mentioned in the warrant, is it permitted that they continue listening to or recording the conversation? The statute provides for these kinds of wiretapping in Article 14, but the theoretical grounds for permitting these kinds of wiretapping are very controversial. Some say that the doctrine of "plain view" (or the "warrantless search or seizure under exigent circumstances") is embedded in Article 35 of the Constitution. According to this theory, if wiretapping can be classified as a method similar to Constitutional seizure, and the circumstances of the actual case show a certain degree of exigency, the type of wiretapping in question has a chance to be permitted. The prevailing view in Japan, on the contrary, does not consider plain view, or "exigent search or seizure", as a doctrine embedded in the Constitution, and it seems more difficult to explain the permissibility of these kinds of wiretapping accordingly. Some scholars explain that since the Constitution does authorize (Constitution, art. 33, Code of Criminal Procedure, art. 212), or does not forbid (Code of Criminal Procedure, art. 210) the legislature from creating exceptions to the requirement of warrants under certain exigent circumstances, a type of exigent seizure (under similar circumstances) can be created by the legislature. However, some say that this explanation is still unsatisfactory.

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6. Commercial Law

Act to Partially Amend the Commercial Code etc.

Law No. 125. August 13, 1999. Effective on October 1, 1999 (Provisions about Share Exchange and Share Transfer and Groups of Companies) and April 1, 2000 (Provisions about Valuation of Assets).

Background:

The modern company tends to run a business not as a single com-

pany but as a member of Groups of Companies, because this improves the efficiency of its management and its international competitive power. In 1997, the revised Act concerning Prohibition of Private Monopoly and Maintenance of Fair Trade permitted the formation of a pure holding company (one who owns shares in the subsidiary companies and doesn't carry out any other businesses). This amendment demanded the creation of any procedures to establish smoothly such a company. So, the 1999 Amendment to the Commercial Code created share exchange and share transfer systems to establish smoothly the relationship of a wholly-owning parent company and a wholly-owned subsidiary company. If some companies use these systems, the position of persons who become shareholders in a wholly-owning parent company will be considerably changed. So, for the purpose of protecting their interests, the New Act, for example, strengthens the disclosure of certain information about a subsidiary company's businesses to shareholders in a parent company.

The existing Commercial Code adopts the principle of acquisition value in respect of valuation of assets on a balance sheet. But, especially owing to the influence of International Accounting Standards, Japanese accounting professionals accepted the view that the principle of market value in respect of the valuation of certain financial assets is desirable for the purpose of the proper disclosure of a company's assets. So, the New Act provides that a company may evaluate its certain financial assets at the market value.

Main Provisions:

1. Establishment of a wholly-owning parent company by share exchange

A company, by carrying out share exchanges with another company, may establish the relationship of a wholly-owning parent company and a wholly-owned subsidiary company (Art. 352, para. 1). Under share exchange, shares which shareholder (A) in a company which will become a wholly-owned company owns are to be transferred to another company which will become a wholly-owning parent company. And A will become a shareholder in the wholly-owning parent company because this company is to issue new shares to A on this oc-

casion (Art. 352, para. 2).

The New Act provides the following procedures because, in particular, the position of A would be considerably affected by share exchanges.

- Making of the share exchange contract (Art. 353, para. 1 & 2)
- Advance disclosure of the share exchange contract etc. (Art. 354)
- Approval of the share exchange contract by each company's shareholder's meetings (special resolution) (Art. 353, para. 1)
- Appraisal rights of dissenting shares (Art. 355)
- Summary procedure for a certain share exchange (Art. 358)

When a company which will become a wholly-owning parent company, carries out share exchange with a small company, such a share exchange doesn't greatly affect the position of shareholders in the wholly-owning parent company. So, in the case of a certain small share exchange, the New Act does not require a special resolution by the shareholder's meeting in the wholly-owning parent company.

- Post disclosure of the document about share exchange (Art. 360)
- Action for avoidance of share exchange (Art. 363)

2. Incorporation of a wholly-owning company by share transfer

A company, by doing share transfer, may incorporate a wholly-owning parent company (Art. 364, para. 1). Under share transfer, shares which a shareholder (B) in a company, which will become a wholly-owned company, owns are to be transferred to a newly incorporated wholly-owning parent company. And B will become a shareholder in the wholly-owning parent company because this company is to issue shares to B on this occasion (Art. 364, para. 2).

The New Act provides the procedures like the above share exchange procedures because share transfer as well as share exchange will affect considerably the position of B.

3. Enrichment of disclosure about a subsidiary company's businesses, etc.

The above A and B could originally participate in management of the company which would become a wholly-owned company through their votes in the shareholder's meeting. But, once the relationship of a wholly-owning parent company and a wholly-owned subsidiary company is established by share exchange, etc. A and B will not be able

to participate in management of the company directly. So, the New Act provides the following provisions for the purposes of protecting the interests of shareholders in the parent company.

- With the permission of the court, The shareholders in a parent company may require inspection of the minutes for a shareholder's meeting in a subsidiary company (Art. 244, para. 4), the minutes for its board meeting (Art. 260. 4, para. 4), its constitution and shareholder register (Art. 263, para. 4), its accounts (Art. 282, para. 3) and its account-books (Art. 293).
- For the purpose of increasing the effectiveness of an audit, a parent company's auditor may require its subsidiary company to report its operations to him and he may investigate the present state of its businesses and property(Art. 274. 3, para. 1).
- In a certain case, the shareholders in a parent company may require the court to appoint a inspector who is to inspect the present state of its businesses and property and, if necessary, he may inspect the present state of a subsidiary company's businesses and property (Art. 294).

4. Adoption of the principle of market value in respect of certain financial assets.

The New Act provides that a company may evaluate its financial claims, debentures and shares which have a market value at its value (Art. 285. 4, para. 3; Art. 285. 5, para. 2 & 3; Art. 285. 6, para. 2).

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