors' meetings by a shareholder requires the approval of the court.

(5) Overseers.

Overseers play a very important role in maintaining fair corporate management. The provision on disqualifications for directors mentioned in (3) of the draft outline is applied *mutatis mutandis* to overseers.

The powers of overseers are also clearly stipulated. In case there is more than one overseer, the allocation of work and respective responsibilities are stipulated. It must be noted that to strengthen the independent status of overseers, their remunerations are to be decided at a shareholders' meeting independently of the directors.

(6) Prohibition of granting benefits concerning the exercise of shareholder's rights.

This aims at dealing with so-called *Sokaiya*.\* When a corporation grants financial benefits to a *Sokaiya* in connection with the exercise of shareholder's rights, a prescribed legal step is provided for the return of such benefits.

\*A *Sokaiya* is either a hoodlum hired by a corporation to keep order at shareholders' meetings or a person who holds a small number of shares in a number of corporations and attempts to extort money from them by threatening to cause trouble at shareholders' meetings.

(7) Accounting.

Standards concerning the accounting of a corporation are prescribed by introducing slight changes or making clear what has not been clarified concerning proposals regarding reserves and distribution of profits or interest, matters to be stated in annual reports, and the method of mapping out auditing reports, etc.

The method of deciding on dividends is changed from the existing method of a special resolution of shareholders provided for by law to an ordinary resolution. In issuing shares at market price, one half of the issue price is to be credited to the stated capital. A definition to reserve allowances for specified purposes is also given.

(8) Debentures accompanied by preemptive rights to new shares.

Mention is specifically made concerning debentures accompanied by preemptive rights to new shares, and the regulations specified in the outline draft just follows those concerning convertible bonds in the existing Commercial Code.

(9) Revision of special exceptions concerning auditing.

The second part of the draft outline calls for amendment of the act for special exceptions to the Commercial Code Concerning Audit. It defines the scope of corporations to which the special act is applied. At the same time, a number of provisions are introduced to make the auditing by overseers really effective and prevent a skeletonizing of shareholders' meetings.

There are also a number of regulations concerning the accounting and independent auditors. Worthy of note is the provision that, with regard to a corporation in which the audit by the independent auditor is required, when both the independent auditor and the overseers declare both the balance sheet and profit-loss statement as lawful, those documents do not have to be approved by a shareholders' meeting.

Finally, new "Commercial Code" and its related act were enacted on June 9, 1981, in line with the above-mentioned tenor.

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