

general, Article 140, New Hague Convention Implementation Act.

**(5) Etcetera**

In addition, by this amendment, the rules involving seizure-prohibited claims and the rules involving the end of an execution against claims are revised.

## **4. Commercial Law**

### **Act Partially Amending the Companies Act and Act on Arrangement of Relevant Acts Incidental to Enforcement of the Act Partially Amending the Companies Act**

Law No.71, December 4, 2019

#### **Background:**

Article 25 of the Supplementary Provisions of Act Partially Amending the Companies Act, which had been enacted in 2014 and enforced in 2015, said that “The Government of Japan is, when two years have passed after the enforcement of this Act, to review systems of corporate governance taking into account changes which occur to the socioeconomic environment, including the prevalence of the appointment of outside directors. The Government of Japan is to take necessary measures, including imposing the obligation to appoint an outside director, in cases where this is deemed necessary based on the findings of the review.”

In 2017, when two years had passed since the above Act had been enforced, the Minister of Justice issued Consultation Document No.104 which said “After considering the necessity of reconsidering the discipline of corporate governance taking into account changes which occur to the socioeconomic environment, which includes rationalizing the procedure for shareholder meetings, preparing discipline for giving a proper incentive to directors and officers, reconsidering how the administration of corporate bonds should function, and imposing the obligation to appoint an outside director, you should report a summary outline if you need revision of the above discipline.”

Based on the Consultation Document, the Legislative Council, which was a consultative body of the Minister of Justice, formed the Corporate Law Division (Corporate Governance) and deliberated for two years. In January 2019, the Legislative Council, based on the above division, compiled and reported the Summary Outline to the Minister of Justice.

In October 2019, bills of an Act Partially Amending the Companies Act and an Act on Arrangement of Relevant Acts Incidental to Enforcement of the Act Partially Amending the Companies Act were approved in the Cabinet and submitted to the Diet.

In the Diet, these bills were partly amended, and two laws of the heading were enacted in December 4, 2019.

**Main provision:**

(1) Review of Regulations of General Shareholder Meetings

① A System for Providing General Shareholder Meeting Materials in Electronic Format

A Stock Company may provide some general shareholder meeting materials in electronic format by a provision of the articles of incorporation. Some materials which may be provided in electronic format are (I) the notice of calling of the general shareholder meeting, (II) the reference documents for the general shareholder meeting, (III) the voting form, (IV) the content of the shareholder's right to propose (Companies Act Article 305), (V) the financial statements and consolidated financial statements, (VI) the business reports, (VII) if the content of (I) ~ (VI) is amended, the fact of amendment and the content before amendment.

Regardless of the above, if the Stock Company prescribes the Record Date for prescribing the shareholders who may exercise their voting rights, the Stock Company must deliver the above (I) ~ (VII) materials in paper-based format to the shareholder who requests for delivery of materials in paper-based format. However, if one year has passed from the date of requests for delivery, the Stock Company may notify to the shareholder that the delivery will end, and if the shareholder does not object to the end of the delivery in a certain period, the Stock Company may end the delivery.

② Shareholder's Right to Propose

The Shareholders of the Company with a Board of Directors, when

they exercise their right to propose (Companies Act Article 305(1)), may not exercise over 10 proposals.

In counting the number of proposals, (I) the proposals about the election of Officers etc. (director, accounting advisor, company auditor, or financial auditor), (II) the proposals about the dismissal of officers, (III) the proposals about the refusal of re-appointment, (IV) over two proposals about changes in articles of incorporation, which has the possibility that if the contents of resolutions of over two proposals are different from each other, the contents of those resolutions are contradictory each other, are deemed as one proposal regardless of their number of proposals.

Note that in summary outline there were the provisions that shareholders may not propose (I) if shareholders propose solely for defaming, insulting, or perplexing others, or pursuing their own or a third party's illegal interests, or (II) if shareholders' proposals are likely to disturb the proper operation of shareholder meetings seriously and harm shareholders' common interest. But these provisions were deleted in the Diet.

(2) Review of Regulations on Directors, etc.

① Giving appropriate incentives to directors etc.

(I) Remunerations for directors

Companies Act Article 361(1)(iii) required a Stock Company to fix the specific contents of remunerations that are not monetary in a resolution at a shareholder meeting or the articles of incorporation. However, in practice, a complicated procedure was needed when the Company's own stock was given as remuneration, so improvement was demanded.

This revision reacted this; (A) the upper limit to the number of shares if shares are provided as remuneration, (B) the upper limit to the number of share options if share options are provided as remuneration, or (C) the specific contents if the other remunerations that are not monetary are provided, are fixed in a resolution at a shareholder meeting or the articles of incorporation.

Moreover, a Company with a Board of Company Auditors (limited to Public Companies and Large Companies) that must submit a securities report, or a Company with an Audit and Supervisory Committee must prescribe the decision policies of the remunerations at the Board of Directors. Provided, however, that this shall not apply if the content of the

remunerations for directors have been prescribed at a shareholder meeting or the articles of incorporation.

(II) Indemnity agreement

When a Stock Company determines the content of the indemnity agreement which prescribes that the Stock Company may indemnify Officers etc. (director, accounting advisor, company auditor, executive officer, or financial auditor) for all or some cost, the Stock Company must determine at a shareholder meeting (or a Board of Directors in cases where the Stock Company is the Company with a Board of Directors).

The costs subject to indemnity are clarified; (A) the costs arising from the doubt about Officers' violations of the law or the pursuit of Officers' responsibility, or (B) the loss arising from compensating a third party's loss or paying settlement money to such a third party.

Even if the costs fall under (A) or (B), the Stock Company may not indemnify the costs which fall under (A) but exceed substantial amount, or all costs which fall under (B) if Officers are in bad faith or have gross negligence liable to a third party.

(III) Directors and Officers liability insurance

When a Stock Company enters into a contract with an insurance company which insures the loss arising from the pursuit of Officers' responsibility but excludes Product Liability Insurance, Commercial General Liability Insurance, Automobile Liability Insurance, and Overseas Travel Insurance, the Stock Company must determine the content of insurance at a shareholder meeting (or a Board of Directors in cases where the Stock Company is a Company with a Board of Directors).

② Regulations about the use of Outside Directors

(I) Delegation of the execution of operations to outside directors

In cases where there is a conflict of interest between a Stock Company and its directors, when it is afraid the interest of shareholders will be harmed if the other directors may execute operations of the Stock Company, the Stock Company may delegate execution of operations to outside directors each time by the decision of the directors (or the resolution of a Board of Directors in cases where the Stock Company is a Company with a Board of Directors).

(II) Mandatory appointment of an outside director

A Company with a Board of Company Auditors (limited to Public

Companies and Large Companies) that must submit a securities report, must appoint an outside director.

(3) Others

① Administration of corporate bonds

In cases where a Company will issue Bonds, the Company must specify a Bond administrator and entrust the receipt of payments, the preservation of rights of claim on behalf of the bondholders and other administration of the Bonds to that manager (Companies Act Article 702), provided, however, that this does not apply in cases where the amount of each Bond is 100,000,000 yen or more, where it is unlikely that the protection of bondholders will be compromised (Article 702), so there have been not a few cases of issuing bonds without a Bond administrator.

In this revision, a Company may entrust assistance of bond administration to Assistant Bond Administrators in cases where the Company has not needed to specify a Bond administrator so that the protection of bondholders is stronger.

② Share Delivery

Under the current law, Share Exchange is available for a Stock Company if the Stock Company makes another Stock Company a wholly owned subsidiary (100% subsidiary). New Share Delivery enables a Stock Company to make another company its subsidiary without making another Stock Company a wholly owned subsidiary.

③ Settlement in the action to enforce liability

When a Stock Company reaches a settlement with directors (excluding Audit and Supervisory Committee Members and Audit Committee Members), executive officers, liquidators, or those who have been above persons, the Stock Company must obtain Company Auditor's consent (or Audit and Supervisory Committee Members' consent, or Audit Committee Members' consent).

④ Inspection or copying of the Voting Forms

The shareholders may make requests for the inspection or copying of the Voting Forms at any time during the business hours (Companies Act Article 311(4)). In contrast, this revision clarifies that those requests are restricted in following cases.

Those cases are the cases (I) where requests are not for the investigation to secure or exercise shareholders' rights, (II) where requests are for

impeding the operation of Company or harming shareholders' common interests, (III) where requests are for reporting the fact to a third party that shareholders have known by inspection or copying of the Voting Forms with an improper interest, (IV) where requests are by the shareholder who has requested for (III) in the past two years. In those cases, the Company may reject the above requests.

⑤ Review of Registration of a Company

Regulations about the registration of share options are revised. And Regulations about the registration at the location of company branch offices are deleted. Outside of the revised act, a Company does not have to provide the address of the representative directors in relation to the online requests of registrations.

⑥ Deleting the Disqualification clause

Under current law, an adult ward, a person under curatorship may not act as directors etc. (director, Company auditor, executive officer, liquidator, director at incorporation, Company Auditor at Incorporation). But this revision enables those persons to act as directors etc. under certain conditions.

**Editorial Note:**

(1) Review of Regulations of General Shareholder Meetings

① A System for Providing General Shareholder Meeting Materials in Electronic Format

Under the current law, in principle General Shareholder Meeting Materials are provided in paper-based format. Exceptionally, those materials are provided in electronic format, which needs the consent of shareholders. Thus, there were both cost problems of printing or delivering paper materials, and time problems of a shortage for considering General Shareholder Meeting Materials sufficiently. The method using the Internet solves both cost and time problems, because it makes printing or delivery unnecessary, and providing the General Shareholder Meeting Materials earlier than before.

On the other hand, there are some shareholders who may not use the Internet. To protect those shareholders' interests, there is the system of the request for delivery of materials in paper-based format. However, there is the concern that the number of shareholders who request increases

cumulatively. Thus, the Company may end the requests after one year has passed from the requests.

② Shareholder's Right to Propose

In recent years, some shareholders have abused their rights to propose. For instance, one shareholder makes a huge number of proposals, or shareholders make proposals in order to bother the Stock Company. Thus, the provision about the limitation of the number of proposals to counter the former problem or the provision about the limitation of the proposals for improper purposes to counter the latter problem are adopted in the revision outline. However, the latter provision is deleted because it is overregulation because of the importance as shareholders' rights and the Diet has thought that this provision needs to be clarified in relation to what kinds of proposals are fallen into abuse of rights.

(2) Review of Regulations on Directors, etc.

① Giving appropriate incentives to directors, etc.

(I) Remuneration for directors

For the purpose of giving management incentives, the cases of providing Company's own shares as remuneration for directors are increasing. However, under the current law, there are criticisms on complicated procedures such as the method of contributing monetary remuneration after the resolution of providing monetary remuneration. For the purpose of providing share remuneration as an incentive, or keeping the balance with the other remuneration regulations, the determination method is clarified, and the comments from the point of view of practice have been responded to. Moreover, in order to secure the suitability and the transparency of the corporate director, modeled on a Company with a Nominating Committee, etc., the decision policy about the remunerations are imposed on certain Companies.

(II·III) Indemnity agreement·Directors and Officers liability insurance

About Company Indemnification or Directors and Officers liability insurance which is done in practice, the range of indemnity in the former or the insured event in the latter is clarified under the Companies Act; by establishing some procedure regulations, the Companies Act basis is provided; and suitability is secured in order not to bring about moral hazard. These agreements may fall into transactions which result in a conflict of interest (Companies Act Article 356, 365). By establishing the

above procedure regulations, the regulations of a conflict of interest shall not apply.

② Regulations about the use of Outside Directors

(I) Delegation of execution of operation to outside directors

For example, in case of a Management Buyout (MBO), the outside director of the target company may negotiate with the acquirer, or consider the fairness of the transaction between the target company and the acquirer. In this case, the outside director's negotiation or consideration falls into to 'execute the operations of the Stock Company' (Companies Act Article 2 (15)), so there was the possibility not to satisfy the requirements of an outside director. This revision clarified that there was no such possibility.

(II) Mandatory appointment of an outside director

A Company with a Board of Company Auditors (limited to Public Companies and Large Companies) that must submit a securities report, must appoint an outside director. In going toward mandatory appointment, opinions are divided on the following two points; first, how we review the ratio of appointing an outside director in listed companies is increasing significantly, second, how we review the fact that it is not clear that in empirical research, the appointment of an outside director leads to an increase in a Company's value. However, the idea which supports mandatory appointments and reviews that the former point is the evidence that a listed Company recognizes the significance of an outside director, and that the latter point is not necessary for considering whether we should mandate the appointment.

## 5. Labor/Social Security Law

### **An Act on the revision of the act to promote measures against child poverty**

Law No. 41, Jun 19, 2019

#### **1. Background**

In Japan, many children live in poverty. Like other countries, the