

criminal. On the other hand, the legal stability brought through time should also be respected. Usually, this legal stability has three aspects in the limitation of prosecution. First, evidence can be scattered and lost through time. Secondly, over time, the emotional request for a harsh penalty tends to decrease in society, including among crime victims. Thirdly, when a certain period of time has elapsed without punishing a person who committed a crime, his/her current state of affairs ought to be respected.

The demand for the legal stability applies also in cases of the crimes for which the limitation of prosecution was abolished in the 2010 Act. However, ultimately, taking all these factors into consideration, the government, the only actor in the criminal policy, has to decide whether we should attach greater importance to the legal stability and prevent evenly public prosecutors from indicting criminals by the limitation, or whether we should emphasize the necessity for punishment and enable public prosecutors to indict more criminals through the revision of the limitation.

3. Commercial Law

Legislative Council established the Company Law Group

Under the advisory by the Minister of Justice (Advisory No. 91) dated 24 February 2010, the Legislative Council decided to establish the Company Law Legislation Group. Then, Shinsaku Iwahara, Professor of University of Tokyo, has been appointed as the head of the group, and the group launched the review of the Company Law. The work is now ongoing. The first meeting was held on April 28, 2010. Thereafter, 10 meetings had been held until February's 10th meeting, but due to the effect of the massive earthquake in East Japan, the Council has been suspended. The deadline of the bill is yet to be specifically defined.

Background and content of the deliberations

The aforementioned Advisory clearly states the demand of the Minister of Justice: "We have to review the Company Law in light of its important roles in the society and the economy. Especially, to ensure fur-

ther reliability of the stakeholders of the company, further review of the disciplines on the corporate governance and that of the parent-subsidiary company have to be established. Also, indicate these guidelines.”

The backgrounds of the Advisory are as follows.

First, regarding the corporate governance, recently, the gaps between domestic standards and the global standards have become taken issues. Specifically, the duty of the outside directors and the auditors (Auditors here means the operational auditors, not the accounting ones; “Kansayaku” in Japanese.) have become issues. Furthermore, recently, the large scales of issuances of shares underwritten by the particular third party have frequently occurred (the private equity finance). The situation is, so to speak, that the management can choose the shareholders, and accordingly, some kind of legal actions to correct the situation are required.

For outside directors, the Company Law requires each company to elect outside directors from “outside of the company”. But, it has now become an issue that the “independence” requirement should be added to their quality with the view to strengthening their supervisory functions. And if it were so required, the next subject is what percentage of the directors should meet with this standard. This viewpoint can also be applied to the auditors. In the discussion of auditors, an inherent difficulty is also pointed out. Namely, auditors without the right to appoint and dismiss directors cannot supervise directors properly.

For the private equity finance addressed to the certain third party, its impact on company control has been the target of growing international criticism.

In addition to these backgrounds, as an issue specific to the legal system in Japan, there are some conflicts of rules among the Company Law and the Financial Instruments and Exchange Law, and the need to coordinate them is requested by the listed companies. Accordingly, the issue has also been discussed.

The second is the debate for the Grouped Corporation Law. As for the disciplines on the grouped corporations, study of the issues has been required several times since the Antitrust Law was revised in 1997. It has in fact been studied for years, but the comprehensive legislation has yet to be realized. Broadly, the topics to be studied on the issues are as follows:

the parent company's shareholder protection, the subsidiary company's creditor and minority shareholder protection, and the parent company's responsibilities on the formation process of business combination.

As for the parent company's shareholder protection, as the specific problem, in recent years, it has become common that only the shareholding company which is located at the top of the pyramidal business groups has become the listed company, and the major operating companies are delisted and positioned as 100% subsidiaries in the group. In such a structure, it becomes a problem that the shareholders of the parent (shareholding) company cannot exercise proper monitoring of the subsidiaries which operate the business actually and are the source of income for the parent. Here, the possibilities of introducing the multi-steps derivative suits, etc. have been discussed to ensure parent shareholders the access to the subsidiary's operation. As for the subsidiary company's creditor and minority shareholder protection, it raises the issues of the conflict of interests among the parent and the subsidiary, and the parent's opportunity to gain at the expense of subsidiary. Here, introducing the criteria for arm's length transactions has been considered. Regarding the parent company's responsibilities on the formation process of business combination mainly makes issues of the appropriateness and reasonableness of the squeeze out by cash. The need for a judicial suspension procedure on the extremely unfair takeover should also be examined.

4. International Law and Organizations

Multilateral :

Date Coming into Force with Respect to Japan	Date of Adoption	Title of Treaties and Agreements
Jan. 1, 2010	Aug. 12, 2008	Huitième Protocole additionnel à la constitution de l'Union postale universelle
Jan. 1, 2010	Aug. 12, 2008	Premier Protocole additionnel au