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RECENT DEVELOPMENTS IN JAPANESE COMPANY LAW

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1 Introduction

The Japanese modern company system was introduced after the establishment of the first modern government in 1867. In 1899, the systematic Commercial Code, an important part of which was company law, was enacted. Although the drafters of the Commercial Code studied mainly the model of the German company law system, some important deviations were thought to be necessary. For example, the organ of the board of supervisors (Aufsichtsrat) that was authorized to appoint and remove managing directors (Vorstand) was, in the drafters' view, not appropriate for Japanese companies that were in the first stage of development. Instead of the board of supervisors, the organ of the statutory auditor was introduced, but it was authorized only to audit management and accounting without being authorized to appoint or remove directors. Managing directors, therefore, had very strong influence. Statutory auditors could not function as effectively as the legislators had envisioned. The statutory auditor was said to be to the system what an organ like an „appendix" is to a human body.

The Japanese company law experienced revolutionary reform under the reign of occupation forces after the Second World War as a part of full-scale reforms concerning Japanese economic and social systems. The United States took a leadership role in the reforms via the involvement of occupation forces. In the field of company law, the elements of American company law were intro-

duced, such as a board of directors, non-par value stock, or authorized capital system etc. As such American elements were grafted into a traditional company law similar to those of civil law countries, the Japanese company law developed unique characteristics from the viewpoint of comparative law.

In the economic growth period after the World War, the company law was amended quite often and, as a result, its uniqueness has been further broadened. Individual provisions of the Commercial Code became so complicated that it has become apparently very difficult for foreigners to understand Japanese company law correctly from translations of it.

Furthermore, the company law has been amended repeatedly in recent years in attempts to revitalize the Japanese economy now mired in deep depression. The amendments, such as those concerning the deregulation of stock repurchases, introduction of stock options, introduction of exchange of shares and division of a company are intended to make it easier for Japanese companies to restructure their businesses. On the other hand, the Japanese system of corporate governance has been criticized recently, and reform efforts are now underway both practically and legislatively. For those purposes, the company law was amended three times during 2001, and furthermore amended also in 2002. As a result, it is very difficult even for Japanese company lawyers to completely understand existing law.

In this report, major characteristics of Japanese company law, particularly the stock company law, including recent amendments, are shortly summarized.

2 Types of companies

Four types of companies can be formed under the law: partnership, limited partnership, limited liability company (private company)[1] and stock company. Under the Japanese Commercial Code, partnerships and limited partnerships are incorporated entities.[2] As a result, the selection of company type is not impactful from a taxation point of view. A partnership or limited partnership is rarely selected. Limited liability companies or stock companies, in which members can limit their liabilities against creditors of a company to

the amount of their contribution to the paid-in capital, are usually the selected organizational models. There are about 1.3 million limited liability companies and about 1million stock companies. For small businesses, the limited liability company is appropriate in theory. However, in Japan, the stock company form is often selected even by very small businesses. The requirement of minimum paid-in capital (Yen 10,00,000) for a stock company was introduced in 1997.[3] Until then there was no requirement for minimum paid-in capital, and use of the stock company form for small businesses was widespread. There are just 3,500 stock companies whose stocks are listed in stock exchanges or traded in the over-the-counter market. Most other stock companies are closed-held companies.

The variety of stock companies makes it necessary to classify them into categories and to build rules that are appropriate to each category of companies. There are some different standards for classification of stock companies under the Commercial Code and other special legislation.

(i) Classification by size of business

Stock companies are classified into three categories; i.e. large company, medium-sized company and small company, as measured by their paid-in capital or by their balance sheet liabilities. A company whose paid-in capital is, more than Yen 500 million or whose liabilities are more than Yen 20,000 million (Yen 20 billion) is considered a large company.[4] Financial statements of a large company shall be audited by certified public accountant.[5] A medium-sized company and a small company audit by a certified public accountant are not obligatory, and financial statements have to be audited only by the statutory auditor. For a large company, there are also special provisions for statutory auditors and a general meeting. A company whose paid-in capital is less than Yen 100 million is considered a small company.[6] In a small company, an auditor is authorized to audit just financial statements and not to audit the actual management of directors.[7] All companies other than large companies or small companies are considered medium-sized.

(ii) Classification by transferability of stocks

As in a closely-held company, restriction of the transferability of stocks is desirable, and the articles of incorporation may restrict such transfers.[8] Owing to this restriction, approval by the board of directors is necessary for such transfer of stocks. The board of directors can refuse approval even without any reasonable reason, but in case of refusal, it must designate another transferee who is acceptable to the company, or itself purchase the stocks to be transferred.[9] Thus, the transferor can recover his investment. There are a lot of individual provisions in the Commercial Code that are applicable to just such companies the transferability of whose stocks are restricted. (Such a company is called a transfer-restricted company in the following parts.) For example, stockholders do not generally have preemptive rights under the Commercial Code, but stockholders of a transfer-restricted company have such preemptive rights.[10]

(iii) Public company and closely-held company

There are some individual provisions in the Commercial Code that are applicable just to companies whose stocks are listed on the stock exchanges or registered on the over-the-counter markets. (Such companies are called public in the following parts.) For example, a public company is able to purchase its own stocks on stock exchanges or over-the-counter markets.[11] On the contrary, a non-public company must provide equal opportunities to all stockholders to sell their stocks to a company from the viewpoint of the equal treatment of stockholders who could not sell stocks in the market.[12]

The Securities Trading Act is also applicable to public companies. The Securities Trading Act's model was the Securities Act of 1933 and the Securities Exchanges Act of 1934 in United States. The Securities Trading Act provides for the disclosure system of public companies that consists of both disclosure at the public issuance of securities and continuous disclosure via annual financial statements, etc. The Commercial Code regulates accounting and disclosure of financial statements just as company laws in most European

countries do, but it is not adequate for public companies. This reason necessitates stricter regulation by The Securities Trading Act.

3 Corporate Finance

(1) Size of stock

Until the enactment of an amendment in 2001, a stock company could issue par value stocks and/or non-par value stocks. In practice, the non-par value stocks were very rare. As under the Commercial Code, the minimum par value was Yen 50,000 at the incoporation stage, and the minimum issue price of par value stock at that stage was also Yen 50,000. Furthermore, non-par value stocks could not be issued at a lower price than Yen 50,000 at incorporation. After incoporation, there were no restrictions on the par value and issure price. However, a stock split as prohibited if after the split the amount of net assets per one stock came to belower than Yen 50,000. Thus, the value of a stock was heavily regulated by the Commercial Code, and it was larger than the typical value of a stock in other major countries. The legislature thought that too small a size triggered disproportionately high costs in administration of stockholders in comparison with the substantial value of stockholders' investments.

The minimum par value and issue price were raised from Yen 50 to Yen 50,000 by amendment in 1981. The par value of the stocks of the companies that had been incorporated until then was usually Yen 50. Therefore, the 1981 amendment means that one thousand stocks must be merged into one stock (reverse stock split, stock split-down). But it was impossible in practice to realize such a stock split-down, because it necessitated the exchange of stock certificates of outstanding stocks for new certificates. The legislature introduced, as a temporary measure, the unit-stocks system. Under this system, a stock company was not forced to split-down its stock, and could give voting rights and other governance participatation rights only to stockholders who held more than one thousand stocks. One thousand stocks constituted „one unit of stocks." The unit-stocks system was maintained until the passing of an amendment in 2001. The legislature thought that too small a size triggered

disproportionately high costs in adminstration of stockholders in comparison with the substantial value of stockholders' investments.

By the amendment in 2001, the par value stock rule was abolished, and regulation on the size of a stock was also abolished simultaneously. The market price of companies in the fields of IT-related businesses skyrocketed some years ago in Japan. Such companies planned stock splits in order to facilitate easier investment by public, but stock splits were impossible by reason of the regulation as mentioned above because such companies did not have sufficient net assets and market prices skyrocketed only by reason of expected future earnings. This phenomenon caused the legislature to abolish the regulation on the size of stocks. By the abolition of par value stocks, all stocks of Japanese companies are now non-par value. There are no longer restrictions on issue price and stock splits. The unit-stocks system has been transformed into a perpetual system by the 2001 amendment.[13]

(2) Classes of stocks

A stock company can issue classes of stocks. Before the amendments in 2001 and 2002, classes of stocks were strictly regulated by the Commercial Code. As classes of stocks, only preferred /common/ deferred stocks, convertible stocks, redeemable stocks were permitted. Only preferred stocks could be non-voting stocks. If preferred dividends were not paid continuously, the preferred non-voting stockholders were able to exercise voting rights. Outstanding non-voting stocks could not exceed one third of all outstanding stocks. The rights of any class of stockholders had to be provided for by the articles of incorporation. Only the amount of preferred dividend could be decided by the board of directors at the time of issue within the highest range provided for by the articles of incorporation.

With the amendments in 2001 and 2002, the regulations on classes of stocks have been relaxed to a large extent. In addition to existing classes, restricted voting stocks and stocks that allow election of a specific number of directors have been introduced. Restricted voting stocks include non-voting stocks, stocks to which voting rights are attached just for specific corporate matters, or stocks to which voting rights are not attached to specific corporate

matters.[14] Other types of restricted voting stocks may be designed by the articles of incorporation. Restriction of voting rights and preference of dividends must not be linked. Non-voting common stocks can be issued under the amended Commercial Code. However, outstanding restricted voting stocks cannot exceed half of all outstanding stocks.[15] Super voting stock or similar stock to which plural voting rights are attached is prohibited by reason that such stock may prejudice fairness in the control of a company. Stocks that allow election of a specific number of directors may be available only for a transfer-restricted company.[16] A refusal right may be attached to any class of stocks.[17]

Deregulation of classes of stocks relating to voting rights means that autonomy as provided for in the articles of incorporation has been dramatically strengthened. As long as the articles of incorporation are drafted prudently, stock companies can issue a variety of classes of stocks that have appeal for a wide range of investors. Autonomy as concerns the articles of corporation is indispensable, particularly in closely-held companies such as joint ventures or venture business companies. However, the refusal right of any class of stockholders may cause deadlock. While the articles of incorporation should provide, in advance, a solution that can end such deadlock, the Commercial Code itself permits a compulsory conversion clause in such articles that enables the company to convert any class of stocks into other classes of stock such as common stocks.[18]

Also regulation of classes of stocks concerning dividends has been relaxed and autonomy, as defined by the articles of incorporation, has been broadened. This deregulation makes possible tracking stocks. With tracking stocks, dividends are closely correlated with the earnings of a specific subsidiary or of a specific segment of business. For such types of stocks, complicated provisions on dividends and other matters are necessary, but the articles of incorporation may provide only an outline of essential matters or guidelines on dividends.[19]

Tracking stocks are useful tools for equity financing of stock companies, but they present serious problems with regard to conflicts of interest between classes of stockholders, as discussed in United States.

(3) Raising capital

Since the amendment in 1950, the so-called authorized stock capital system has been provided for in the Commercial Code as in American company law. Under this system, the board of directors is authorized to issue new stocks at any time within the authorization limit defined by the articles of incorporation, and a resolution of general meeting is not necessary to do so.[20] Only authorization to issue new stocks exceeding four times the number of outstanding stocks is prohibited.[21] Existing, stockholders, except in transfer-restricted companies, do not have preemptive rights for new stocks to be issued, unless they are given preemptive rights by a resolution of the board of directors or by a provision of the articles of incorporation. Under the authorized stock capital system, the amount of paid-in capital is not an item of the articles of incorporation. It is registered in the corporate registry.[22]

Under the authorized capital system a controlling power of stockholders who do not have preemtive rights could be diluted by issue of new stocks. The Commercial Code gives priority to the interests of a company in its flexibility to raise capital over the interests of stockholders. However, the Commercial Code restricts the issue price in order to prevent dilution of equity value of existing stocks. If the issue price is lower than the market price of existing stocks, the issuance of new stocks must be authorized by the special resolution of a general meeting.[23] The directors must make public notice or give individual notice to stockholders on the issue price, number of issued new stocks and so on, unless existing stockholders are given preemptive rights.[24] If informed stockholders consider the issuance unlawful or unfair, they can claim a court-issued injunctive order to enjoin the issue of new stocks.[25]

(4) Stock option

As the growth prospects of Japanese companies declined, they have become highly interested in stock options that give management or employees incentive to contribute to the earnings of their companies. With an amendment in 1997, stock options have been permitted under the Commercial Code. Unfortunately, as this amendment

was realized by the leadership of the members of Parliament for political motive, the amended Commercial Code were problematic from a practical point of view. Moreover, in 2000, the prohibition of a holding company system by the Anti-Monopoly Act was abolished and some major groups of companies have been restructured into holding company groups. In such a holding company group structure, stock options would be granted to directors or employees of all companies belonging to the group. But under the Commercial Code at that time, a stock company could grant stock options only to its own directors or employees. By amendment in 2001, the provisions on stock options were completely reformed.

The amended Commercial Code introduced general provisions on stock option. The concept of stock option includes all types of options that enable holders of options to claim issue or tansfer of stocks from the company.[26] Not only stock options granted to management or employees, but also conversion rights of convertible bonds or warrants of bonds with warrants are stock options in the meaning of the Commercial Code, and they are fundamentally subject to the same regulation. Stock options must be granted in exchange for payment of fair value.[27] The Black-Sholes option pricing model or similar models may be referred to for valuation of fair value of stock options. The special resolution of the general meeting is necessary to grant anybody stock options if granted without payment of fair value.[28] On the other hand, the board of directors is authorized to grant stock options to anybody as long as the grantees of stock options pay fair value to the company, and there are no legal restrictions on the types of grantees.

Directors or employees are usually granted stock options without payment of fair value. The Commercial Code does not consider the services or labour supplied by directors or employees as consideration for stock options. Therefore, a special resolution of the general meeting is necessary to grant stock options to directors or employees. This regulation seems to be excessive compared to regulations in other countries, and a normal resolution by simple majority is sufficient.

4 Corporate Governance

(1) Existing system and its reform

In Japan, an unique system of corporate governance has been developed. Directors who are elected by the general meeting constitute the board of directors,[29] and the board of directors elects the representative directors.[30] The representative directors execute businesses affairs of the company, and the board of directors supervises the execution of the representative directors.[31] Besides the board of directors, the statutory auditors, as an organ for auditing, are appointed by the general meeting.[32] Differing from the supervisory board (Aufsichtsrat) under the German company law, the statutory auditors are not authorized to elect directors, and are authorized only to audit the execution of business affairs by directors and accounting.[33] The audit of the execution of business affairs can cover only the legality of execution, but the efficiency of execution may not be so covered. In a large company, the statutory auditors constitute the board of statutory auditors,[34] but the power of individual statutory auditors and the board thereof has not been broadened.

Institutionally, the board of directors should supervise the execution of duties by representative directors form the viewpoint of legality and efficiency. The supervision by the board of directors is expected to function, backed by the power of the board of directors, by electing and removing the representative directors who hold the top management positions in the organization. But the board of directors does not function as well in practice as was originally envisioned. The major reason is that directors are usually nominated from the ranks of senior employees of the same company by the representative directors, and that most directors other than representative directors are engaged in the execution of business affairs and are also incorporated into the management organization of the company. Curiously, the lower classes of directors often hold the satus of director and senior employee concurrently. In other words, there are no very few independent outside directors in Japanese

public companies. These practices make the supervisory role by the board of directors a nominal formality.

The statutory auditors are not authorized to supervise the efficiency of management by directors. The statutory auditors play an important role in legal compliance issues concerning directors and employees, but they can not effectively prevent directors or employees from engaging in illegal activities even in major companies. The reasons for such phenomena are probably that the statutory auditors are usually nominated by the representative directors, and sufficient staff levels for wide-ranging, comprehensive auditing are not provided.

Until the end of 1980s, when the Japanese economy enjoyed prosperity, the peculiar system of corporate governance in Japanese companies was held in high esteem. Management by directors who are former employees can realize long-range interests of the company, it was believed, and would also serve stockholder interests well. Certainly, with stock market prices soaring continuously until the beginning of 1990s, stocks were the excellent investment vehicles, providing even less reason to question the conventional wisdom which prevailed at the time.

However, with the serious economic depression that has endured since the 1990s, the Japanese governance system has been exposed to strong criticism. Japanese companies are criticized in the sense that management with a view to a long-range perspective sacrificed efficiencies in the process. Data on the average ROE of Japanese companies, being very low in international comparison, supports such a criticism. Also, illegal activities, even in major companies, were not being prevented effectively.

Based upon such criticism, there prevailed a leading opinion that favoured reinforcement of the supervisory function of the board of directors. Such an opinion is strongly influenced by the American monitoring model of corporate governance. Under the American monitoring mode, the majority of directors are outside directors, and also, the majority of the members of committees, such as audit committee, nominating committee or compensation committe, are outside directors. Those committees play key roles in supervision of the management practices of executive officers. Such

a monitoring system is unacceptable to Japanese top management who consider the right to nominate directors as the source of personal leadership and power in one's company. Even the proposal that all large or public companies must have at least one outside director could not be adopted by reason of strong opposition of management organizations. As a compromise, the new alternate governance system was introduced by amendment in 2002. A large company is able to choose either the existing governance system or the new governance system.

(2) New alternative governance system

It is practically difficult to impose compulsory election of a majority of outside directors on a large company, because it is not customary to appoint outside directors, and it is difficult to recruit an appropriate person as an outside director. Taking such circumstances into consideration, under the new alternative system, a company is obligated to organize three committees under the board of directors; i.e. audit committee, nominating committee and compensation committee.[35] Those committees must consist of at least three members, and the majority of members in each committee must be outside directors who are not executive officers.[36] Because one outside director may be appointed a member of two or three committees at the same time, two outside directors are sufficient to adopt the new alternative system. As there are no restrictions on the total number of directors, the majority of the board of directors may be non-outside directors.

In order to solve the problem that outside directors are usually in the minority, the power of the nominating committee and the compensation committee are strengthened in comparison with similar committees in United States. Those committees are not authorized to determine and enforce nomination or compensation of directors in United States. Rather, nomination or compensation is decided by the board of directors. The Japanese nominating commitee and compensation committee are, however, authorized to decide those matters.[37] Thus, committees are expected to work effectively in spite of the fact that outside directors are in the numerical minority.

Under the new alternative system, functions of the execution of business affairs and the supervision of the execution thereof that are performed by the board of directors under the existing governance system are separated, and each function is performed by different organs. The organ of executive officers is responsible for the execution of business affairs under the fundamental management strategy decided upon by the board of directors.[38] Directors can not be engaged in the execution of business affairs.[39] In addition to decisions on fundamental strategy, the board of directors is responsible for supervision of the execution of such strategies by the executive officers.[40] In particular, the board of directors is obligated to construct an effective internal control system for supervision of the executive officers.[41] The audit committee performs audits to determine whether the internal control system functions well.[42] As an executive officer may at the same time be a director,[43] top management will usually hold the status of executive officer concurrently. His broad influence is expected to be supervised by the committees as above mentioned.

It seems doubtful that the new alternative governance system will be adopted by many large companies in the near future. At this point, less than one percent of all listed companies have expressed their intent to adopt the new system. Unless public companies, however, can not raise profitablity, the lack of initiative may possibly be found in the management under the existing, governance system.

Although it is doubtful that there is a causal connection between a governance and profits of a company, maintaining the existing system may eventually become a symbol of incompetence and inefficiency of such company's top management.

(3) Liabilities of directors against a company and derivative suits

With the 1950 amendment, the procedure for filing derivative suits was imported from the American corporation law. A stockholder who holds at least one stock can, on behalf of the company, bring suit against a director to claim damages for loss incurred by the company as a result of the director's dereliction of duties. If a direc-

tor is found liable, the injured company itself should try to recover its loss from the liable director. But, generally speaking, the other directors or statutory auditors would not be keen to bring such a suit on behalf of the company. Therefore, the stockholder is entitled to bring suit in his name on behalf of the company. That action is so called the derivative suit. A stockholder, as a first step, has to request that the statutory auditor bring suit, but unless the statutory auditor does not bring such suit within sixty days from the request, the requesting stockholder himself is entitled to bring suit.[44]

After the import of the derivative suit procedure, there had been very few derivative suits until the 1990s. This pattern was explained by the fact that it is very difficult for a plaintiff stockholder to get evidence proving a director's liability, and that the court fee for filing of a suit was very expensive.

At the beginning of 1990s, the United States Government requested stronger protection of stockholders under Japanese company law. As a backdrop to this interest in investor protection, investments in stocks of Japanese companies by the American institutional investors had been increasing. One of the requests was to make it easier for stockholders to bring derivative suits. The Japanese government refused this requests, but the Japanese legislature reduced the court fee for a derivative suit drastically. On the other hand, after the end of the „bubble economy" of the late 1980s, a lot of scandals at Japanese companies were exposed, and in some cases, directors and employees were prosecuted. If prosecuted criminally, stockholders could easily get evidence for derivative suits form the criminal procedure. From those reasons the derivative suits increased dramatically, and plaintiff stockholders were successful in not a few cases.

Some famous examples: A director of a large construction firm who committed bribery for the purpose of accepting orders from the public sector was judged to be liable against the company. The amount of damages was Yen 14 million and that was that bribe offered by the company.[45]

Directors of a trading company who exported electronic instruments in violation of the Law of Customs Duties and the Law on the

Regulation of Foreign Exchange were judged to be liable against the company. The amount of damages was Yen 200 million that consisted of the fine imposed on the company and the amount of losses caused by the purchase of instruments that could not be resold.[46]

The most famous case was that of Daiwa Bank in which some defendant directors were ordered to pay Yen 80 billion as damages.[47] At the beginning of the case, it was revealed that an employee of the New York branch made dealings in U.S. treasury bonds without permisssion of the bank and he caused a loss of $11 million to the bank. The president and other senior directors were informed of this fact, but did not urgently give notice of it to the U.S. bank supervision authorities, because they were afraid of a potentially adverse influence upon the financial markets. By this delay of notice, they violated U.S. bank regulations, and a fine of $ 3 million was imposed upon the bank by the U.S. criminal court. Plaintiff stockholders claimed damages for a loss from the trading loss and fine as mentioned above. For the trading loss, the court was in the opinion that the internal control system at the New York branch was not appropriate and, therefore, two directors who were responsible for branch businesses were judged to be liable. For the loss caused by the fine imposed upon the bank, directors who neglected the notice in spite of the knowledge of the loss were judged to be liable. The total amount of damages was about Yen 80 billion.

It is arguable, whether this judgment is reasonable or not. At the Court of Appeals, the parties reached a compromise, according to which the defendant directors paid several hundred million yen to the bank. But this case had a serious influence on directors generally. As in most cases in which plaintiff directors were judged to be liable, they participated intentionally or at least recklessly in illegal activities, there were, theoretically, no way to defend them. However, there are not a few derivative suits in which plaintiffs claim damages for losses that are caused by the simple misjudgments of directors in management. Certainly the idea that is similar to the so-called business judgment rule under the American law is supported by case law, the Japanese courts tend to test the reasonableness of the business judgments prudently in trial and a period of deliberation was required until the suits were dismissed.

Therefore, being defendants in derivative suits caries a heavy burden for directors.

In derivative suits under Japanese law, a winning plaintiff stockholder can claim reasonable compensation against the company.[48] That is calculated usually on the basis of reasonable lawyers fees. But active plaintiffs are, generally speaking, stockholders or lawyers who are mainly interesting in the criticism of illegal activites or mismanagement by directors. Therefore, compensation is not as strong an incentive for them as in the case of derivative suits in United States.

It is well-known that the American corporation law has weakened the threat of derivative suits using some legal tools; i.e. the business judgment rule, the litigation committee of the board of directors that can dismiss derivative suits, and the limitation of directors' liabilities by the articles of incorporation. Because in Japan derivative suits have been rare historically, the schemes that impose restraint on the excessive prosecution of the derivative suits have not been seriously considered, and it is not deniable that directors have been in a rather defenseless situation.

The issue of whether directors should be protected from derivative suits has become a political matter. Some members of Parliament are enthusiastic about the amendment of the Commercial Code concerning the weakening of the threat of derivative suits. In 2001, the Parliament passed the amendment that enables the limitation of liabilites, accompanied by the amendment that strengthens the power of the statutory auditors for auditory functions. According to the amendment, the general meeting, or the board of directors if authorized by the articles of incorporation, can exempt the liabilities of a director to the total amount of his compensation for 4 years (6 years for a representative director) from the company.[49] For liabilities of an outside director, a company can make an agreement with outside director that his liabilities are limited to the total amount of his compansation for two years.[50] The exemption or limitation can not be effective if a director violated their duties intentionally or gross negligently.[51] As liabilities of a non-outside director can be exempted after the court judges that he is liable, it seems difficult for the board of directors to propose such

exemption to the general meeting or to decide exemption, because it may be afraid of criticism from stockholders. On the other hand, limitation of liabilities of an outside director is useful because an outside director can limit his liabilities in advance by contract upon his appointment. It would become easier for outside directors candidates to undertake the job without fearing huge liabilities.

4 Conclusion

The Japanese company law that started out as company law similar to that of continental-European countries has been transformed, since the end of the Second World War, into an unique mixture of elements derived from European company law and the American company laws. By amendments in recent years, elements of the American company law were moreover imported such as the stock option, treasury stock, tracking stock, limited voting right stock etc. Also, the new alternative corporate governance system is influenced strongly by the American corporate governance model. However, it is usually necessary to transform such borrowed elements in order to incorporate them into the Japanese company law system. With the transformation, the unique characteristics of Japanese company law have continuously broadened, although the fundamental structure of company law does not differ from those in European countries and the United States.

NOTES

1 For a limited company Limited Companies Law was enacted in 1938.
2 Commercial Code art. 54, para. 1.
3 Commercial Code art. 168-4.
4 Law for Special Exceptions to the Commercial Code Concerning Audit, etc. of Stock Companies (This Law is cited as „Special Exceptions Law" inthe following parts) art. 1-2, para. 1.
5 Special Exceptions Law art. 2 – art. 13.
6 Special Exceptions Law art. 1-2, para. 2.
7 Special Exceptions Law art. 25.
8 Commercial Code art. 204. para. 1.
9 Commercial Code art. 204-2 – art. 204-5.
10 Commercial Code art. 280-5-2.
11 Commercial Code art. 210, para. 9.
12 Commercial Code art. 210, para. 2 and para. 7.
13 Commercial Code art. 221.
14 Commercial Code art. 222, para. l,.no. 5.
15 Commercial Code art. 222, para. 5.
16 Commercial Code art. 222, para. 1, no. 6 and para. 7, art. 257-2 – art. 257-6.
17 Commercial Code art. 222, para. 9.
18 Commercial Code art. 222-8 – art. 222-10.
19 Commercial Code art. 222, para. 3.
20 Commercial Code. art. 280-2, para. 1.
21 Commercial Code art. 347.
22 Commercial Code art. 188, para. 2, no. 6.
23 Commercial Code art. 280-2, para. 2.
24 Commercial Code art. 280-3-2.
25 Commercial Code art. 280-10.
26 Commercial Code art. 280-19.
27 Commercial Code art. 280-21.
28 Commercial Code art. 280-21.
29 Commercial Code art. 254, para. 1.
30 Commercial Code art. 261, para. 1.
31 Commercial Code art. 261, para. 1.
32 Commercial Code art. 280, para 1. an art. 254, para. 1.
33 Commercial Code art. 74, para. 1, art. 281-2 and art. 281-3.
34 Special Exceptions Law art. 18-2.
35 Special Exceptions Law art. 2IM5, para. L Under the new alternative system, the organ of the statutory auditors is abolished. Special Exceptions Law art. 21-5, para. 2.
36 Special Exceptions Law art. 21-8, para. 4.
37 Special Exceptions Law art. 21-8,para. 1 and para. 3.
38 Special Exceptions Law art. 21-7 and art. 21-12.
39 Special Exceptions Law art. 21-6, para. 2.
40 Special Exceptions Law art. 21-7, para. 1.
41 Special Exceptions Law art. 2I-7, para. 1, no. 2 that authorizes the Ministerial Ordinance to provide for the internal control system.
42 Special Exceptions Law art. 21-8, para. 2 and art. 21-10.
43 Special Exceptions Law art. 21-13, para. 5. But directors belonging to the audit committee cannot hold the status of executive officers or employees of the company and its subsidiaries concurrently. Special Exceptions Law art. 21-8, para. 7.
44 Commercial Code art. 267.
45 Judgment of Tokyo District Court, December 22, 1994, Hanrei Jiho No. l518, p.3.
46 Judgement of Tokyo District Court, June 20, 1996, Hanrei Jiho No. 1572, p.27.
47 Judgement of Osaka District Court, September 20, 2000, Hanrei Jiho No. 1721, p.3.
48 Commercial Code art. 268-2..
49 Commercial Code art. 266, para. 7 – para. 18.
50 Commercial Code art. 266, para. 19 -para. 23.
51 Commercial Code art. 266, para. 7, para. 12 and para. 19.