sures of security still remain deeply rooted. In this regard, it is strongly hoped that further careful study will be made on the basis of the policies newly announced by the Justice Ministry.

2. On a Revision of the Prison Act

The Legislative Council on Nov. 25, 1980 submitted a recommendation entitled "Outline Draft of the Gist of a Revision of the Prison Act" to the Justice Minister. (On this issue, see p. 37, Volume 1). As of 1981, the Justice Ministry was drafting a bill on the basis of the "Outline Draft." The bill was to be submitted to the Diet in the spring of 1982.

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5. Commercial Law

The "Act of Amendment to Parts of the Commercial Code" was proclaimed in June 1981, on the basis of the "Outline of a Draft Bill for Partial Amendment of the Commercial Code" introduced already in Volume 2, 1982, of this Bulletin.

The Act of Amendment is, in gist, made up of 1) the scope of large corporations under the Act Providing Exceptions to the Commercial Code for Auditing Stock Corporations (Stock Corporations Special Audit Act), 2) shares, 3) organizations, 4) accounting and disclosure, 5) prohibition of granting benefits concerning the exercise of shareholder's rights, and 6) debentures accompanied by preemptive rights to new shares. Each item is explained herewith.

1. The Scope of Large Corporations under the Stock Corporations Special Audit Act:

An "Act Providing Exceptions to the Commercial Code for Auditing Stock Corporations" or the Stock Corporations Special Audit Act for short was amended in connection with the current amendment of the Commercial Code.

Although it is an amendment of a special act, the outline of the amendment is explained here at the outset for the sake of convenience in the light of its significance in relation to the Commercial Code.

The Stock Corporations Special Audit Act provides differently graded treatment according to the amount of capital concerning the regulations of accounting, etc. of corporations. Particularly with regard to the auditing of corporations with a capital of more than ¥500 million (so-called big corporations), the Act makes it compulsory by law to conduct auditing by an accounting expert, such as a certified public accountant or an auditing corporate person, in addition to the auditing by the overseer. This is a legislative step taken in view of the great social unrest caused by a series of bankruptcies of corporations accompanying window dressing settlements.

With the current amendment of the Stock Corporations Special Audit Act, the scope of large corporations prescribed in the Act is expanded. In addition to corporations with a capital of more than ¥500 million, those with liabilities amounting to more than ¥20 billion on the balance sheet are now termed as large corporations under the Act.

Such large corporations so to speak are to be accorded treatment different in many respects from other corporations, especially concerning the establishment of balance sheet and profit-and-loss statement, their public notices, plural auditing system, and voting by written instrument at general shareholders' meetings about which further explanations will be made elsewhere.

2. Shares:

As a result of the current amendment, the minimum face value of par value shares issued on the occasion of establishing a corporation is raised to ¥50,000, although the shares issued by corpo-

rations established before the amendment of 1950 were either ¥20 or ¥50. (The current raise is applicable to the issue price of no-par value shares at time of establishing a corporation.)

This large-scale raise of the face value was provided for by law because the old face value had become unreasonably low as a unit of investment, in view of the considerable fluctuations of monetary value.

It must be noted, however, that only new corporations established after the enforcement of the amendment are required of issuing par value shares with a minimum face value of ¥50,000. The ¥50,000 face value is not applied to existing corporations established before the amendment because these corporations have been issuing an enormous amount of shares in the stock exchange markets with a face value of ¥50 or ¥500, and it is necessary to avoid confusion likely to occur with raising the face value up to ¥50,000.

However, in order to ensure purposes of the current amendment, that is, to raise the investment unit of the share up to a proper level, the unit share system has now been applied to those corporations, especially those listed in the stock exchange.

Under the unit system, a unit represents a number of shares (for instance, 100 shares) obtained by dividing ¥50,000 with the face value of a share (for instance, ¥500) and this single unit is vested with one voting right as well as Gemeinnutzige or rights relating to management. The transaction of shares are based on this unit.

A shareholder whose shares do not run up to one unit, however, has proprietary rights, such as the right to dividends, but is denied rights relating to management, such as voting rights, inspection rights and so on. This unit system is only a transitionary measure aimed at raising the investment unit of shares in practice while avoiding possible confusion accruing from raising the value of shares of existing corporations uniformly at one stroke.

The face value of par value shares and the issue price of shares without a face value are required to be a minimum ¥50,000 or more only when they are issued on the occasion of "establishing a corporation." On this point, the legally fixed minimum of exist-

ing face value (old law §202 (2)) was abandoned.

On the other hand, in order to apply a brake to the decline of the investment unit value by an unlimited lowering of the face value, it is stipulated for gratuitous issuance of shares (excluding share dividends), issuance of shares partly gratuitous partly for valuable consideration and share splits that the equity value of a share after any of these transactions occurs, that is, an amount calculated by dividing the amount of net assets existing in the corporation according to the last balance sheet by the resulting total number of issued shares, shall not be less than ¥50,000 (§§293-3 (2), 293-3-2(2), 293-4(2) and 280-9-2(1)). A fractional share system is also adopted because when an investment unit became large, as a result of its increased face value, the fractions of a share that could be disregarded possess a property value that cannot be dismissed (§§230-2 to 230-9).

The regulations on the reacquisition by the corporation of its issued shares are amended, allowing to take in pledge up to one twentieth of its issued shares in number (§210). A subsidiary corporation is also prohibited expressly from holding shares in its parent corporation (§211-2). In this instance, the parent corporation is defined one holding more than half the total shares issued by its subsidiary corporation (§211-2).

3. **Organizations:**

There have been important amendments in this area concerning shareholders' general meetings, the board of directors, directors, and overseers.

(1) Shareholders' General Meeting

For the purpose of activating a general meeting, the revised act provides for the shareholders' proposal rights, duty of directors and overseers to explain and the chairman of the general meeting (§§232-2, 237-3, and 237-4).

With regard to big corporations prescribed in the Stock Corporations Special Audit Act, the system of voting by written instrument is introduced in the case of 1,000 or more shareholders. (Stock Corporations Special Audit Act § 21-3). As a consequence, such corporations are obligated to send shareholders materials,

statements and forms for written voting so that the agenda and proposals at the general meeting will be more open and the will of the absentee shareholders will be more reflected on the general meeting.

In addition, the system of an inspector of general meeting is established, who shall be elected upon the request of shareholders holding one hundredth or more of outstanding shares for more than consecutive six months to examine the legality of the decision-making process as well as the procedure for convening general meetings (§237-2). The exclusion in advance of the voting right of shareholders having special interests, which has frequently been criticized, was abolished and, at the same time, the system of requesting by action to rescind unreasonable resolutions made at general meetings was also abolished. (This system was a relief measure for shareholders having special interests, whose voting right was excluded in advance, in case any unreasonable resolution was made which would affect him.) If, however, an unreasonable resolution were made due to the fact that shareholders having special interests were involved in the voting, it would be a reason for rescinding a resolution made at a general meeting (§247(1) (iii)).

Moreover, the provision concerning the procedure for action on the legality of a resolution made at a general meeting has also been amended, and the system of dismissal of an action by discretion is revived (§251).

(2) Directors and Board of Directors

The board of directors is expected to help representative directors carry out proper corporate management by exercising its supervisory authority.

In practice, however, it is not too much to say that both the board of directors and shareholders' meetings have become skeletonized. Thereupon, as was introduced in this Bulletin, Vol. 1, a tentative plan for a revision of Commercial Code was made revising the system for the purpose of making laws and rules compatible with and rationalizing in a sense the actual state of affairs of the board of directors and, at the same time, preventing the board of directors from becoming skeletonized.

In the current amendment, however, various bold regulatory proposals intended by the tentative plan were not adopted and the revision has been limited to individual problems.

With regard to directors, reasons for disqualifying them such as being an incompetent or quasi-incompetent person, or a person having been adjudged bankrupt but not reinstated, to status quo ante, have been prescribed for the first time (§254-2).

In addition, the regulation concerning competitive transactions of a director that come under the class of business carried on by the corporation has become more realistic as a result of the current amendment. It has thus become possible for director to engage in competitive transactions with the approval of the board of directors, instead of receiving the approval at a shareholders' meeting of shareholders with two-thirds of the outstanding shares (§264(1)). As before the amendment, important materials in connection with the said transaction must be shown to the board of directors to obtain its approval.

A new provision is added to Article 265(1) to the effect that a director shall obtain the approval of the board of directors also "where the corporation guarantees any liability of the director or effects with a third person other than the directors a transaction in which the interests of the corporation conflict with those of a director." Even when a transaction in which the interests are at variance is carried out with the approval of the board of directors, if any damage is caused to the corporation the director shall be liable for damages to the corporation (§266(1) (iv)). Since the directors who gave approval at the board of directors meeting, or those whose dissent was not entered in the minutes are to be held liable to their corporations (§266(1) (iii) and (iv), (2) and (3)), directors who engage in a transaction in which the interests are at variance with the corporation are obligated to report to the board of directors without delay important matters as to the transaction, such as in the case of competitive transactions (§265(3)).

Of the revisions concerning the board of directors, it must be pointed out that the supervisory authority of the board has been clarified as well as its legal authority to activate the board's func-

tion. In other words, as part of its legal authority, the disposition and purchase of important property, borrowing of large sums, etc., are added anew to the existing powers (decisions on administration of company affairs, establishment, change and abolition of a branch office, and appointment and dismissal of a manager) (§ 260(2)).

It is also expressly stipulated that directors shall report conditions of administrative business affairs to the board one or more times during a three-month period (§260(3)).

With regard to the management of the board of directors, each director can demand the covering of a board meeting, even though a particular director is vested with the power to convene meetings (§259). Amendment has also been made concerning the disclosure of the minutes in order to protect corporate secrets (§260-4, (3) to (5)).

(3) Overseers

Promotion of the practical effect of overseeing by overseers is extremely important for a corporation to strengthen its independent self control functions.

In this regard, the amendment has enlarged the authority of overseers and made their roles more substantial by expressly prescribing the right to call on business employees for a report on the business of the corporation (§274(2)), the right to demand the convening of a board meeting (§260-3(3)), etc. By clarifying the liability of overseers to the third party (§280 (2)), as well as, by establishing regulations on the renumeration and expenses of overseers (§§279, 279-2), their independent status may well be said strengthened.

4. Accounting and Disclosure:

Provisions concerning corporate accounting were revised in 1950, 1962 and 1974. The current amendment is aimed at rectifying and strengthening the regulation concerning disclosure.

The revision was also designed to rationalize the preparation, auditing and disclosure of accounting documents by instituting a revision of the public notification of accounting documents, unify-

ing auditing reports and making their entry items more substantial, legalizing matters to be stated in business reports and advancing the date of presentation of annexed specifications to the board, the overseer or the general meeting, as the case may be. (§§281-2(2), 281-3, 283(3)).

With regard to the big corporations under the Stock Corporations Special Audit Act, it is prescribed that under specific conditions the balance sheet and profit-loss statement shall be confirmed by obtaining the approval of the board of directors (Stock Corporations Special Audit Act §16(1)), and that the requirement for the resolution of a general meeting on share dividends shall be eased to that of an ordinary resolution (§293-2(1)).

The provision concerning the release of liabilities of directors and overseers was deleted.

With regard to the stated capital and the capital reserve, it is stipulated that, an amount exceeding one-half of the issue prices of shares whether with or without face value must be credited to the stated capital, and the amount to be credited to the capital was raised (§284-2(1) and (2)).

It is also clear that the reserves smacking of retaining profit shall be eliminated (§287-2).

Efforts were made to strengthen overseeing by introducing detailed provisions concerning the election, qualifications, terms of office and removal of auditors of big corporations prescribed in the Stock Corporations Special Audit Act (§§3 ff.).

5. Prohibition of Granting Benefits Concerning the Exercise of Shareholder's Rights:

The amendment prohibits the corporation from offering proprietary profits involving the exercise of shareholder's rights in an attempt to stamp out Sokaiya* (§294-2). Any director who has offered such profit in contravention of this provision shall be held

* A *Sokaiya* is either a hoodlum hired by a corporation to keep order at shareholders' meeting 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.

liable to the corporation (§266(1) (ii)). Penal regulations are provided for such cases (§479).

6. Debentures Accompanied by Preemptive Rights to New Shares:

In order to diversify the methods of corporate financing, debentures accompanied by preemptive rights to new shares have been set up which somewhat resemble convertible debentures in economic terms, but legally a debenture holder can obtain new shares by exercising one's preemptive right while remaining as such. (§§341-8 ff.).

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6. Labor Law

Abolition of exceptions for the public convenience concerning working hours.

(Partial revision of the Enforcement Ordinance of the Labor Standards Law on Feb. 6, 1981. Enforcement of the Ministry of Labor Ordinance No. 5 on Apr. 1, 1981, part of which was enforced on Apr. 1, 1983.)

Articles 26 through 29 of the old Enforcement Ordinance were deleted. As a result, the exceptional steps allowing an extension of working hours, despite the principle of eight hours a day and 48 hours a week stipulated in Article 32 of the Labor Standards Law, were abolished.

However, the exceptional case concerning the working hours of workers on train car services as reserve personnel (Article 26-2 of the old Ordinance and Article 26 of the new Ordinance) remained intact and, at the same time, special steps designed to relax the principle or postpone the enforcement were adopted. The follow-