

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

mechanism for the solution of labor relation disputes was reviewed.

To solve labor relation disputes, the Judicial Review Council made the final report that presented the challenges to be reformed over the whole judiciary system in June 2001, and admitted that labor relation disputes include a necessity to understand the system and the habitual practices of the employment relation and labor relations, etc. and a necessity to treat these disputes simply and promptly. The report also recommended the discussion of a new labor mediation system in which specialists who had expertise on employment relations and labor relations participated should be introduced, a new trial system in which such specialists are involved should be improved, and peculiar lawsuit procedures related to labor disputes should be organized.

Based on these recommendations made by the report, the Labor Study Committee was set up as a study group under the Judiciary System Reform Promotion Division, and the above-mentioned issues were reviewed. The main issues to be reviewed were concerning the introduction of the labor tribunal system. There were affirmative opinions to support the necessity that both labor and employers should participate in labor trials to improve the specialty concerning the labor relation disputes before courts. On the other hand, there were negative opinions concerning such a system, with the opinions that the mutual trust between labor and employers in Japan might be damaged by bringing labor relation disputes into trials.

Through these discussions, the recognition of an increasing tendency for individual labor relation disputes to be observed through the mid or long-term, which were based on the change in business environments, corporate organizations, and labor markets, etc, was shared. Then the foundation of a unique judicial system suitable for individual labor relation disputes in Japan was set up, and it was agreed that a "Labor Tribunal System" be set up. The conference body consists of judges, labor and employers, and holds trials for individual labor relation disputes for up to three sessions aiming at providing solutions by mediation, and if the disputes are still not solved, the conference judges. The labor tribunal procedure progresses regardless of what intention the parties concerned have. However, the parties concerned have rights to complain within two weeks when any of the parties raises an objection against the judgment,

and in such a case, the judgment loses validity. And, in this case, it is regarded that the civil suit is instituted in stead as if it were pleaded on the day that the Tribunal procedure was pleaded.

The bill was made at the Judiciary System Reform Promotion Division based on the mutual agreement of the Labor Study Committee. And the Bill of the Labor Tribunal Law was presented to the 159th session of the Diet in March 2004. This bill was passed on April 28, 2004 afterwards. The Labor Tribunal Law is expected to be enforced on April 1, 2006.

Main Provisions:

Disputes in labor relations are divided into individual labor disputes that are between individual workers and enterprises and group labor disputes that are between labor unions and enterprises. The Labor Tribunal Law limits its scope to the former, and founds the procedure of tribunals where a mediation procedure is included (Art. 1).

The features of the labor tribunal system under the Law are as follows.

First, in district courts, a conference body (the labor tribunal committee), consists of one judge and two representatives (one from workers and the other from employers) who have great knowledge and experience of labor relations, makes progress with procedures to solve a dispute (Arts. 7–9). This is because individual labor related disputes are to be dealt with based on the system and the habitual practices of the employment relation and labor relations, although such disputes are a part of civil affairs. The Law aims to solve disputes more appropriately with the special knowledge and the experiences that both workers and employers have (Art. 1).

Secondly, it tries to solve disputes promptly and intensively by providing the rule that a trial must be concluded within three sessions as a rule because individual labor disputes greatly influence the workers' life (Art. 15). It is a key feature of the labor tribunal procedure that disputes are handled within three sessions promptly. However, this will not be achieved when there is no cooperation among the parties concerned. So, the obligation is on the parties concerned to make an effort to perform the procedures promptly.

Thirdly, mediations are included in the procedures that should be tried first when there is an expectation that the dispute can be solved by mediations (Art. 1), because reconciliation with concession made by the parties concerned would solve the disputes more promptly and substantially. A proposal for mediation is shown in the first stage of the tribunal based on the content of the trial in line with the issues raised by the disputes. The content of the proposed plan aims at the settlement of the dispute based on the rights of the parties concerned recognized in the trial. Consent to a solution plan by mediation has the same effects as the compromises which are made in and authorized by the court.

Fourthly, when disputes cannot be solved by mediation the judgments are to be made to solve disputes in line with the current circumstances of each case based on the rights of the parties concerned (Art. 1). The tribunal would confirm the related rights of the parties concerned, and order the payment of money etc. Moreover, other matters considered to be appropriate can be provided for the settlement of disputes (Art. 20).

Fifthly, the law stipulates cooperation with lawsuit procedures. The labor tribunal loses its validity when there is a challenge from the parties concerned (Art. 21). Once the challenge is raised, the appeal was considered to be instituted on the day when the start of the procedure of the labor tribunal was to be stated (Art. 22). In a word, the labor tribunal system doesn't become the system of dispute solution with any enforcement power. However, the system tries to realize ultimate solutions of disputes by automatically shifting to the lawsuit procedure when the judgment loses its validity.

Editorial Note:

(1) Cases to be targeted for tribunals:

The labor tribunal procedures targets "individual disputes in labor relations," that is, "disputes of civil affairs caused between individual employees and employers, for example, the existence of a labor contract" (Art. 1). For example, disputes over rights between individual employees and employers become the objects, like dismissals, job changes, pay claims, retirement allowance claims, disciplinary actions and the working condition changes, etc.

Because the Labor Relations Commission as a special organization

has jurisdiction, disputes on collective labor relations between labor unions and employers are excluded from the objects of the labor tribunal procedure, thus, only disputes between individual employees and employers that have been increasing in recent years are targeted in the labor tribunal procedures. However, when disputes occur over the rights of individual employees concerning discrimination, changes of working conditions and layoffs, it becomes the object of the labor tribunal procedure even if it is a group dispute.

(2) Statement:

The parties concerned can state the labor tribunal procedure to the court in order to solve a dispute of civil affairs related to him or her (Art. 5). It is necessary to describe the outline and the reason for the statement in the statement book (Art. 5), and it is necessary for it to contain specific facts in order to specify the statement, and to make the statement reasonable (Art. 5). In addition, it is necessary to describe the issues that are expected to be raised, the important facts related to the issues, the evidence for each expected issue, the outline of details prior to stating, for example, negotiations among persons concerned (Art. 5). It is necessary to have a fruitful first trial to end the whole session within three meetings. Therefore, it is necessary to write out concretely the reasons for the statement, issues, and evidence of each issue, and the negotiation details between parties concerned etc. in the statement book and to append copies of documentary evidence to the statement book.

(3) Intensive hearings and closing within three sessions:

The labor tribunal committee should hear the parties concerned promptly and arrange issues and evidence (Art. 15). Therefore, the labor tribunal committee calls together the parties concerned and hears them. "In the labor tribunal procedure, it is necessary to conclude the trial within three sessions, except when there are special circumstances (Art. 15)." To have the labor tribunal procedure be prompt, the labor tribunal law dares to set the frame of three sessions.

(4) Tribunal:

When disputes cannot be solved by mediation the judgements are to be made to solve disputes in line with the current circumstances of each case based on the rights of the parties concerned (Art. 1).

The tribunal would confirm the related rights of the parties con-

cerned, and order the payment of money etc. Moreover, other matters considered to be appropriate can be provided for the settlement of disputes (Art. 20).

In the tribunal, it is necessary to draft the judgment in writing that describes the text and summary of the reason (Art. 20). It is necessary to deliver the judgment in writing to the parties concerned. When the judgment in writing is delivered to the parties concerned, the labor tribunals will be effected (Art. 20). The parties concerned can complain to the labor tribunal within two weeks (Art. 21). Because the duty of the labor tribunal committee has ended by the judgment, this challenge should be stated to the court.

Effects of the labor tribunal would be lost when there is a legal challenge and it is shifted to the lawsuit procedure (Art. 21).

9. International Law and Organizations

Multilateral:

Date coming into Force with Respect to Japan	Date of Adoption	Treaties and Other International Agreements
Feb. 19, 2004	Jan. 29, 2000	Cartagena Protocol on Biosafety to the Convention on Biological Diversity
May 17, 2004	May 22, 2001	Stockholm Convention on Persistent Organic Pollutants
May 18, 2004	Dec. 21, 2001	Amendment to Article I of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects