

tims in “hearing” the trial. Some people say that this type of victim support should have been extended further to the realization of the victim’s “right to attend the trial” which would allow him to attend the trial whenever he wished to do so. ② The new system of enrolling the agreement in criminal trial records (a system of criminal settlement) is thought to be somewhat alien in its character in relation to the original criminal procedure. It is contended, accordingly, that the courts should be very careful in applying those provisions.

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7. Commercial Law

An Amendment to the Commercial Law: Creating Laws for Corporate Separation and Revising the Laws for Stock Option etc.

Law No. 90, May 31, 2000 (Effective on April 1, 2001).

Background:

Today’s world economy is dramatically changing. The development of computer networks, information technology, and new types of transactions, including electronic commerce, are exerting a great influence on the economic activities of corporations, fostering the internationalization of transactions. Under these circumstances, corporations are required to enhance management efficiency and intercorporate competitiveness, so business leaders worldwide have been calling for the consolidation of rules not only governing these transactions but also governing corporate organization or restructuring.

The Japanese government has conducted a thorough review of its own legal framework for corporate organization in the last decade, and the Commercial Law has been amended more than once. For example, in 1997, the Commercial Law was amended to laws regarding mergers and acquisitions and, in 1999, laws were created concerning share

exchange and share transfer so as to establish smoothly and readily a holding company. The amendment to the Commercial Law, which created provisions for Corporate Separation, was carried out as a part of these amendments creating or revising provisions governing corporate organization or restructuring. Although western countries including U.S., U.K., Germany and France, have had a legal system for corporate separation, until now, we have not had any provision regarding corporate separation in Japanese Commercial Law. Under the New Commercial Law, corporations are able to set their departments or branches up in business smoothly and easily.

Main Provisions:

(1) Procedures for the corporate separation

Corporate separation is an action based on law regarding corporate organization by which a corporation may *inclusively* transfer any or all its business to another corporation. There are two patterns of corporate separation. One is “*Shinsetsu-Bunkatsu*”, which means a corporation may inclusively transfer any or all its business to a newly-established corporation (Art. 373). Another is “*Kyushu-Bunkatsu*”, which means a corporation may inclusively transfer any or all its business to an existing corporation (Art. 374.16). Corporate separation, whether a corporation carries out “*Shinsetsu-Bunkatsu*” or “*Kyushu-Bunkatsu*”, seriously affects the position of shareholders, creditors, and employees in the same way as other organic changes in a corporation (*e.g.*, merger, consolidation, and transfer of corporation’s business, etc.), so the New Commercial Law provides the following procedures in order to protect these concerned.

- Preparation of a corporate separation plan (when carrying out “*Shinsetsu-Bunkatsu*”, Art. 374, para. 1) or contract (when carrying out “*Kyushu-Bunkatsu*”, Art. 374.17, para. 1).
- Proceedings for the protection of Labors (Bylaw of the Act to Partially Amend the Commercial Law, Art. 5, Act for Succession to Labor Contracts in Corporate Separation)
- Advance disclosure of the corporate separation plan or contract etc. (Arts. 374.2 & 374.18).
- Approval of the corporate separation plan or contract by meetings

of shareholders (special resolution) (Art. 374, para. 1 & Art. 374.17, para. 1).

- Dissenting shareholder' right to appraisal and right to obtain payment for their shares (Art. 374.3, para. 1 & Art. 374.31, para. 5).
- Proceedings for the protection of creditors (Arts. 374.4 & 374.20).
- Public announcement of corporate separation (Art. 374.7, para. 1 & Art. 374.31, para. 3).
- Registration of corporate separation (Arts. 374.8 & 374.24)
- Post disclosure of corporate separation (Art. 374.11, para. 1 & Art. 374.31, para. 3)
- Action for claiming the voidance of corporate separation (Arts. 374.12 & 374.28).

(2) Simplified procedures for a certain corporate separation

The Amendment provides simplified procedures for the following types of corporate separation.

First, when a corporation that will carry out corporate separation will not dispose of assets in excess of one-twentieth of all its assets counted up on balance sheet to a newly-established corporation or existing corporation, the New Commercial Act does not require the approval of a shareholder's meetings (Art. 374.6 & 374.22) and grants dissenting shareholders appraisal rights and the right to obtain payment for their shares (Art. 374.6, para. 3 & 374.22, para. 3). This is because such a corporate separation does not seriously affect position of shareholders.

Second, in the case of "*Kyushu-Bunkatsu*", a corporation which will receive the disposed assets from the corporation that carries out the corporation separation (hereinafter "the succeeding corporation") basically is required to receive the approval of the corporate separation contract by meetings of shareholders (Art. 474.17, para. 1). However, if the shares issued to the shareholders of a corporation that will carry out corporate separation by the succeeding corporation will not exceed one-twentieth of the outstanding shares and the amount paid to the shareholders will not exceed one-fiftieth of the all its assets counted up on a balance sheet, the succeeding corporation is not necessary to get the required approval of shareholders' meetings (Art. 374.23). Because such a corporate separation does not seriously affect the position of the

shareholders of the succeeding corporation.

(3) Other revised provisions

Other than stated above, the Amendment introduces the following new provisions.

First, the provisions for stock options. Under the existing law, corporations had two methods to give stock options to directors or employees. One was the method by which the corporation acquires its own shares and transfers them to directors or employees, and another was the method by which the corporation granted pre-emptive right to directors or employees. But corporations have been prohibited to use these methods concomitantly. At a desire to use these methods concomitantly from the business community, the New Commercial Law now permits corporations to do so (Art. 210.2, para. 4 & Art. 280.19, para. 3).

Second, simplified procedures for certain business purchases are introduced. Under the New Commercial Law, when the consideration that a corporation pays for the business of other corporations does not exceed one-twentieth of all its assets, the corporation is not required to get the approval of shareholders' meetings (Art. 245.5, para. 1).

Third, the New Commercial Law prohibits corporations to afford extra favors to anyone on account of subsidiary corporations (Art. 294.2, para. 1). In recent years, several cases in which directors of a parent corporation make directors of subsidiary corporations afford extra favors to someone have appeared. The purpose of this provision is to prevent this kind of practice.

Editorial Note:

As stated above, the amendment concerning Corporate Separation is a part of amendments the reform of the laws governing corporate organization or restructuring. With this amendment being carried out, agendas set in "Problems concerning the Amendment to the Corporate Law", which was published by the Counselor's Office of the Civil Affairs Bureau of the Ministry of Justice in 1975, have been approximately completed. But there are a number of problems still existing in laws governing corporate organization or restructuring: *e.g.*, the protection of minority-shareholders; the disclosure of consolidated financial

statements; the dividend based on consolidated balance sheets, and so on. In Japan, these problems are to be resolved in later amendments.

Incidentally, on April 12, 2000, the Commercial Code Division of the Legislative Council of the Ministry of Justice undertook to consider amendments to the Commercial Law. And, on September 6, 2000, the Commercial Code Division confirmed that the key points of future amendments to Commercial Law will be assurance of the effectiveness of corporate governance, correspondence to an information-intensive society, improvement of methods of corporate finance, and correspondence to an internationalization of corporate activities. Based on these considerations, examination of a comprehensive reform of the Commercial Law is continued.

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8. International Law

Treaties and Other International Agreements

Multilateral:

Date coming into Force with Respect to Japan (Date of Adoption)	Treaties and Other International Agreements
Feb. 3, 2000 (Nov. 11, 1988)	Protocol of 1988 Relating to the International Convention on Load Lines, 1966
Feb. 3, 2000 (Nov. 11, 1988)	Protocol of 1988 Relating to the International Convention for the Safety of Life at Sea, 1974
Jun. 1, 2000 (Dec. 20, 1999)	Schedules of Tariff Concessions to the General Agreement on Tariffs and Trade 1994: Certification of Modifications and Rectifications, 20 De-