

7. Commercial Law

Amendments to the Commercial Law: Creating laws for the system which makes it possible not to issue physical share certificates

Law No.88, June 9, 2004 (Effective on October 1, 2004).

Background:

The Legislative Council prepared an “Outline of the introducing of a system which makes it possible not to issue physical share certificates” on September 10, 2003, and submitted the draft to the Ministry of Justice (hereinafter “MOJ”). Regarding the system which makes it possible not to issue physical share certificates, “A draft of an amendment to the law related to the transfer of bonds etc. in order to rationalize the settlement of transactions of shares etc.” (hereinafter “the transfer of bonds, etc. law”) was settled by the Cabinet council and proposed in the 159th ordinary session of the Diet. This aims to reduce the cost of printing and issuing share certificates, and aims to prevent the risk of cases of robbery or loss, and was enacted on June 9, 2004, and enforced on October 1, 2004.

Hitherto, the law provided that a share must be based on a share certificate for better circulation; joint stock company must issue the certificates soon after its founding or the day of payment to the new shares; and shareholders who want to transfer the shares have to deliver the certificates. Yet, actually, the need for such certificates had been low in both publicly held companies and the other companies. Therefore the introduction of a system which makes it possible not to issue physical share certificates had been requested.

a) Publicly held companies:

It is very expensive for a publicly held company to issue the share certificates. And it may be an obstacle in dealing with shares safely in large quantities in the share market.

b) Other companies:

Because there are few transfers of shares, there is little need to issue certificates, and many companies do not issue them.

Main Provisions:

The transfer of bonds, etc. law: Introduction of a system which makes it possible not to issue physical share certificates.

Hitherto, Commercial Code has requested that all joint stock companies issue physical share certificates for all shares and it has been necessary to deliver the certificate in cases of transfer. This reform makes it possible not to issue physical share certificates in order to reduce the costs and risks related to their issue, circulation and management.

Any joint stock company can be a company which does not issue physical share certificates by providing so in its articles of incorporation (a company which abolishes the share certificates). In that case, those who want to transfer the company's shares can do it just by expressing such an intention. Publicly held companies shall be regarded as providing for this in the articles of incorporation when the transfer of bonds, etc. law changes in about 5 years time.

The company which restricts the transfer of its shares will not have to issue the physical share certificates unless its shareholders request them, even if it does not change its articles of incorporation. However, this does not mean that the shareholders who want to transfer the shares do not need the share certificates: it is necessary to deliver the certificates in order to transfer the shares.

Editorial Note:

This reform aims to reduce the cost of printing and issuing share certificates, and to prevent the risk of cases of robbery or loss. It is expected that many companies will become companies which abolish share certificates.

On March 18, 2005, a draft of the Corporate Law was settled by the Cabinet council, and it was proposed in the ordinary session of the Diet on March 22, 2005. This draft is the new Code which changes systematically and dramatically the systems related to companies. The main reforms are the followings: (1) rewriting to the colloquial style language, (2) abolition of *Yugen-Kaisha* (absorbed into joint-stock companies), (3) more flexibility to design of organizations in a company, (4) abolition of minimum capital, (5) enhancement of self-governing in

the articles of incorporation. Though three directors and one auditor are needed for a joint stock company in current law, only one director is needed in the draft. The new corporate law will be enacted on April 1, 2006.

8. Labor Law

Labor Tribunal Law

Law No.45, April 28, 2004 (Effective on April 1, 2006).

Background:

In Japan, solutions of labor relation disputes have been mainly treated as civil affairs disputes in court. The solution procedures of civil affairs disputes in court are classified into the lawsuit procedures for adjudication and the mediation procedures for reconciliation. However, in April 2004, the labor tribunal law was enacted as a part of the judiciary system reform and labor tribunal procedures in court that rule the adjustment (mediation) and the decision (judgment) for labor relation disputes was institutionalized.

Although administrative services like consultations, advice and mediation, mainly provided by the administrative divisions of the Bureau of Labor of the Ministry of Health, Labor and Welfare, have been well sustained for the individual labor disputes that have remarkably increased since the 1990's, the reform of the solution system for individual labor relation disputes in the judiciary system had been left unserved as a future task to be challenged. Under these circumstances, the Judicial Review Council was established in July 1999, and the ideal form of a judiciary system concerning labor relation disputes was set as an issue to be studied.

At the council, the current state of the judiciary system of Japan, where labor relation lawsuits are extremely few, that has confronted an increasing tendency for individual labor relation disputes in recent years, was discussed. Also, the necessity for the creation of a suitable new