national administration and states the direction of the basic policies. Although the new law is epoch-making in restructuring the synthetic framework for the basic ideas and fundamental measures in Japan's environmental policies, there still remain some problems. First of all, the act does not specify the right of environment or the right to enjoy a natural environment. In this regard it was argued in the Diet that the basic ideas in the act made clear the recognition that a healthy and rich environment was essential to healthy and cultural human life, and that as long as the right of environment had never been recognized by the judiciary, it was important to promote measures for actualizing the basic ideas in order to ensure the new right.

The act has also been criticized for postponing the institution of the system of environmental impact assessment. Article 20 of the act only states that the state shall take necessary steps to promote the system. It was widely reported that jurisdictional disputes between government departments resulted in this incomplete provision. Departments, including the Ministry of Construction, which manage and control public utilities are thought to have defeated the Environmental Agency. Because the system of environmental impact assessment is essential to the nationwide administration of environmental protection, it is highly regrettable that the act is lacking in ensuring such a basic system. In order to construct a concrete system of assessment, further steps should be taken as soon as possible.

b. Administrative Law

Administrative Procedure Act.

Promulgated on November 12, 1993. Ch. 88. Effective as of October 1, 1994.

[Background of the Legislation]

In 1964 the special investigation committee on administration announced its opinion concerning the reformation of administrative procedure in order to ensure fairness of administration, and recommended that new legislation on administrative procedure should be

made. The committee proposed at that time a draft of an Administrative Procedure Act (APA) for the first time, but it had little effect in arousing a positive response. It was after the conference on countermeasures for the prevention of airplane scandals had proposed in 1979 to study a general administrative procedure act that the argument was revived. Later, the second special investigation committee on administration submitted its report in 1983 and included a chapter on freedom of administrative information and administrative procedure, and the study group for an APA that had been held under the then Administrative Management Agency announced a report on an APA also in 1983. In 1985 the second study group for an APA was established under the Management and Coordination Agency and announced an interim report in 1989. In 1990 the then Prime Minister Toshiki Kaifu submitted the adjustment of fair and transparent administrative procedure for deliberation to the third special council on the promotion of administrative reform, and the sectional meeting of the council worked vigorously to publish a report. In 1991 the third special council submitted to the government the report on the adjustment of fair and transparent administrative procedure which had been completed by the sectional meeting. Soon after the submission the cabinet council decided to submit a bill to the Diet, but it took much time to coordinate the interests of government offices. In 1992 the government promised the United States to submit an APA bill to the next ordinary Diet and in 1993 an APA bill was finally submitted to the Diet. Although the bill was once dropped because of the unexpected dissolution of the Diet, it was re-introduced into the Diet and finally passed in 1993.

[Main Points of the Act]

The aim of the Law is to seek to advance a guarantee of fairness and progress towards transparency in administrative process, so that it may contribute to the protection of the rights and interests of the people (Article 1).

As to dispositions relating to applications, administrative agencies shall establish criteria necessary for judging, in accordance with the provisions of relevant laws, whether an application requesting

for permission will be granted, and must make the criteria public in principle (Article 5); administrative agencies must make an effort to establish a standard period typically needed for taking a disposition after an application is reached, and must make it public (Article 6); administrative agencies must begin the review of an application without delay and must respond to even a formally disqualified application quickly (Article 7); administrative agencies must show reasons in principle when denying permission to an application (Article 8); administrative agencies must make an effort to give information concerning applications upon the request of applicants (Article 9); administrative agencies must make an effort to hold a public hearing for persons other than the applicants if needed (Article 10).

As to adverse dispositions, administrative agencies must make an effort to establish criteria necessary for judging, in accordance with the provisions of relevant laws, whether adverse dispositions will be rendered and what kind of adverse dispositions will be rendered, and must make an effort to make the criteria public (Article 12); administrative agencies must hold a formal hearing or must grant an opportunity for explanation and rebuttal when rendering adverse dispositions (Article 13); administrative agencies must show reasons in principle when rendering adverse dispositions (Article 14); various procedures for formal hearings and the granting of opportunities for explanation and rebuttal are also established (Articles 15–31).

As to administrative guidance, general principles are established, that is, (1) persons giving administrative guidance must take care that their actions should not exceed the scope of the duties or designated functions of the administrative organ concerned and that the substance of the administrative guidance is realized solely upon the voluntary cooperation of a subject party, (2) persons giving administrative guidance must not treat a subject party of administrative guidance disadvantageously if he or she does not comply with the administrative guidance in question (Article 32); persons giving administrative guidance must not obstruct an applicant's exercise of rights by continuing the administrative guidance in question even when the applicant states that he or she has no intention of complying with the

administrative guidance in question (Article 33); persons giving administrative guidance must not compel a subject party to comply with the administrative guidance in question by intentionally suggesting that he or she is capable of exercising the authority to grant permission or to render disposition based on permission (Article 34); persons giving administrative guidance must make clear to a subject party the purpose and content of, and the parties responsible for, the administrative guidance, and must provide the matters in writing to a subject party in principle when requested (Article 35); when administrative guidance is rendered to more than one person, an administrative organ must establish, in advance and in accordance with the circumstances of the particular case, the contents to be uniformly applied in the administrative guidance, and must make them public in principle (Article 36).

As to notifications, where notifications conform to formal requirements provided by laws, procedural requirements for filing the notification in question shall be fulfilled upon its arrival at the administrative office of the organ designated by laws to receive the notification in question (Article 37).

[Comment]

The enactment of a general law on administrative procedure has long been awaited by academic specialists in administrative law in order to make administrative process both fair and open to the public. Although the fact that it took years to complete the endeavor to make such a law indicates how difficult it is to change the style of administration radically, the Administrative Procedure Act is expected to advance a guarantee of fairness and progress towards transparency in administrative process and to promote the rights and interests of the public more firmly.

Generally speaking, the Act is highly valued in academic circles, but this does not mean that there is no room for improvement. Among other things, there has been criticism that the Act lacks the provisions on administrative plannings or administrative rules. In addition, there is no guarantee for procedure on dispositions which deny permission, since such dispositions are excluded from the statutory

definition of adverse dispositions. Moreover, there has been strong objection to the scope of application, which in particular makes tax administration free from the application of the Act. Although it is important to root the Act deeply in administrative process, the Act is said to have potential of future drastic revisions.

In the end it is emphasized that the degree of the impact that this new Act will have upon administration depends upon the degree of public attention concerning the application of the Law.

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2. Commercial Law

An Act to Partially Amend the Commercial Code, and so on. Promulgated on June 14, 1993. Ch. 62. Effective as of October 1, 1993.

[Background]

The Act to Amend the Commercial Code, and so on (hereinafter referred to as "Amendment Act") has two parts; the reform of some systems involved in corporate governance and the improvement in the corporate bond system. As to the corporate governance, the Amendment Act first has improved the representative action system to reduce suit filing costs incurred by plaintiff shareholders, and secondly lightened the requirements concerning shareholders' inspection rights of corporate account books and records in order to facilitate the exercise of these rights. Thirdly, reforming the corporate auditing system for the purpose of consolidating the corporate auditor's position and strengthening its function, the Amendment Act has not only extended the auditor's term of office in every stock corporation, but also increased the required number of auditors and introduced both an outside auditor and a board of auditors in the "large-sized corporation" under a special act under the Commer-