

## **2. Legal Affairs**

### **[Awareness of the Issues]**

Among the significant tasks in the legal affairs field are establishing a justice system that is easy for people to use and developing a broad legal infrastructure to revitalize the Japanese economy and ensure enhancement of corporations competitiveness.

As for the former, in order to establish this system as soon as possible, it is important to strive to enhance legal services both in terms of quality and quantity. To this end, it is essential to increase the number of people providing legal services by drastically increasing the number of successful candidates for the national bar examination and by utilizing the expertise of specialists in fields adjoining law and, through this, to stimulate competition in industries providing legal services..

As for the latter, with regard to the basic civil legal system, particularly the commercial code, most of the measures contained in the government's "Three-year Program for Regulatory Reform (Revised)" were implemented as a result of the drastic revisions carried out in 2001 and 2002 from the standpoint of securing the effectiveness of corporate governance, responding to the progress of a highly-networked information society (IT society), improving corporations' funding vehicles, and responding to the globalization of business activities. As a result, it can be said that the legal system pertaining to corporations economic activities has been drastically improved. However, since these laws are the basic infrastructure for corporations economic activities, it is necessary to continue to improve not only the basic laws, such as the civil and commercial codes but also on a broad front based on daily changes in the environment surrounding corporations. In doing so, it is necessary to pay attention not only to the domestic situation but also to changes in the global environment and it is extremely important to focus on the revitalization of the Japanese economy and the further enhancement of Japanese corporations' competitiveness.

### **[Specific Measures]**

#### **1 Promotion of judicial reform**

##### **(1) Further increase of legal professionals [To be continuously implemented]**

In order to increase the number of successful candidates for the national bar

examination, such an increase should be implemented in a schedule and as soon as possible. The goal should be to work toward around 3,000, which should be realized about 2010 while keeping watch over the progress of the new legal training system, including law schools. The increase to about 1,500 should be realized by 2004.

Since the number of legal professionals in the various fields of society is determined by market forces based on actual societal needs, even if the number of successful candidates is increased to 3,000, it should not be viewed as the upper limit. Therefore, further research and study should be undertaken on the ideal number of legal professionals by taking this point into account.

**(2) Securing candidacy qualifications for the new national bar examination for those who are not law school graduates [Measure to be taken in FY2002 and to be implemented in successive steps thereafter]**

Successful candidates for the preliminary examination, even if they are not law school graduates, should be given the same candidacy qualifications for the new national bar examination, which will be implemented starting in FY2006, as those for law school graduates.

In administering a preliminary examination, it is necessary to ensure that its primary purpose is to judge if the candidates have the same level of sophistication as law school graduates. Therefore, the preliminary examination method and the number of successful candidates should be reviewed each time in order to maintain fairness and to minimize disparity in the ratio of successful applicants for the new national bar examination between successful candidates of the preliminary examination and law school graduates.

**(3) Training of lawyers familiar with specialized fields (such as intellectual property rights, international corporate legal affairs, and medical treatment) [Measure to be taken in FY2002 and to be implemented in successive steps thereafter]**

As criteria for establishing law schools, practitioners such as lawyers should be allowed to double as full-time members of the faculty and subjects other than positive laws should be included in the 93 course credits that a student is required to earn. From these standpoints, when it is necessary for training lawyers familiar with specialized fields, appropriate measures should be taken, including decreasing the required number of full-time members of the faculty and the required number of credits.

As criteria for establishing law schools, each law school should be allowed to give preferential treatment to specialists, such as certified public accountants and

medical doctors, in selective examinations at its own discretion.

Measures should also be studied to encourage law graduates with no specialized knowledge other than law to earn credits from a graduate school other than law schools and to allow those who studied law but did not graduate from the law faculty to earn their certificate in two years in the same way as graduates of the law faculty who studied a certain amount of subjects other than law.

With regard to selecting successful candidates, effective measures should be taken so that, for example, an incorporated school will not give preferential treatment to graduates of its affiliated university and that the ratio of graduates from the law faculty to the total number of successful candidates will not become excessive, by such means as disclosing information evaluated by third parties.

**(4) Establishment of law schools [To be implemented in FY2002]**

With regard to the design of institutional arrangements for the establishment of law schools, the administration should approve establishment of law schools if they meet objective conditions to ensure required quality. The administration should also take measures to secure correct and sufficient disclosure of information so that it can improve the quality of education through market evaluation after establishment.

**(5) Review of stipend system in apprenticeship training [Measure to be studied and concluded in FY2003]**

With regard to apprenticeship training, in light of business education to be provided as results of the establishment of law schools, the stipend system should be reviewed for possible abolition, while keeping in mind the whole picture of the legal training system, including law schools. Training contents should also be reviewed, as the training period is to be shortened to one year.

**(6) Review of Article 72 of the Lawyers Law [Measure to be taken by the end of FY2003 at the latest]**

With regard to Article 72 of the Lawyers Law (Law 205, 1949), the predictability of the scope and modes of activities that are subject to restrictions should be ensured and required measures should be taken after studying the contents of services provided by specialists in fields adjoining law, the relationship with the corporate legal section from the standpoint of responding to changes in the diversification of company forms and other points.

In order to enhance the quality of legal services, it is important to stimulate

competition by increasing the number of people providing legal services. However, Article 72 of the Lawyers Law prohibits the practice of law by non-lawyers. Therefore, from the standpoint of expanding the scope of the practice of law allowed to non-lawyers, the above study should be undertaken while taking into account the following suggestions.

Article 72 of the Lawyers Law says that prohibitions “shall not apply in such cases as otherwise specified in this Law.” However, since the Judicial Scrivener Law (Law 197, 1950) and other laws set forth exceptions, this proviso should be revised.

Specialists other than lawyers (not limited to specialists in fields adjoining law) should be allowed to engage in extrajudicial legal business. At the very least, the kind of legal services that carry less necessity to protect consumers, such as legal services to business establishments, including allowing a company to engage in the practice of law for its group companies for payment, should be permitted as an exception to Article 72 of the Lawyers Law.

Authorized company officials should be allowed to become procedural representatives of the company.

With regard to patent attorneys' right to act as a proxy in legal action, the condition requiring the patent attorney to act jointly with a lawyer should be abolished.

Incidentally, with regard to tax attorneys and judicial scriveners, as a result of law revisions, certain legal businesses have been added to the list of businesses that can be engaged by specialists in fields adjoining law. In light of the Second Opinion of the Regulatory Reform Commission and recommendations of the Judicial Reform Council, and from the standpoint of exploring the possibility of further expanding businesses, the government should continue to pay close attention to the situation of the revised laws.

**(7) Relaxing restrictions on the law profession [Bill to be submitted in the next ordinary session of the Diet]**

In order to cope with legal demand in the age of internationalization, it is essential to promote cooperation and coordination between lawyers and foreign law solicitors permitted to practice in Japan. From this standpoint, joint practices should be liberalized by abolishing restrictions on the purposes of joint practices. Employment prohibition should be reviewed, indeed some people point out that it should be abolished.

Moreover, even if some measures to prevent adverse effects have to be adopted, they should be minimised.

With regard to the provision of Article 30-1 of the Lawyers Law restricting concurrent assumption of an official post and the provision of Article 30-3 of the same law requiring permission for business, the Judicial System Council recommends that they should be abolished by shifting to a reporting system. Therefore, necessary measures should be implemented as soon as possible.

## **2 Expansion of the limited partnership system (venture capital system) [Measure partially implemented in FY2002. Study to be continued in FY2003]**

Limited partnerships based on the Law Concerning the Contract of Limited Partnership for Venture Capital Investment have played a role in promoting fund supply to SMEs and venture companies as association type of investment funds having advantages over conventional investment associations established based on the Civil Code in that the “limited liability” of non-business executing partners is legally ensured and that taxes are exempted at the partnership level (tax pass through). In order to further stimulate business activities by providing diversified risk money, the expansion of investment choices for limited partnerships and investment business scope had been called for.

In connection to this, the so-called Small and Medium-sized Enterprise Challenge Support Law (that partially revised the Small and Medium-sized Enterprise Cooperative Association Law for the promotion of new business activities by SMEs) expanded investment choices from joint stock companies to limited companies and business cooperatives, and broadened the scope of investment to make it possible to invest in project finance to acquire trust beneficiary rights. In order to expand investment by supplying diversified risk money, the range of investment choices should be further expanded by taking into account effects of the above expansion.

## **3 Facilitating fund procurement by establishing a legal system for movables and finance receivables as collateral [Study to be commenced in FY2003]**

Under the Japanese legal system, the requirements and effects of transferred security interest with regard to movables (including collective movables) and receivables (including collective receivables) all depend on case law. It is pointed out that this makes it inconvenient to practically use transferred security interest. Generally speaking, if the movable that is the object of a security interest is acquired by a third party in due course, the secured party will lose its right. Some point out that it is necessary to

reexamine the advisability of using such a rule in adjusting interests between the secured party and the third party. It is also pointed out that a posting system like the one in the United States should be established for security on movables and receivables in Japan. On the other hand, some point out that legislating transferred security interest would make the system rigid and inconvenient. It is also pointed out that there is no particular problem with the adjustment of interests rule between a secured party on collective movables and a third party. Some also point out that it would be difficult to establish an effective posting system.

Therefore, a study should be undertaken on the need for establishing a legal system for movable and receivable security and on highlighting problems.

#### **4 Revision of the Industry Revitalization Law (preferential measure under Commercial Code) [Bill to be submitted in the next ordinary session of the Diet]**

The Law on Special Measures for Industrial Revitalization (Law 131, 1999) in its early stage of enforcement prodded corporations to restructure their businesses through “selection and concentration” by extending special support in the fields of tax, Commercial Code, and finance to approved corporations in order to help them realize productivity enhancement by effectively utilizing Japan’s management resources and thus help them get out of the situation where Japanese economic productivity growth has been declining.

However, in order to get out of the current economic situation and to cope with the urgent problems of economic revitalization and strengthening international competitiveness, it is essential to promote “selection and concentration” of the national economy as a whole or industries as a whole, not to mention the restructuring of individual corporations, along with the disposal of non-performing loans. When doing so, special measures of the Commercial Code should be implemented, such as the expansion of simplified reorganization and flexible treatment of purchase consideration in business consolidation that are particularly effective in accelerating industry reorganization.

Therefore, from the standpoint of accelerating industrial reorganization and promoting prompt and smooth business revitalization, special measures of the Commercial Code should be implemented, including the expansion of the scope of simplified mergers and division that can be decided by the board of directors, flexible treatment of purchase consideration in business consolidation, and the exemption of examinations required on such occasions as investment in kind to be made in accordance with an approved plan.

## **5 Introduction of a stock certificate nonissuance system [Bill to be submitted in FY2003]**

Under the current system, although a so-called certificateless plan is in place, a joint stock company is required to issue stock certificates without delay after it comes into being or after the closing date for new stock issues.

However, it has been pointed out that nonissuance of stock certificates should be allowed for companies that are restricted to transfer stocks and privately held companies. As for publicly held companies, shareholders often transfer stocks of without actually issuing stock certificates, as they usually open a custody account at a brokerage house or use a stock storage-transfer system managed by central depository organizations. Moreover, if nonissuance of stock certificates was allowed, it would greatly contribute to reducing the costs and risks involved in the delivery of stock certificates.

Therefore, a stock certificate nonissuance system should be introduced and a new stock transfer system should be established.

## **6 Establishment of a public announcement system via the Internet [Bill to be submitted in FY2003]**

The revision of the Commercial Code in 2001 has made it possible for joint-stock companies to make public announcements (public announcements of business results) of their balance sheets, etc. via electronic means in addition to daily newspapers or the Official Gazette, although the use of electronic means has yet to be approved for other public announcements.

However, in response to the progress of a highly-networked information society, it is appropriate to open the way for the use of electronic means for public announcements.

Therefore, the use of electronic means, such as the Internet, should be approved for public announcements in general that are at present required to be carried in the Official Gazette or daily newspapers.

## **7 Modernization of company laws [Study to be made in FY2003 and FY2004. Measure to be taken in FY2007]**

It is pointed out that the Commercial Code that governs company laws should be rewritten in an easy-to-understand *hiragana* colloquial style. It is also pointed out that while unlimited partnership, limited partnership, and joint-stock companies are

stipulated by the Commercial Code, limited companies are stipulated by a separate law and that this is difficult to understand for users. Furthermore, since the Commercial Code was recently revised many times in a short period of time in response to rapid economic changes, some point out the need to review the revisions thoroughly from the standpoint of making the company laws consistent.

Therefore, a study should be undertaken on modernizing company laws.

#### **8 Relaxation of requirements for resident status of special activities concerning foreign student's internship [To be implemented in FY2003]**

When a foreign student enters Japan for an internship at a Japanese company by using summer holidays, it is in principle required that the student is able to get course credits for the internship from the university they are now enrolled in. From the standpoint of facilitating internship, this requirement should be abolished. From the same standpoint, the necessary documents required for entering Japan on resident status of special activities should be reduced.