THE 1950 AMENDMENT ACT OF THE BUSINESS CORPORATION LAW

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I. *Process of the Legislation of the 1950 Amendment Act*

The Business Corporation Law was revised in July, 1948 in order to institute the paid-up capital system as a preliminary to the adoption of the authorized capital system after the pattern of Anglo-American legislation, and this revision greatly facilitated the adoption of the authorized capital system in Japan.

Under the system which authorizes the payment of capital by instalments, a business corporation can come into being, following payment of a part of its registered capital, and is permitted to collect unpaid shares to meet an increasing demand for funds as time goes by, hence a corporation has little difficulty in securing the necessary funds under such a system.

However, under the 1948 Amendment Act, which requires a business corporation to have its capital fully paid in at the time of incorporation, it has to increase its stated capital and make a call for payment of shares by stockholders whenever it needs more funds. Under the current system, however, the corporation is required to obtain special approval for a capital increase from a general meeting of the stockholders, such procedure inevitably resulting in a waste of time, labor and expenses, and preventing the company from getting needed funds on time.

Accordingly, the need arose to sanction the authorized capital system which allows the board of directors to issue new shares as a means of securing needed funds within the limit of its authorized capital, whenever necessary, under most favorable conditions.

In the face of such a need, the Attorney General's Office took up the study of ways and means to revise the Business Corporation Law centering on the adoption of authorized capital, and decided to adopt the non-par stock system, provided for only under American law, with a view toward paving the way for the easier acquisition of funds by corporations for their own use.

A revised law bill including the non-par stock system on November 16, 1948, was drafted as an "Outline of the Bill Making a Partial Revision of the Commercial Code" (the second plan).

Inasmuch as the plan serves to strengthen the position of the directors through the introduction of authorized capital and non-par stocks, there arose a demand for amending this bill so as to strengthen the position of the stockholders, pursuant to American law, so that a balance of power may be maintained between the two. In the light of this demand, the Amendment Preparation Committee, existent in the Attorney General's Office since 1948, further studied the matter, and in August, 1949, the Legislation Deliberative Council was formally established as part of the government structure. Its Commercial Law Subcommittee deliberated on the Outline of the Bill to effect a partial revision of the commercial code drafted by the Attorney General's Office on August 13, 1949, and completed the drafting of an amendment to the proposed bill on December 22, 1949. This bill embodies a series of revisions placing considerable restrictions on stockholders, in view of the danger in Japan that they might abuse their strengthened position and adversely affect the corporation.

On the basis of this plan, revised by the Legislation Deliberative Council, an amended bill was drafted, and, approved at a Cabinet meeting at the end of January, 1950, being submitted to the seventh session of the Diet on February 24, 1950. Although a minor revision was made by the House of Representatives and the House of Councillors, the bill was duly passed on May 2, finally being promulgated as Act No. 167 on May 10, effective from July 1, 1951.

II. *Reasons for Legislating the Amendment Act*

The major reasons for legislating the Amendment Act are as follows:

First, it facilitates corporations to obtain funds, which is the most important reason for the revision, so that if a corporation wants funds for its own use, it can issue new stock. The authorized capital system and the non-par stock system enable the corporation to get needed funds quickly, advantageously and reliably. Since most readers of this article will be Americans, it is thought, who understand the advantages of these systems, it will not be necessary for the author to give further explanation.

Second, under the existing economic conditions in Japan, the introduction of foreign capital, especially American, is urgently needed. If the business corporation law in Japan, modelled after its American counter-part, functions as well as the latter does, the American investor can feel confident when acquiring Japanese corporation stock, which may help to facilitate a smooth flow of foreign capital into this country. For such purposes, however, it is necessary that the authorized capital and non-par stock systems be adopted in such a way as to give equal treatment to both domestic and foreign corporations, and to realize this need, the Amendment Act makes

this specific point plain, as seen from 2, Article 485. The Amendment Act seeks, as one objective, to bolster the position of the stockholder, thereby serving to encourage foreign investors to become Japanese stockholders.

Third, it seeks to propel the democratization of stockholding, the need for which has often been voiced since the end of the war, security dealers and Government agencies sponsoring movements for such purposes. The democratization of stockholding stems from the idea that corporation stocks should be held by as large a number of people as possible in various strata of society, rather than by a small number of financial cliques and capitalists as in the pre-war and wartime periods, this basic idea being considered responsible for the emphasis placed on strengthening the position of stockholders in the Amendment Act.

The three points mentioned are regarded as the major reasons for legislating the Amendment Act, the essentials of which follow.

III. *Revisions Concerning the Category of Business Corporations*

From the categories of business corporations, the mixture of partnership with limited shares (Kabushiki Goshi Kaisha) is stricken out. At the outset of the Amendment Act, it is clearly set forth that Chapter 5 on "Kabushiki Goshi Kaisha" (the partnership with shares) is eliminated as well as all provisions in the chapter regarding this type of business. This abolition was long debated in legislative circles, and in the Amendment Act, this type of business concern, with little actual benefits, was abolished in view of the complications of revising the chapter thereon.

IV. *Revisions on the Incorporation of Business Corporations*

1. Considerable revisions have been made in essential items of the Articles of Incorporation, but no special explanation is needed since they were effected as a result of insertions and changes in their items. What attracts attention is the provision requiring unanimous approval by all the promoters of the three items concerning the classes and the number of stocks to be issued when a business corporation is established, the issue-value of stocks to be floated and the paid-in surplus of non-par stocks (Article 168–2 of Amendment Act). The insertion of these items in the original Articles of Incorporation is difficult, and in some cases they are in the nature of being decided having regard to economic conditions.

2. Important revisions have been made concerning the issuance and transfer of stocks. Corporations under the Amendment Act need not issue stocks up to the full amount of their authorized capital, since the authorized capital system has been implemented. The only restriction is that a corporation must issue stocks, at the time of incorporation, not less than one-fourth of the total number of registered stock (Paragraph 2, Article 166 of Amendment Act). If a business corporation is incorporated after soliciting stockholders, decisions will be made by more than two-thirds of the votes to be cast by would-be stockholders present at the constituent general meeting, as well as by votes representing more than a majority of the total number of stocks already taken up by would-be stockholders (Paragraph 2, Article 180 of Amendment Act).

This revision was effected as a counter-measure against the method of special decisions to be taken at the general meeting of the stockholders after the incorporation of the company (Paragraph 1, Article 343 of Amendment Act), and naturally is not meant to lay overdue emphasis on the method of making decisions at the constituent general meeting alone.

This method of making decisions is adopted when directors and auditors are elected (Article 183 of Amendment Act). In the election of directors at the constituent general meeting, the system of cumulative voting is not used and the tenure of office of these officials is shortened by one year (Paragraph 2, Article 256 of Amendment Act).

V. *Revisions on Stocks*

1. Under the existing law, provisions can be made in the Articles of Incorporation concerning restrictions or prohibitions of the transfer of stocks (the latter part of Paragraph 1, Article 204), but under the revised law, no provisions in the Articles of Incorporation can ban or restrict the transfer of shares (Paragraph 1, Article 204 of Amendment Act), an amendment necessary to protect the interest of stockholders.

2. Under the existing law, non-bearer shares are transferrable on expression of the intention on the part of the two parties concerned, except where endorsement is necessary and where only the transfer of shares is required as an incidental condition. Under the revised law, the shares are transferrable by exchange of a note certifying the transfer in the name of a person designated as the stockholder, as well as by handing over the share certificate to the new acquisitor. This procedure, however is not incidental, but the consummative conditions (Paragraph 1, Article 205 of Amendment Act).

For notes certifying the transfer of shares, a form indicating the trans-

fer should be adopted, and it is likely that an adaptable form practical in exchange circles will be set for general use in the future. It may be asked what will happen if the transfer of non-bearer shares takes place on the basis of a blanket letter of proxy, currently used for a change of hands and attached to the shares following the enforcement of the revised law? Since the letter is not a document directly certifying the transfer itself, but a datum showing the conferment of the transfer agent's right virtually confirming the change of hands, the power of proxy is considered to fall under the category of documents concerning the transfer as above mentioned.

For the transfer of shares, a new system of a transfer agent has been adopted after the pattern of the transfer agent in the United States, in order to effect a change of holder speedily and without trouble, as a means to democratize the stocks through protection of the shareholders. The use of a transfer agent, however, is not compulsory in all cases. Each corporation has to maintain such an agent under the provisions of its Articles of Incorporation (Paragraph 2, Article 206 of the Amendment Act), and is required to record this fact in the share application form (Paragraph 2, Article 175 of the Amendment Act) and register it with the competent authorities at the time of incorporation (No. 3, Paragraph 2, Article 188 of the Amendment Act).

With the transfer agent recording the stockholders' list the name and address of the new acquisitor, the change of hands becomes a fait accompli (Paragraph 2, Article 206 of the Amendment Act). If a corporation institutes a transfer agent, its director is required to maintain in the agent's office a record of the stockholders and a ledger of debentures or a copy thereof (Paragraph 1, Article 263 of the Amendment Act). The registrar has been instituted as a means to check an excessive issuance of shares, resulting from the adoption of the transfer agent after the American fashion (Paragraph 3, Article 263 of the Amendment Act).

3. Increased Protection for Bona Fide Acquisitors of Shares

The existing law embodies certain restrictions for the protection of a new acquistitor. If the endorsement recorded by a shareholder in the list of the shareholders is not bona fide and its falsity is ascertained by inquiring of the corporation concerned, he is not recognized as an acquisitor of the shares in question (Paragraph 2, Article 229).

Under the Amendment Act, however, these restrictions are removed and unrestricted protection accorded to bona fide acquisitors in line with Article 21 of the Cheque Act. Hence, it has been made unnecessary for the acquisitor to ascertain whether or not the signature of the assignor or the share endorsor is real, or whether or not the signature stamp used corresponds to the one registered with the corporation concerned. As long as the transfer is conducted in good faith involving no grave mistake, all

rights attendant on the shares are handed over to the acquisitor, enabling him to ask the corporation to effect the change of hands, and the corporation cannot refuse the request for transfer merely because the signature seal used is false, a revision regarded as exceedingly important in view of the fact that the existing law not only prevents the transfer of a very large number of shares on grounds of the use of unregistered signature seals but also repudiates the need for transactions involving the sales and pledging of such shares.

VI. *Revisions to the Organs of the Corporation*

1. General Outlook

A glance at the changes effected in the organs in general of the corporation, shows that the rights of a general meeting of shareholders have been restricted to decision-making, as provided for in the Commercial Code or in its Articles of Incorporation (Article 230–2 of the Amendment Act), effecting a noticeable change in the nature of the general meeting hitherto held under the existing law, losing many of the characteristics as the supreme organ.

A change has also been made in the system of the directors (Torishimariyaku) which was ambiguous. Replaced by a decision-making organ called the board of directors, comprising all the directors, this agency functions as a planning organ for execution of the corporation's business and is responsible for the issuance of shares and debentures and approval of transactions between the directors and the corporation, which all formerly belonged to other organs. Furthermore, the board of directors is entrusted with the election of a representative director to represent the corporation in administering its affairs. These amendments have been effected pursuant to American law.

In the third place, authority hitherto conferred on the auditor (Kansayaku) has been markedly curtailed. Under the Amendment Act, the auditor has no right to supervise the administration of the business, but will concern himself solely with the accounting of the corporation. American law makes no provision for the institution of an auditor, for in his place a public-accredited accountant supervises the accounting of the corporation. Under prevailing circumstances in Japan, however, a radical change in auditorship was considered unwarranted. Inasmuch as only a small number of public-accredited accountants are available in Japan, auditorship has been retained to function with limited authority; corporation auditors do not have to be public-accredited accountants. The Amendment Act has made no special revision concerning temporary auditorship or inspectorship (Kensayaku) which remains as hitherto.

2. Revisions regarding general meetings of the shareholders

Under the Amendment Act, a general meeting of the shareholders is authorized to make decisions on matters as provided for by law and the Articles of Incorporation (Article 230-2 of the Amendment Act). Part of its authority has been transferred to the board of directors, and the rest to individual shareholders. Accordingly, the rights of the board of directors and individual shareholders have been greatly expanded.

The authorized sponsor of an ordinary general meeting is the board of directors (Article 231 of the Amendment Act) and that of an extraordinary meeting is the board of directors, the liquidator or a certain number of shareholders. The auditor is not included as a sponsor and Paragraph 2, Article 235 of the existing law is deleted, for the auditor has been deprived of his right to supervise the business affairs and with it, his right to convene an extraordinary general meeting.

In the set of laws, both existing and new, a general meeting makes decisions, ordinary and extraordinary. In both cases, the method of decision-making has been bolstered under the Amendment Act. For making ordinary decisions, the existing law does not provide for any quorum, but the Amendment Act in principle requires a definite quorum; unless the Articles of Incorporation make some special provision, shareholders possessing a majority of the total number of shares already issued should attend the general meeting, and a majority of them vote the issues on the agenda to make them officical (Paragraph 1, Article 239 of the Amendment Act). Although this provision for a quorum for such purposes can be omitted in the Articles of Incorporation, the election of directors should be decided by the votes of not less than one-third of the total number of the shares already issued (Article 256 of the Amendment Act). This particular provision has been made since it concerns decisions on a specially important matter.

The method of making extraordinary decisions is also bolstered, since the attendance of shareholders possessing more than half the total number of the shares already issued is required, and more than two-thirds of their votes are needed to make the decisions official (Article 343 of the Amendment Act). Hence no provisions in the Articles of Incorporation can ease the conditions regarding decision-making.

3. Revision of the system of Directors, Especially the Legalization of the Board of Directors

The major point of the revision in the system of directors is found in the legalization of the board of directors, as a necessary and standing organ of the corporation charged with making plans and reaching decisions for the conducting the business affairs. In some cases, its organization, convocation and authority were set forth in the Articles of Incorporation or agreements and by-laws concerning the board of directors in the past, and

all these have been written into the law under the Amendment Act. As legal measures have been adopted for the authority charged with convoking the board of directors meetings (Article 259 of the Amendment Act), and convoking procedures (Article 259–2 and Article 259–3 of the Amendment Act), explanations are omitted here.

The principal authority of the board of directors lies in making decisions concerning the execution of the corporation's business affairs (Article 260 of the Amendment Act). The Commercial Code makes provisions for each of the important elements in the authority, such as the issuance of shares and debentures, the election and release of the manager, the election of a representative director, agreement on transactions between the corporation and the director, and the election of a person charged with representing the corporation in a lawsuit between the corporation and the director. All these matters concern the decisions on the corporation's will regarding the execution of its business affairs. Unless specifically provided that these matters fall under the juridiction of a general meeting of the stockholders, they are to be administered by the board of directors.

However, the actual execution of the business affairs is an entirely different matter. As in the case of a "Gomei-Kaisha" (the partnership with unlimited liabilities), unilateral execution in principle is to be applied. As to the director charged with the actual execution of business, even the Amendment Act does not make any specific provision, hence the Articles of Incorporation should specify how the election of such a director should be conducted; ordinarily the board of directors is entrusted with task. Although he may be the same person as the reprentative director, to whom reference will be made later, the two do not necessarily have to be one and the same person.

The representative director is one authorized to represent the corporation. As has been explained, he may be the director having authority over the execution of business, though he may also be a different person. The board of directors is an optional institution under the current law, but a compulsory one under the Amendment Act, and for this reason the corporation is required to appoint a representative director pursuant to the decision made by the board of directors; the corporation may, in some cases, select several representative directors to represent it jointly (Article 261 of the Amendment Act). To protect third parties, the name of the representative director or the joint representation of the corporation by several representative directors must be registered with the competent authorities (Nos. 7 & 8, Paragraph 2, Article 188 of the Amendment Act). Provisions concerning the conclusively presumed representative director remain the same under the two laws (Article 262).

According to the Amendment Act, a corporation cannot make provisions even in its Articles of Incorporation for a director to be a shareholder

(Paragraph 2, Article 254 of the Amendment Act), the basic idea being to permit his selection from as wide a circle as possible. While the tenure of office of a director is limited to three years under the current law, it is shortened to two years in the Amendment Act, also providing that the first directors shall serve only one year. These revisions have been made to give the stockholders more opportunity to cast their votes of confidence in the directors, in view of the enhanced authority of the board of directors and the abridged authority of the general meeting of the stockholders. On the same principle, the quorum for the election of a director cannot be made less than one-third of the total number of the shares issued, even under provisions of the Articles of Incorporation (Article 256-2 of the Amendment Act). For the election of a director, American law has been adopted to permit the participation of a maximum number of those representing the interests of a minority of stockholders on the board of directors. For such purposes, cumulative voting is endorsed for the election of the plural directors. In other words, when a general meeting of the stockholders is called to elect more than two directors, the stockholders may demand the corporation in writing to use cumulative voting five days ahead of the meeting date, each stockholder being given as many votes as the number of directors to be elected. A stockholder may cast all his ballots for one candidate or for more than two. The candidates become directors in the order of the votes they have garnered (Article 256-3 of the Amendment Act), but inasmuch as cumulative voting is liable to permit alien elements into the board of directors, and therby cause difficulty in the management of business affairs, the corporation is authorized to reject cumulative voting for electing directors in its Articles of Incorporation (first part of Articles 256-4 of the Amendment Act). An exception, however, is stockholders who possess more than one-fourth of the total number of stock issued; the Articles of Incorporation cannot deprive them of their right to cumulative voting (latter part of Article 256-4 of the Amendment Act).

Some changes in the provisions concerning the release of a director from office have been made, such as the requirement for a special decision on the release being considered an important issue, and acceptance of an appeal from stockholders possessing more than three-hundredths of the total number of shares issued calling for release of a director from office to protect the interest of a minority of stockholders even in case a decision on his release is rejected (Paragraph 2 & 4, Article 257 of the Amendment Act).

The Amendment Act provides for the general line of the duties imposed on a director for the execution of business affairs; it obligates a director to fulfil his duties faithfully for the corporation pursuant to the law, the provisions of the Articles of Incorporation and the decisions made at the general meetings (Article 254-2 of the Amendment Act). This

provision has a similar counterpart in the American law, which stipulates that a director shall carry on his duties as trustee on the basis of trust vis-a-vis the corporation and the stockholders, but it is incomplete as legislation. As to the effects of violations of this provision, conflicting views are likely to be expressed.

Making specific provisions with reference to the responsibility of the directors, the Amendment Act stipulates that if the directors make a proposal for a bogus dividend at a general meeting, they are to be held jointly responsible for the dividends that have been paid out illegally. If some directors extended loans to other directors, they are held jointly responsible for any money not returned. If they engage in transactions in violation of competitive business or with corporations as mentioned in Article 265, or commit acts infringing the provisions of the law or the Articles of Incorporation, they are held jointly responsible for any loss incurred by the corporation (Paragraph 1, Article 266 of Amendment Act).

If any such acts are carried out pursuant to the decision of the board of directors, those directors who approved the decision are regarded as having committed such acts (Paragraph 2, *ditto*), as well as those directors who voiced no objection to the record of the board proceeding after taking part in the decision (Paragraph 3, the same article). Special restrictions are imposed on the exemption of a director from responsibility to the corporation as enumerated above (Paragraph 4, 5 of same article).

All these matters concern the resposibility of the directors to the corporation, but provisions are also made for their responsibility toward third parties. If directors demonstrate malice or commit serious mistakes in the discharge of their duties, if they make false statements on share application forms, debenture application forms, prospectuses, statements of account or schedules, or if they make false registrations or public announcements, they are held jointly responsible for any loss occasioned to third parties (Article 266–3 of the Amendment Act).

4. Abridged Authority of the Auditor

Reference has been already made to the curtailment of the authority of auditorship. Authority accorded to the auditor under the Amendment Act, differing from that under the existing law, is limited to nominal accounting supervision. Hence, his authority may be said to approximate that exercised by an inspector, though the two differ in that the position of the auditor is a standing institution. Regulations in the Amendment Act concerning auditorship mainly refer to a revision resulting from the abridgment of its authority. Excluding these, virtually the same provisions are made as those for the hitherto-existing auditors. One difference is that the Amendment Act sets his maximum term of office at one year (Article 273 of the Amendment Act), which results from the shortening of a director's

tenure of office to give the general meeting of the stockholders more opportunity to cast their votes.

VII. *Institution of Regulations Concerning the Issuance of New Shares*

Inasmuch as the Amendment Act adopted the authorized capital system, the regulations concerning the increase of stated capital, as part of the section hitherto in force governing the change of the Articles of Incorporation, have been completely deleted. However, a new section has been inserted regulating the issuance of new shares between those sections dealing with the organs and accounting.

1. Decision on the Issuance of New Shares

As a result of the adoption of the authorized capital system in the Amendment Act, the board of directors has been entrusted with deciding not only the propriety of issuing the unfloated portion of the total number of shares, as provided for in the Articles of Incorporation after the establishment of the corporation (Article 280–2 of the Amendment Act), but with various conditions regarding the issuance as well.

The conditions concerning share issuance are determined by the board of directors, except in cases where the Commercial Code or the Articles of Incorporation makes related provisions or the general meeting of the stockholders has made due decisions. The conditions relate to the new shares with par-value or not, their class and number, their issue price and the date of issuance, various details pertaining to non-monetary-property investments and the paid-in surplus arising from the payment of non-par shares (*ditto*).

When the board of directors makes its decision, it is required in principle to fix the same issue price for the new shares and other conditions whenever they are floated, the exception to this rule being when the board of directors makes decisions in favor of those possessing the right to new shares (Article 280–3 of the Amendment Act).

A corporation must issue the new shares and fix their value in a fair and just way on the basis of the board of directors' decision. If the corporation in issuing new shares violates the law or the Articles of Incorporation, or floats them in a glaringly unjust way, or at an exceedingly unfair price, the stockholders may call on the corporation to suspend the issuance to protect their own interest (Article 280–10 of the Amendment Act). If any one should buy shares through some director at a notably unjust price, he is held responsible for paying the corporation the differential between the just and unjust prices (Article 280–11 of Amendment Act). A stockholder's right to request the suspension of the issuance of shares corresponds to the

Anglo-American legal idea of "injunction." In Japanese legal procedure, the stockholder is to ask the court of law for provisional disposition by suing the corporation.

2. Right to New Shares (Pre-emptive rights of shareholders)

Promoters of the corporation are to determine, by unanimous approval, conditions considered absolutely necessary to be included in the original Articles of Incorpopation and the share application form on the establishment of the corporation, such as whether the stockholders are to be given the right to new shares, what restrictions are to be imposed thereon and what provisions are to be made concerning the accordance of a right to specific third parties to new shares, if a decision was made to give it to them (No. 5, Paragraph 1, Article 166 and Paragraphs 2 & 3, Article 175 of the Amendment Act). When new shares are to be issued within the fixed number of stock, the right to them is granted pursuant to the recorded decisions or citations in the application form (Article 280-6 of the Amendment Act).

However, a decision on a change in the Articles of Incorporation concerning the raising of the ceiling on authorized share issuance is accompanied by the determination of whether the stockholders should be given the right to new shares thus issued, and what restrictions are imposed on or withheld from it. Moreover, in such a case, a decision is to be made concernining the accordance of the right to specific third parties if they are entitled to it (Paragraph 2, Article 347 of the Amendment Act).

3. Issuance of New Shares and Investment with Non-Monetary Property

In case the Articles of Incorporation make no reference to the names of those who make investments with property other than money, or the kind and the value of property-investments, the type of share with or without par-value for investment, its kind and number, the board of directors is to make due decisions (No. 3, Article 280-2 of the Amendment Act). Since investments with non-monetary property are liable to break the par-value of shares as a result of their over-estimation, a court of law must be requested to select inspectors to investigate the matter except where the number of shares given for investments in the form of non-monetary property does not exceed one-twentieth of the total number of the shares already issued (Paragraph 1, Article 280-8 of the Amendment Act).

The court of law may, in such case, forward the inspectors' reports to the board of directors and the investors after making some revisions, if the reports are considered to include unjust findings: If non-monetary-property investors reject the revisions made by the court, the latter may cancel their right to new shares, or take it for granted that the investors have accepted the revisions, if they register no protest within two weeks

after the notice (Paragraph 2 & 3, Article 280-8 of the Amendment Act).

4. Invalidation of New Share Issuance

A cause for the invalidation of a new share issuance, viewed from a teleological point of view, is compared to a cause for invalidation of the creation of the corporation; strict interpretations should be given both.

Such invalidation primarily occurs when the new shares are issued outside the framework of the authorized capital or without a decision by the board of directors. As to the effect of the invalidation, regulations similar to those governing lawsuits for invalidation of an amalgamation are provided, with a view to protecting the standardized nature of the Organizations Law and the mobile safety of transactions. In another words, the invalidation of a new share issuance can be demanded by an appeal to the court of Law within six months after the shares are issued. The lawsuit can be submitted to the court by stockholders or directors alone (Article 280-15 of the Amendment Act). In making a lawsuit, the regulations governing legal actions for invalidation of the amalgamation are applied in consideration of the suit-making procedures designed to standardize court decisions, and the effect of such decisions in general (Article 280-16, Article 88, Paragraphs 2, 3 & 4, Article 105, Article 109 of the Amendment Act).

When a court decision has been handed down to invalidate a new share issuance, the main and branch offices of the corporation are required to register the fact with the authorities concerned in their locality (Article 280-16, Article 137 of the Amendment Act).

VIII. *Revisions on Corporation Accounting*

1. An amendment to the regulations concerning the accounting of corporations has been made pursuant to the Financial Tables Working Rules and the Enterprise Accounting Basic Regulations, based on Anglo-American practice as instituted by the Enterprise Accounting System Research Commission in the Economic Stabilization Board. But there is still room for a further study, and inasmuch as it is predominantly held still premature to implement the new amendment, a fundamental revision of the accounting system has been deferred. Only a small section of the Anglo-American principle has been adopted in the current amendment.

2. The Amendment Act divides the legal reserve fund into profit reserve funds, instead of maintaining only one reserve fund as in the existing law, in an attempt in the Commercial Code to adopt the generally-accepted fundamental principle of accounting. The profit reserve fund is a legal

reserve fund with profits as its source of income, the rate of reserve remaining the same as under the existing law (Article 288 of the Amendment Act). The capital reserve fund is a legal reserve fund accruing from (1) the differential between the par-value and the higher price at which the par-value shares are sold, (2) paid-in surplus from payment of the non-par shares, (3) the difference between the appraisal profit of the property and the appraisal loss during a business year, (4) differential of the reduction of stated capital, (5) differential of the amalgamation (Article 288-2 of the Amendment Act).

If the legal reserve fund is to be used, the profit reserve fund has to be drawn on first, and, if inadequate then the capital reserve fund should be used (Paragraph 2, Article 289 of the Amendment Act).

3. The regulations concerning the dividend on profits have been revised to authorize the payment of stock dividends on the basis of the American legal system. In other words, a corporation can, by a special decision, offer the stockholders the whole or part of the dividend due them in shares to be newly issued. Hence, the dividend is given in an amount corresponding to the par-value, in the case of par-value shares, and a sum equal to the value as designated in a special decision for non-par shares. Under such circumstances, however, no recognition is given to the paid-in surplus (Paragraphs 1, 2 & 4, Article 293-2 of the Amendment Act). Those who receive stock dividends get the right to new shares as soon the general meeting of the stockholders comes to a close, after decisions have been reached on the dividends (Paragraph 5, Article 293-2).

4. The legal reserve fund can, under the new Act, be credited to the capital of the corporation, the procedure for such a step being left to the decision by the board of directors, but not by a general meeting of the stockholders (Paragraph 1, Article 293-3 of the Amendment Act). In such a case, the corporation may issue shares to the stockholders in proportion to the number of stock in their possession. The stockholders obtain the right to new shares when the board of directors decides on the crediting of the legal reserve fund to capital (Paragraph 2, Article 293-3 of the Amendment Act).

5. The new Act authorizes the stockholders to inspect or copy the schedule accompanying the accounting documents that record designated items, or stockholders more than the designated number to inspect or copy the account books, a system adopted following American law, which permits stockholders access to books, though the American way has been greatly modified to meet the Japanese situation. The corporation is required to prepare the schedule of the accounting documents, as provided for in Article

281, within four months after each accounting period and keep it in its main and branch offices (Paragraph 1, Article 293-5 of the Amendment Act). Similar to the schedule in the United States, it records in detail the business affairs and the conditions of the properties of the corporation, especially with reference to an increase or reduction of the stated capital and the reserve fund, transactions between the directors, the auditor, and the stockholders, and the establishment of a mortgage right. In the case of a non-financing corporation, the schedule must show in detail loan extentions, the acquisition of shares issued by other corporations and the disposition of fixed properties (Para. 2, *ditto*). Stockholders can ask the corporation for permission to inspect or make a copy of the schedule at any time during the business hours, or ask for the issuance of a copy or a partial copy of the schedule, on payment of the fee as stipulated by the corporation (The last paragraph, *ditto*).

All these rights are accorded to stockholders in general, but those holding shares of more than one-tenth of the total number already issued can ask permission to inspect and copy documents not mentioned above, such as the account books and all other related documents (Paragraph 1, Article 293-6 of the Amendment Act). But inasmuch as such requests may have an adverse bearing on the corporation, the stockholder is required to submit a request in writing clarifying the reason therefor (Para. 2, *ditto*). A director cannot reject the request unless there is a justifiable reason (Article 293-7 of the Amendment Act).

IX. *Revisions Regarding Debentures*

1. A new provision has been added concerning debentures, (Sub-Section 3) which governs convertible bonds as a type of debenture, a step taken as a result of the abolition of the regulations regarding the increase of stated capital.

2. Only minor revisions have been made in the general regulations in Sub-Section 1. In their revisions, debentures are to be issued on the basis of a decision by the board of directors (Article 296 of the Amendment Act). Likewise, the limit of subscription to debentures as a general rule has been expanded to the total amount of the stated capital and the legal reserve fund, by hiking the ceiling on the debenture issuance as an expedient measure for capital acquisition (Paragraphs 1 & 2, Article 279 of the Amendment Act). Another revision, among others, provides that if there occurs a change of ownership in non-bearer debentures, transfer agents can be instituted as in the case of non-bearer shares (Article 397 of the Amendment Act). In actual practice, however, this revision has no effect since all debentures are bearer debentures in Japan.

3. Under the new revisions, convertible bonds can be issued at any time pursuant to the provisions of the Articles of Incorporation or by a special decision of a general meeting. This is not a measure to increase capital as heretofore, however (Paragraphs 1 & 2, Article 341-2 of the Amendment Act). Furthermore, the number of shares to be issued for the conversion of debentures is to be kept below the ceiling of the total number of shares to be floated by the corporation (Paragraphs 2 & 3, Article 341-2 of the Amendment Act), and the conversion of debentures into shares becomes immediately effective (Article 341-5 and Article 222-6 of the Amendment Act).

X. *Revisions Concerning Changes in the Articles of Incorporation and a Reduction of Stated Capital*

1. Regulations concerning an increase of the stated capital in section 6 for a change in the Articles of Incorporation have been scrapped, inasmuch as such a change and the issuance of new shares have been separated as a result of the adoption of the authorized capital system. Furthermore, according to the provisions for a reduction in the stated capital, the term "capital" as used in the Amendment Act can be interpreted to mean stated "capital" which generally is the already-issued capital. Since stated capital has no place in the Articles of Incorporation, and hence its change does not necessitate an Amendment in the Articles of Incorporation, it has been removed from the section governing the latter and placed in an independent new section dealing with a reduction of stated capital. In this connection, some changes have been made in the provisions pertaining to an amendment to the Articles of Incorporation, for reasons arising from the adoption of authorized capital and others.

2. A peculiar revision to the regulations concerning a change in the Article of Incorporation is one regarding the method of making decisions (Articles 343 and 345 of the Amendment Act), but since explanation already has been made as to how decisions are to be reached by the general meettings of the stockholders, no further reference is given here.

An important revision to changes in the Articles of Incorporation is found in the institution of regulations concerning an increase of authorized capital, because of the adoption of the authorized capital system. Rather than giving excessive authority to the board of directors, the new regulations impose certain restrictions on them as to the issuance of new shares and the total number of stock to be issued by the corporation, as such a measure is considered proper in Japan. Accordingly, it is made clear that the total number of shares to be issued by a corporation cannot exceed four

times the number of shares already issued (Paragraph 1, Article 347 of the Amendment Act). No explanation is given here on the decision concerning the acquisition of the right to new shares in this case (Paragraph 2, *ditto*) since reference already has been made to it when the issuance of new shares was discussed elsewhere.

3. The reduction of the stated capital does not follow a change in the Articles of Incorporation under the Amendment Act. For this reason, there arises the need to regulate the method of making decisions involved therein; the Amendment Act, Article 375 stipulates that a special decision is the correct method for doing so, as clarified by the new institution of special regulations. Actually, however, there is no material difference between the existing and new laws; all procedures provided for in Article 376 and subsequent articles are similar to those under the existing law.

XI. *Revisions on the Re-organization, Dissolution, Amalgamation and Liquidation of a Corporation*

Although some minor revisions have been made regarding the re-organization, dissolution, amalgamation, and liquidation of a corporation, explanation on individual cases is omitted here since they are not particularly important. Two revisions, however, must be mentioned. First, the transfer of the total business is not considered a cause for the dissolution of a corporation any longer (Article 404 of the Amendment Act). Second, stockholders who oppose amalgamation of the corporation are authorized to demand payment of a fair price for the stocks in their possession. The former revision has been made to permit the corporation to remain in operation even after it has surrendered its business to another concern and acquired business from others. The latter revision has been effected to protect a minority of stockholders as in the United States.

XII. *Revisions Regarding Foreign Corporations*

A revision has been made to the regulations concerning foreign corporations in view of a gradual rise in their number in Japan and the need for increasing their number as a means to induce more foreign capital into the country. First, except where legal provisions are made, a foreign corporation is classed under other Japanese laws in the same category as similar Japanese concerns and given the same treatment as the latter (Article 485-2 of the Amendment Act). Both Japanese and foreign corporations are treated equally in both private and public laws in order to promote the

development of foreign trade as well as to induce more foreign capital into the country.

The Amendment, however, requires that foreign corporations maintaining no branch office while engaging in business activities, shall designate an agent in Japan. The requirement has been made in view of the difficulty in treating them in the absence of special regulations. Furthermore, foreign corporations are called upon, in such a case, to maintain an office (where its agent resides or elsewhere) and make a public announcement thereon (Paragraph 1 and first part of Paragraph 2, Article 479 of the Amendment Act). In this registration, the foreign corporation is required to state, under what law it was incorporated, so that the parties to transactions can investigate easily any ambiguous legal matters concerning their incorporation.

Until a foreign corporation registers with the competent authorities, it is not authorized to engage in business in Japan. If its agent should do so, in violation of this regulation, the foreign corporation and its agent are held jointly responsible and can be fined pursuant to penal provisions (Article 498-3 of the Amendment Act).