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

and duties are comprehensively taken over by the new firm, whereas the transfer of business undertakings requires individual agreements from creditors, which is a cumbersome procedure. The new legal measure is aimed at making business restructuring including corporate breakups simpler. Since the division of a corporation may affect the workers of such a corporation, the "Law Concerning the Succession of Labour Contracts, etc. upon the Divisive Reorganization of a Company" (hereinafter the "Labor Contract Succession Law") was enacted to protect workers' interests.

Main Provisions:

(1) Categorization of Workers

Art. 2. para. 1. No. 1 and 2 of the Labor Contract Succession Law categorizes workers to be engaged in the business to be divided into the following two groups, i.e., a worker mainly engaged in the business and a worker only ancillarily engaged in the business.

(2) Succession of Individual Labor Contracts

A labor contract between a divisively reorganized company and a worker mainly engaged in the business to be divided is succeeded by the newly formed company, etc. Such a worker does not have the right to exclude him-/herself from the transfer (art. 3).

In case a worker mainly engaged in the business to be divided is excluded under the division plan or contract from the subject of transfer, he/she has the right to file an objection to such an exclusion (art. 4. para. 1). When a worker mainly engaged in the business files such an objection, his/her labor contract with the divisively reorganized company is succeeded by the newly formed company, etc. (art. 4. para. 3).

As regards a worker only ancillarily engaged in the business to be divided and yet included under the division plan or contract in the subject of transfer, he/she has the right to file an objection to such an inclusion (art. 5. para. 1). If such a worker files such an objection in a timely manner, his/her labor contract is automatically and mandatorily excluded from the transfer and he/she continues to belong to the divisively reorganized company (art. 5. para. 4).

(3) Advance Notice to Workers

The law requires the divisively reorganized company to provide notice to its workers who are mainly engaged in the business to be divided and who are only ancillarily engaged in the business but are included under the division plan or contract in the subject of transfer regarding their treatment at least two weeks before the shareholders' meeting that determines the adoption of the division plan or contract (art. 2. para. 1).

(4) Succession of Collective Bargaining Agreements

With respect to a collective bargaining agreement between a divisively reorganized company and a trade union, the law stipulates that when the labor contracts of the members of a trade union are succeeded by the newly formed company, it is deemed that a collective agreement with the same contents has been concluded between the divisively reorganized company and the trade union (art. 6. para. 3).

(5) Partial Transfer of Collective Bargaining Agreements

A divisively reorganized company may state in the division plan or agreement the portion of the existing collective bargaining agreement to which the formed company succeeds (art. 6. para. 1).

(6) Advance Notice to Trade Unions

The law requires the divisively reorganized company to notify the trade unions concerned at least two weeks before the shareholders' meeting that determines the division plan or contracts regarding the treatment of collective agreements (art. 2. para. 2).

(7) Understanding and Cooperation of Workers

A divisively reorganized company should endeavor to obtain the understanding and cooperation of its workers (art. 7).

(8) Guidelines

The Minister of Health, Labor and Welfare may prescribe guidelines necessary to encourage the appropriate implementation of measures that the divisively reorganized company and the formed company should take regarding the succession of labor contracts and collective agreements of the divisively reorganized company (art. 8).

Editorial Note:

In cases under the amended Commercial Code alone, may cause some serious problems for the workers concerned the division of a cor-

poration. For example, since the divisively reorganized company can freely determine who will transferred to the formed company, a worker who has been mainly engaged in the business to be divided may not be able to move to the formed company even if he/she wishes to do so. Meanwhile, a worker who has been only ancillarily engaged in the business may be forced to move despite of his/her wish to stay in the existing company. Therefore, this law was enacted together with the amendment of the Civil Code in order to avoid such problems.

Arts. 3 and 4 of this law prescribe the rules for the succession of the labor contract of a worker mainly engaged in the business to be divided. Since it may be very disadvantageous for such a worker to be excluded from the transfer, the law grants a right to file objection.

On the other hand, a worker only ancillarily engaged in the business to be divided may face a serious problem if he/she is forced to be transferred despite of his/her wish to stay. Thus, art. 5 of this law grants such a worker the right to file objection.

It should, however, be noted that a criteria to determine whether a worker is "mainly" or "only ancillarily" engaged in the business is not addressed by the law itself. This is provided by guidelines, which are prescribed in art. 8, promulgated by the Ministry of Labor in December 2000 in its announcement No. 127. For example, the criterion at the time of preparation of a plan to divide is as follows:

(A) A worker who is engaged solely in the business to be divided shall come under the category of worker mainly engaged.

(B) In the case that a worker is also engaged in other business, a comprehensive judgment, which includes consideration of matters such as time spent in the respective businesses, the roles of the worker at each business, etc., must be made.

(C) A worker who is engaged in a back-office function and is engaged solely on behalf of the business to be divided shall come under the category of worker mainly engaged.

In the case where a worker also is engaged on behalf of other businesses, judgment should be made in accordance with (B) above.

In a case where a worker is engaged in a back-office function without clear distinction as to which business he/she is engaged on behalf of, then provided there are no special circumstances, the worker

shall come under the category of mainly engaged only in the case where the formed company succeeds to the labor contracts that covers the majority of the workers employed by the divisively reorganized company other than the workers with respect to whom the said judgment cannot be made.

A number of problems with respect to collective labor relations may arise if we have no legislation other than the amended Commercial Code. If the division plan or contract provides that the labor contracts of union members shall be succeeded but their collective agreements shall not, the union members cannot benefit from protection under the collective agreement. Thus, art. 6. para. 3 of the law prescribes the "deemed collective bargaining agreement" with the divisively reorganized company.

In line with art. 8., the Ministry of Labor promulgated guidelines in its announcement No. 127. These guidelines contain many items such as the working conditions that must be maintained after the transfer.

In order to survive amidst keen global competition and also with the economic downturn continuing, many Japanese companies are realigning their operations. It is reported that a large number of major corporations are considering the utilization of the scheme of the division of the corporation.