

Cities and towns may draw up basic plans concerning the systematic provision of various opportunities for learning and cultural activities with the assistance of private businesses. Recognition of the basic plan by the Ministers of Education and International Trade and Industry may be applied for (Article 5).

A Council of Lifelong Learning will be established within the Ministry of Education (Article 10).

**[Comment]**

This is the first legislation in Japan on lifelong learning. The Act uses the words “lifelong learning”, instead of “lifelong education,” considering that learning and cultural activities should be accomplished through individual free will. In this sense, lifelong learning is a problem all of us have to wrestle with. However, the government can promote a shift to a system of lifelong learning by taking various measures. This Act is widely expected to be a starting point for the future development of the system of lifelong learning.

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## **2. Commercial Law**

**Act Partially Amending the Commercial Code, etc.**

Promulgated on June 29, 1990. Ch. 64. Effective as of April 1, 1991.

**[Background of the Legislation]**

This Act amends provisions of the Commercial Code, the *Yugen-kaisha* (company with limited liability) Act and the Act

for Temporary Measures Limiting the Issue of Debentures. These amendments were materialized due to efforts made to substantially revise the Commercial Code, and follow substantial amendments made in 1981. Under circumstances where the Commercial Code failed to effectively regulate the small and closed companies which comprise a great majority of both the *Kabushiki-kaisha* (stock corporations) and *Yugen-kaisha* in Japan, these amendments are intended to: (1) provide legal vehicles suitable to these companies; (2) set up provisions to allow more protection of creditors and the public; and (3) improve the system of procurement of capital by large corporations.

The following is the outline of the most significant aspects of these amendments, especially those relating to *Kabushiki-kaisha*.

### ***[Outline of the Amendments]***

#### **(1) Changes concerning Small Corporations.**

First, the minimum number requirement for promoters is abolished, and thus even one promotor can now incorporate a *Kabushiki-kaisha* (Commercial Code (hereinafter referred to as "CC.") Art. 165). This change is made to facilitate the incorporation of small and medium sized corporations. Since the previous law required the participation of at least 7 promoters for the incorporation of a *Kabushiki-kaisha* (a promotor must also subscribe one or more shares of the new *Kabushiki-kaisha*), dummies were often used as promoters to satisfy this statutory numerical requirement. The abolition of this requirement makes it possible for one promotor to incorporate a *Kabushiki-kaisha*.

Second, the investigation of the course of incorporation of the *Kabushiki-kaisha* is simplified. The investigation by a Court-appointed investor, which was statutorily required with regard to the so-called "promotive incorporation", in which only promoters can subscribe to the shares issued by the *Kabushiki-kaisha* at the time of its incorporation is eliminated (CC. Art. 173). This type of incorporation was not frequently used due to the cumbersome investigation by the Court-appointed investor under the previous law. Accordingly, even in cases where promotive incorporation might

seem more appropriate, subscription incorporation was broadly utilized, which is another type of incorporation under the law that does not require the above investigation. With this amendment, it is expected that promotive incorporation, without its old defects, will be used more often than before since it is generally regarded as the more suitable type of incorporation for most Japanese corporations. In addition, the procedure for the investigation of incorporation expenses is simplified with the introduction of special treatment regarding such expenses, which, before this amendment, was required to be stated in the articles of incorporation as one of the “extraordinary incorporation matters” (CC. Art. 168 I ⑧).

Third, the shareholder’s right to preemptively subscribe to new shares issued by a *Kabushiki-kaisha* is legally guaranteed where such *Kabushiki-kaisha* imposes restrictions on the transfer of its shares (CC. Art. 288-5-2). Most Japanese corporations have a provision in their articles of incorporation subjecting the transfer of shares to the approval of the board of directors. Thus, the shareholders of such corporations are not free to enlarge their share in the company by buying shares in the public market, although their share in the company may be lowered with the issuance of new shares. The new amendment allows the existing shareholders to maintain their share in the company by assuring preemptive rights to subscribe to new shares.

## (2) Protection of Creditors and the General Public.

First, a statutory minimum capital requirement is adopted for corporations, under which at least 10 million yen is necessary as capital for incorporation of a *Kabushiki-kaisha* and at least 3 million yen for incorporation of a *Yugen-kaisha* (CC. Art. 168-4; the *Yugen-kaisha* Act Art. 9). Before this amendment, no capital contribution was required for the incorporation of a *Kabushiki-kaisha*, whereas the incorporation of a *Yugen-kaisha* was asked for a capital formation in the amount of 100,000 yen, which is an insignificant value under current economic circumstances. Therefore, the minimum capital requirement is introduced to strengthen the protection of creditors by ensuring the contribution of corporate assets of *Kabushiki-kaisha* as well as *Yugen-kaisha* whose liabilities are

limited to the extent of the corporate assets. Concerning this, those *Kabushiki-kaisha* already in existence at the time of this amendment are entitled to a 5 year grace period, during which they must take step to enlarge their capital to satisfy the minimum capital requirement.

Second, the liability of the persons taking part in the incorporation is increased (CC. Arts. 192 and 192-2). Under the previous law, a strict form of liability was provided for in connection with the asset-based capitalization at the time of incorporation. However, this liability was imposed only on the promoters. This amendment enlarges the scope of persons subject to such liability, thus making not only promoters, but also directors at the time of incorporation jointly and severally liable.

### (3) Reform in Corporate Financing.

First, burdensome steps to be taken in issuing preferred and convertible stock are eliminated so that companies may issue new shares more promptly than before in response to market conditions (CC. Arts. 222 II and 222-2 II). Before the amendment, a *Kabushiki-kaisha* intending to issue preferred or convertible stock was required to change the articles of incorporation to include provisions setting detailed conditions of such issuance. But this requirement was criticized for delaying the prompt issuance of such shares. The amendment strengthens the role of directors in issuing such stock and consequently, the process for their issuance is shortened and streamlined.

Second, the upper limit of the total amount of corporate debentures is changed (CC. Art. 297; Act for Temporary Measures Limiting the Issue of Debentures, Art. 1). Corporations were formerly able to issue corporate debentures up to the limit of either the total amount of capital and reserve funds or the amount of net assets, whichever is smaller. Under the new law, this dual standard is changed to the single standard of the amount of net assets, resulting in a substantial increase in the amount of issuable corporate debentures. On the other hand, the amendment to the Act for Temporary Measures Limiting the Issue of Debentures adds certificates of preemptive right to new shares to the list of eligible corporate

debentures which corporations may choose to issue up to the limit of amount of two times that under the Commercial Code.

### **[Comments]**

The principal objective of these amendments is to change the law concerning corporations by taking into account the size of Japanese corporations in general. In other words, revisions are made to meet the needs of small and closed companies, which constitute the majority of corporations in Japan. Attempts to statutorily classify corporations into “large” and “small” corporations were abandoned at an early stage of deliberation of the draft amendments. The amendments allow small companies to take the form of a *Kabushiki-kaisha*, but provide for some different treatment based on the size of the corporation in consideration of the real differences between large and small corporations.

As mentioned in (1) and (2) above, it is not easy to reconcile the need to simplify statutory regulation of small corporations with the need to protect the interests of the persons dealing with the corporations by relying on the limited liability safeguard. Therefore, the amendments substantially fall short of accomplishing the objectives of the previously proposed draft amendments. In particular, although there were few objections to the introduction of the minimum capital requirement provision, which is the most conspicuous aspect of these amendments, there were opposing opinions as to the specific amount of minimum capital before the amount of 10 million yen was reached for that of a *Kabushiki-kaisha* (3 million yen for that of a *Yugen-kaisha*) by a political compromise. However, there is still some criticism that these amounts are not sufficient for protection of corporate creditors, notwithstanding the legislative purpose to protect these creditors.

Another characteristic of these amendments worth mentioning is the statutory recognition of the one shareholder corporation, which was strongly called for by corporate managers. In this regard, however, there are some scholars who have expressed, in view of the “corporateness” of the corporation, theoretical doubt as to this recognition, as well as the insecurities which may be caused to

creditors by easily extending limited liability protection to enterprises which are in essence personal, rather than corporate.

Among the amendments focusing on the large corporations, the most notable is the reform in corporate financing as mentioned in (3) above. In particular, the need for flexible issuance of preferred stock necessarily involves the issuance of non-voting stock, and the latter is often regarded as an effective defensive measure against hostile takeovers, which recently have begun to emerge in Japan.

Even though these amendments were originally planned as the second stage of efforts to complete full-scale amendment of corporate law, the result is that only a small portion of the problems remaining from the first stage are solved by these amendments. Consequently, amendment efforts will be continued into the future.

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### **3. Labor Law**

**Partial amendment of the Cabinet decree on the provisional regulations concerning working hours provided in the Article 32, paragraph 1 of the Labor Standards Act and Partial amendment of the Ordinance concerning the Labor Standards Act.**

#### ***[Outline of the Amendment]***

1. Normal working hours per week shall not exceed 44 hours, except in enterprises engaged in primary industry or those listed below.
2. Normal working hours per week shall not exceed 46 hours in the following enterprises: