

**Editorial Note:**

The advanced information and communications networks, such as the Internet, have improved convenience in national life and served as an infrastructure to support the basis of Japanese society and economy. On the other hand, cybercrimes have become more serious. For instance, unauthorized computer access with regard to the Internet banking occurred frequently in 2011. According to the National Police Agency, between March and December of 2011, 165 accounts of 56 financial institutions in 35 of 47 prefectures in Japan suffered damage from unauthorized computer access, for which identification codes for access control appear to have been obtained through use of phishing or malicious program. As a result, the total sum of money illegally remitted by that unauthorized computer access amounted to about three hundred million yen. In this way, the situation concerning the violation of the law banning unauthorized computer access has not been sufficiently ameliorated. Therefore, we expect the effective operation of the said Act.

## **5. Commercial Law**

### **Adoption of the “Outline Proposal for the Review of Company Law” on September 7, 2012**

**Background:**

The Company Law Subcommittee of the Legislative Council compiled the “Outline Proposal for the Review of Company Law” on August 1, 2012, and it was adopted by the General Assembly of the Legislative Council on September 7, 2012. The Company Law Subcommittee was launched on February 24, 2010 in response to the advisory by the Minister of Justice. After the adoption of the Outline Proposal, a general election of the House of Representatives was held on December 2012, and the change of government from the Democratic Party of Japan, which had lasted three years and three months, to the Liberal Democratic Party occurred. Perhaps because of the effects of the change of government, the

submission of the bill for the amendment of the Company Law to the ordinary session of the 2013 Diet was postponed, and currently, the scheduled time of submission has not yet been fixed.

### **Summary of the Outline Proposal:**

The Outline Proposal is composed of the three parts: “The manner of corporate governance”, “The discipline of parent company”, and “Others”. The former two parts have become the pillars of this draft.

In the first part: “The manner of corporate governance”, the requirements for the qualification of outside directors have become more severe. Under the current law, the Company Law only requires outside directors and auditors to be “not the relevant parties from the company and/or the subsidiaries of the company” (Art.2 para. 15, 16 of the Company Law). In the Outline Proposal, parties from a brother company are also considered as relevant parties of the company. On the other hand, the strengthening of the audit function by forcing the appointment of outside directors has been shelved. Instead, as the additional resolution, the discipline through the financial exchange regulation has been required. The introduction of auditing and a supervisory committee system is included in the Proposal.

In the second part: “The discipline of parent company”, several proposals have been made about the multi-steps derivative suites, transfer of subsidiaries’ share by the parent company, and the subsidiary company’s creditor and minority shareholder protection. The issue of the multi-steps derivative suites concerns the problem that shareholders in a parent company cannot exercise appropriate monitoring of the subsidiaries’ management, especially in a grouped corporate structure in which one shareholding (parent) company is located at the top of pyramidal business groups, and the major operating companies are delisted and positioned as 100% subsidiaries in the group. Under the current law, shareholders can pursue the liability for the directors only when the shareholder holds the company’s shares. Therefore, under the shareholding company system, the shareholders of the parent (shareholding) company cannot pursue the liability of the subsidiaries’ directors. In response to this situation, in the Outline Proposal, it is suggested that shareholders holding more than 1% of the outstanding

shares or voting rights of all shareholders of the 100% owned parent company can pursue the liability of the subsidiaries' directors.

As for the transfer of subsidiaries' shares by the parent company, a new legislation is proposed that requires from the parent company the special resolution of a general meeting of shareholders in the case of the transfer of important subsidiaries' shares.

Regarding the subsidiary company's creditor and minority shareholder protection, as to the conflict of interest transactions with the parent company, the Outline Proposal requires the subsidiaries to fully disclose the information of the transactions.

On the other hand, this time, creating an express provision which clarifies the parent company's responsibility in case of having the conflict-of-interest transactions between the parent company and subsidiaries has been shelved.

The creation of a system of "Cash Out(request for sale of shares by controlling shareholders)" is proposed in the Outline Proposal. It is intended as a protection of the rights of shareholders who are subject to shutout in the reorganization, etc., and to ensure the legal stability of the reorganization act.

Furthermore, creating the shareholder's right of an injunction against the reorganization is included in the Outline Proposal. Regarding the operation method for the opposing shareholder's right to demand the purchase of shares in reorganization, some review has been proposed, such as establishing a new purchase account system which manages the shares of the opposing shareholders temporarily in order to prevent the opposing shareholders exercising their right in an opportunistic and abusive way.

## **6. Labor Law**

**The Law on Partial Revision of the Labour Contract Act**  
(referred to hereinafter as "the Act")

Act No. 56 of 2012, enacted on 10 August 2012