

law does not interfere with family business (affairs) ". However, this law expects the administration, the police, and the courts to perform a certain role to prevent spousal violence. The personnel of the Spousal Violence Counseling and Support Center and the police officer who directly has contact with victims of spousal violence should recognize that DV is a serious problem, concerning some of the most important human rights.

In coping with the problem of DV, the law chooses to focus on the protection of victims. However, in order for the protection of victims to be long-lasting, effective rehabilitation of persons who have committed violence should also be created. As the law does not provide measures to solve this problem, the problems of measures to rehabilitate these persons and how to incorporate such measures in the law need to be solved in the near future.

The causes of DV going undetected and becoming increasingly serious are related to the structure of Japanese society. Women in Japan are, still today, prevented from becoming self-sufficient, owing to specific social conditions. These include differentials in employment (or pay), the distribution of the roles to be performed by men and women, and thus, the difficulties in securing both a job and a household. The problem should be solved essentially by rethinking the contemporary meaning of (and changing) the system of marriage — the system of notifying the state of a specific relationship between a man and a woman to receive a certain guarantee from the state (or society) —. However, such a radical reform is not yet a practical solution. What is more practical, at least at the moment, is to ask for the construction of a system of social security, where individuals could enjoy diverse lifestyles of their own choice.

## **6. Commercial Law**

### **A Partial Amendment to the Commercial Law**

Law No. 79, June 29, 2001 (Effective on October 1, 2001).

**Background:**

The amendment aims to create a wide-ranging review of the stock system and to revitalize the market. Precisely, it includes deregulation of the acquisition and holding of treasury stock, a review of the restrictions on the size of units of stock, and a review of the system for a legal reserve.

By virtue of the enhancement of the importance of direct financing (as compared to indirect financing) as method of finance, the increase in the capital demand of venture and emerging companies, and the development of an OTC market for capital stock or other securities (*i.e.*, Mothers and JASDAQ etc.), the Japanese corporate legal system relating to shares has been expected to receive some amendments. Since 2000, the Corporate Sub-Council in the Legislative Council of the Ministry of Justice (the “Corporate Sub-Council”) had reviewed corporate law comprehensively and also discussed improving the methods through which Japanese corporations may obtain financing as a part of this comprehensive review. On the other hand, ruling parties, at the beginning of 2001, proposed an amendment to the Commercial Law by means of which restrictions on treasury stock and the size of units of stock could be deregulated. Taking up this proposal, the Counselor’s Office of the Civil Affairs Bureau of the Ministry of Justice in effect prepared an amendment draft. After preparing the amendment draft, the members of the Diet submitted the draft to the 151st annual session of the Diet, and the Diet passed the draft.

**Main Provisions:****(1) Deregulation of the acquisition and holding of treasury stock**

The former Commercial Law had provided that Japanese corporations may acquire shares of its issued and outstanding stock only when a corporation cancelled stock or afforded stock options to directors or employees. Under the revised Commercial Code, such provisions has been repealed and Japanese corporations are permitted in principle to acquire their own stocks whatever the purpose of the acquisition is, as long as the corporation complies with following procedures and limitations (Art. 210, para. 1).

- When a corporation intends to acquire outstanding stocks, the corporation should adopt in advance a resolution at an annual meeting of the shareholders specifying the kinds, the total number, and the total purchase price of the stock proposed to be acquired during the one-year period ending with the next annual shareholders' meeting (Art. 210, para. 1). The corporation may acquire outstanding stocks to the extent that the resolution at the annual meeting of the shareholders authorizes;
- When a corporation intends to acquire outstanding stocks not by transactions in the stock-market or TOB but by face-to-face transactions between the corporation and a particular person, the corporations should adopt a special resolution at an annual meeting of the shareholders in order to ensure the principle of equal treatment of shareholders (Art. 210, para. 1, no. 3 & para. 5 & para. 8); and
- The total purchase price which is adopted in a resolution at an annual meeting of the shareholders should not exceed the sum of the amount of distributable profit and the amount of the capital reduction and capital reserve reduction which is approved in the resolution adopted at the previous shareholders' meeting authorizing the acquisition of stock (Art. 210, paras. 3 & 4).

When a corporation acquires outstanding stocks, the corporation need not to comply with the above-mentioned procedures, if there are provisions that otherwise permit the corporation to acquire them (*i.e.*, when a corporation caters to exercising appraisal rights from shareholders; when a corporation, which requires the approvals of the board of directors for the transfer of its stocks, becomes an alienee in accordance with the Commercial Law Art. 204, para. 1). Before the Commercial Law revised, under the Law for Special Exceptions to the Commercial Code concerning Cancellation of Shares ("the Law for Special Exceptions to Cancellation of Shares"), a publicly-held corporation was permitted to cancel its own shares by use of its capital reserve when a board of directors approved the cancellation based on the authorization by its articles of incorporations (the Law for Special Exceptions to Cancellation of Shares, Art. 3, para. 1). But, under the revised Commercial Law, a publicly-held corporation also should adopt

a resolution at an annual meeting of the shareholders for acquiring its own outstanding stock.

Related to the holding of treasury stocks, the Former Commercial Law provided that a corporation should dispose of treasury stocks during a reasonable term, even if the corporation inevitably acquired its own stocks (*i.e.*, when, in a merger, a surviving corporation disposed of its own stocks from a defunct corporation). In contrast, under the revised Commercial Law, a corporation may hold treasury stocks that the corporation acquires in accordance with the above-mentioned procedures. However, regarding its accounting treatment, while the Former Commercial Law required a corporation to account for treasury stocks on a balance sheet as assets, the revised Commercial Law requires a corporation to account for treasury stocks on the balance sheet as deductible capital (Regulation for financial statements, Art. 34, para. 4).

With regard to the cancellation or disposition of treasury stock, under the revised Commercial Law, a corporation is permitted to do that, by the adoption of a board resolution alone. But regulations for the new issuance of stocks are also applied to the disposition of treasury stock, as its substance is similar to that of a new issuance of stocks (Art. 211, para. 3).

In addition to the revision of the Commercial Law deregulating restrictions on the acquisition and holding of treasury stocks as just described, the Securities and Exchange Law was also amended on the point of regulations for anti-insider-trading, anti-manipulation, and disclosure in the acquisition and holding of treasury stocks (the Securities and Exchange Law, Arts. 24.6, 162.2, & 166.2 etc.).

## (2) Review of the restrictions on the size of units of stock

In this amendment, the restrictions on the size of units of stock were reviewed as follows. It aims to expand the discretion of a corporation in determining the size of units of stock.

- Abolishment of the restriction that shares of capital stock have a minimum issue price of 50,000 yen per stock at the time of incorporation;
- Abolishment of the restriction that shares of capital stock have a

minimum value of net assets of 50,000 yen per stock at the time of split of shares (Art. 218);

- Abolishment of the lot stock (*tan'i-kabu*) system to ensure that each unit of tradable shares in an issuing corporate stock would have a per share value of at least 50,000 yen;
- Establishment of the Voting Unit (*tangen-kabu*) system that authorize a corporation to provide in its articles of incorporation that a certain number of its shares constitute one unit, each of which represents one voting right (Art. 221 & Art. 241, para. 1); and
- Abolishment of par-value stock

(3) Review of the system for legal reserve

Under the revised Commercial Law, the system for legal reserve is reviewed as follows.

- While under the Former Commercial Law legal reserve could be used only to compensate losses of capital or to insert into capital, and only a publicly-held corporation could use it for the cancellation of shares under the Law for Special Exceptions to Cancellation of Shares, under the revised Commercial Law a corporation may reduce the amount of legal reserve through a normal resolution at a shareholders' meeting and proceedings for the protection of creditors, to the extent that the amount of legal reserve exceeds more than one-quarter (1/4) of the amount of capital within the total amount of capital reserve and profit reserve. And the restriction on the purpose of the reduction of legal reserve was abolished (Art. 289).

- Though, under the Former Commercial Law, when a corporation intended to reduce the amount of legal reserve, the corporation needed to reduce the amount of profit reserve in preference to the capital reserve (the Former Commercial Law, Art. 289, para. 2), this restriction on the rank order in the reduction of legal reserve was abolished.

- While, under the Former Commercial Law, a corporation was required to reserve a reduction surplus as capital reserve, the revised Commercial Law does not impose such an obligation on a corporation.

**Editorial Note:**

The principal aim of these amendments is the deregulation of the acquisition and holding of treasury stocks. Some business leaders had demanded this over the years. Especially, in the past few years, through a series of enactments of a legal system which enables a corporation to restructure its organization flexibly (*i.e.*, a legal system for merger or demerger (*Kaisha-Bunkatsu*)), it had been strongly required to enable the corporation restructuring its organization to transfer its own stocks without a new issuance of stocks, to ease the burden of the dividend involving a new issuance of stocks, and to prevent the reduction of the existing shareholders' ownership. These amendments can meet these requirements. At the same time, these amendments have the aspect that they had been required to reflect the slump in the economy and the bumping of stock prices, which had progressed since the end of 2000. If such an aspect was excessively emphasized, these amendments could lead to allowing a corporation to manipulate its own stocks and to permitting interested persons (*i.e.*, its directors and employees etc.) to carry out insider trading. Therefore, it will be necessary to discuss further relevant regulations and provisions in the Commercial Law and the Securities and Exchange Law for the future.

For the review of the restrictions on the size of units of stock, the abolishment of the lot stock (*tan'i-kabu*) system, and the establishment of the Voting Unit (*tangen-kabu*) system, the purpose was mainly to activate the securities markets as well as to encourage investment by individual investors. After enacting the amendment, in fact, many corporations have decided to reduce the units of tradable shares. However, while encouraging investment by individual investors, it is thought that it is necessary to improve further the environment for individual investors to invest safely (*i.e.*, further improvement of the system for accounting and disclosure etc.).

Some critics who discuss the deregulation of the use of legal reserve have argued that the restriction on the use of legal reserve under the former Commercial Law made it possible for Japanese to enhance their financial strength. In the future, we may have to discuss the meaning of the legal reserve system and the possibility of further

amendments of the Commercial Code.

At any rate, as there are so many contentious issues in relation to the meaning and purpose of the above-mentioned amendments, it will be necessary to develop discussion and to pay attention to the operation of this amendment.

### **A Partial Amendment to the Commercial Law**

Law No. 128, November 28, 2001 (Effective on April 1, 2002).

#### **Background:**

As already mentioned, the Corporate Sub-Council has made an effort to review Japanese Corporate Law since 2000. This effort has been made from the following aspects; (i) ensuring efficient corporate governance; (ii) accommodating an advanced information-sharing society; (iii) improving the methods through which Japanese corporations may obtain financing; and (iv) permitting greater internationalization of corporate activities. Taking account of such reviews, in the April of 2001, the Counselor's Office of the Civil Affairs Bureau of the Ministry of Justice published "The Preliminary draft of a Partial Amendment to the Commercial Law" ("the Preliminary draft") and asked for various quarters' opinions. Though the practical amendments involved in the Preliminary draft covered a lot of ground, it was necessary to implement it as early as possible to address the goals of (ii) accommodating an advanced information-sharing society and (iii) improving the methods through which Japanese corporations may obtain financing. So these amendments were separate from other amendments, submitted to the 153rd extraordinary session of the Diet in the autumn of 2001, and enacted in November 2001.

By the way, when draft of these amendments was prepared, present status of legal system of foreign countries was taken into account. So these amendments have also reflected the goal of (iv) permitting greater internationalization of corporate activities.

#### **Main Provisions:**

The revised Commercial Law amended provisions relating to the stock system and the computerization of corporate documents, and the

disclosure of financial statements.

(1) Deregulation on the new issuance of shares

Under the revised Commercial Law, restrictions on the new issuance of shares have been amended to enable smooth financing by corporations as follows.

- For closed corporations (corporations requiring, in their articles of incorporation, board approval for transfers of shares), the minimum requirements for the number of shares issued at the time of incorporation (The number of shares issued at the time of their incorporation should be at least one-fourth (1/4) of the number of shares authorizing the board to issue) and maximum requirement for the number of shares authorizing the board to issue (the number of shares authorizing the board to issue shouldn't be in excess of 400% of the outstanding shares) were abolished (Art. 166, para. 4 & Art. 347). The reason is that, in relation to the closed corporations, there are provisions that afford a preemptive right to all shareholders and require a special resolution at a shareholders' meeting when the closed corporations issue shares to the person other than shareholders.

- The effective period for a shareholders' resolution authorizing the issuance of shares is extended from 6 months to one year (Art. 280.2, para. 4).

- When the issuance of shares is fully underwritten by a broker on the basis of an agreement with the issuing corporation, the provision that obligates the issuing corporation to prepare certificates of application for purchase (*kabushiki-moshikomisho*) is not applied (Art. 280.6, para. 2).

(2) Increase in the variety of stock

Under the Former Commercial Law, a corporation was permitted to issue only preferred stocks, common stocks, and deferred stocks relating to the dividend or the distribution of residual property, or redeemable stocks that could be cancelled by the use of profit (the Former Commercial Law, Art. 222, para. 1). However, under the revised Commercial Law, a corporation may issue stocks with limited voting rights in addition to such stocks, unless the number of such stocks



exceeds more than one-half (1/2) of the total issued stocks. Consequently, a corporation is able (i) to issue a certain class stock without voting rights that is common or deferred in relation to the dividend, (ii) to adopt provisions in articles of incorporation relating to the restoration of voting right or the conditions that could restore voting right, and (iii) to issue stock with partly limited voting rights in addition to traditional stock without voting rights. In addition, for the purpose of protecting the interests of shareholders holding a certain class of stock, it is authorized for a corporation to make provision in its articles of incorporation to require it to adopt an ordinary resolution of a certain class of shareholders for a resolution at a board or a shareholders' meeting (Art. 222, para. 7).

Though, under the Former Commercial Law, a corporation could issue the convertible stock that could be converted into another type of stock only at the discretion of the holder, under the revised Commercial Act, a corporation has been in addition permitted to issue mandatory convertible stock, which may be converted into another type of stock at the sole discretion of the issuing corporation rather than the holders (Art. 222.8). And the revised Commercial Code renames the traditional convertible stock as "stock with conversion rights" in order to distinguish it from the newly introduced mandatory convertible stock (Arts. 222.2–222.7).

### (3) Establishment of the System for Stock Purchase Warrants

While the concept of "stock subscription warrant" under the Former Commercial Law had the following meaning: (i) the warrant-holders had the right to subscript newly-issued stocks of a corporation at a new issuance of stocks; and (ii) the warrant-holders had the right to acquire newly-issued stocks or its treasury stocks irrespective of a new issuance of stocks, the revised Commercial Law has distinguished the meaning of (ii) from the concept of "warrant" and has redefined it as a "Stock Purchase Warrant" which involves a right against the issuing corporation to acquire its newly-issued stocks or its treasury stocks at a fixed price (Art. 280.19). Though, under the Former Commercial Law, the Stock Subscription Warrant in the meaning of (ii) had been issued as a stock option afforded to directors/employees or as a

bond with warrant in set with a corporate bond, the revised Commercial Law has allowed a corporation to issue the Stock Purchase Warrants not only in conjunction with other securities (*e.g.*, bonds with warrants) but also as separate and independent securities (Art. 280.20). However, if a corporation issued the Stock Purchase Warrants to a person other than existing shareholders at favorable values, it would be required to adopt a special resolution at the shareholders' meeting according to restrictions on the new issuance of stock (Art. 280.22).

#### (4) Computerization of Related Documents and Disclosure of Financial Statements

In view of the emergence of an advanced information-sharing society, the revised Commercial Act has permitted a corporation as follows;

- to prepare corporate documents (*i.e.*, an accounting book, articles of incorporation, list of shareholders, and financial statements etc.) in the form of electronic files;
- to meet its mandatory disclosure requirement for its financial statements by making the full text of them available in an electronic format;
- to make notice or demand or other like communications between a corporation and shareholders / certain other persons through the use of electronic devices and formats.; and
- to make its shareholders able to exercise their voting rights through the use of electronic devices upon an authorization to do so by the board.

#### **Editorial Note:**

Under the revised Commercial Law, which amends provisions relating to the stock system, a corporation, particularly a venture or an emerging corporation, which often cannot secure financing from banks, has been ensured smooth financing by corporations. On the other hand, if a corporation, especially a publicly-held corporation, issued a variety of stocks, the interests of minority shareholders who can scarcely have occasion to negotiate with such a corporation or to gain a great deal of information from such a corporation could suffer, because these

amendments are applied to not only a venture or an emerging corporation but all corporations generally. While it can not be thought that a publicly-held corporation would issue a variety of stocks other than a preferred stock, if a publicly-held corporation were to issue such stocks in the future, it would be necessary to prepare related regulations with a focus on disclosure (*i.e.*, as a corporation issue tracking stocks in conjunction with the performance of its subsidiary corporation, or regulations for the disclosure of information related to the subsidiary corporation).

For computerization of related documents and disclosure of financial statements, there are few examples where corporations send notices for convocation to the shareholders' meeting in 2002. However, many problems might occur with the enforcement of this amendment involving the operation of computer systems (*i.e.*, the situation where shareholders are incapable to connect to the server of the corporation, or anyone tampering with data on the server). In the present situation, because it is difficult to say that the existing legal system addresses such problems, it is thought necessary to consider countermeasures for such problems in the future.

## **7. Labor Law**

### **Law Concerning the Succession of Labour Contracts, etc. upon the Divisive Reorganization of a Company**

Law No. 103, May 31, 2000 (Effective on April 1, 2001).

#### **Background:**

In order to support business restructuring efforts, a new legal measure on corporate breakups, which are called the "division of a corporation", has been enacted in April 2001, as a result of the amendment to the Commercial Code. Formerly, corporate breakups have been carried out via mergers or the transfer of business undertakings. However, these approaches have their shortcomings. With mergers, all the rights