

### 3. Law of Property and Obligations

#### **The Act concerning General Corporations and General Foundations**

Law No. 48, June 2, 2006 (Not yet effective)

#### **Background:**

This year, many acts concerning civil law have been passed. Picking out the important ones, there are the amendment act of the lender act (Law No. 115, 2006), the amendment act of the consumer contract act (Law No. 56, 2006), the trust act (Law No. 108, 2006), and the lost article act (Law No. 73, 2006). Especially, the act concerning General Corporations and General Foundations (following: the act), the act concerning qualification of Public Corporations and Public Foundations (following: the qualification act) and the act concerning the improvement of the related act with the enactment of the act concerning General Corporations and General Foundations and the act concerning qualification of Public Corporations and Public Foundations (following: the improvement act) (these 3 acts, following: the 3 acts) exclude most provisions concerning the Juridical Person from the Civil Code, and have a great influence. Here we shall mainly explain the act.

The present Juridical Person system, which is based on the Civil Code of 1898, distinguishes between a company corporation which seeks a profit and a Juridical Person in the Civil Code which seeks a public interest (*kōeki*), and with regard to the latter adopts the system of the competent government agent (*syumu-kancho*) and the concession system, and places the establishment of a Juridical Person under the control and discretion of the government. On the one side, the present system is criticized because of the monopoly of *kōeki* by the government, and the necessity of encouraging civilians to participate in activities for the public interest is emphasized. On the other hand, the above necessity is related to the streamlining of administration in administrative reform.

In this context, the act for encouraging in the certain non-profit activi-

ties (Law No. 7, 1998) (the NPO act) and the middle juridical person (*chukan-hôjin*) act (Law No. 49, 2001) have been enacted. Especially, the *chukan-hôjin* act aims to make a juridical person into a corporation that has the purpose of promoting a mutual interest for members, and does not have the purpose of distributing the residue among the members. In enacting both acts, an additional resolution was made, and in the resolutions the general review of a non-profit juridical person system was requested of the government. So the government considered the issue, and the further reform of a juridical person for the public interest became a theme in administrative reform. The bureau for promoting the administrative reform in the Cabinet Secretary made the reform plan public in December, 2005. And the bills of the 3 acts were introduced to the Diet in March, 2006, passed on May 26, and the acts were published on June 2. These acts shall be enforced within 2 years and 6 months from the day of publication.

### **Main Provisions:**

This amendment covers the whole of the law of the Juridical Person, and it is impossible to present all the main points. So we will here observe mainly the points that are revised on a large scale from the present provision. The most important point is that the acquisition a Juridical Person position (*hôjin-kaku*) is separated from the recognition of a public character. While the present system requires that the body must seek the public interest in order to acquire *hôjin-kaku*, this act makes the body a Juridical Person unless the body does not seek a profit (a body seeking a profit becomes a Juridical Person as a stock company etc.). We will in the following explain the establishment and the organs of mainly the General Corporation.

#### 1. The General Corporations

##### (1) The establishment

The establishment of a Juridical Person is made by making articles of incorporation (*tei-kan*) and registering them (*tôki*). First, the articles must be formed by more than two members (*syain*). There is no restriction on the purpose to be mentioned in the articles, but the articles can not lay down the distribution of the residue. That is, the General Corporation cannot aim at a profit. The establishment of a Juridical Person takes effect at

the time of registration.

(2) Organs

Any General Corporation must have the General Meeting (*syain-sôkai*) and the Director (*riji*). And the corporation can have the Board of Director's Meeting (*riji-kai*), the Auditor-Secretary (*kanji*) or Independent Auditor (*kaikei-kansa-nin*) (Art. 35, 60). The corporation must have the Auditor-Secretary, when it has the Board of Director's Meeting and Independent Auditor (Art. 61). A corporation that owes more than 20 billion yen must have the Independent Auditor (Art. 62). That is because in such a corporation the need for proper account management is higher.

(3) The fund

The corporation can have a fund (*kikin*). The fund corresponds to the capital in a stock company, and forms the assets for a corporation's creditor.

(4) The representative action

The member can bring the representative action, when the director and so on behaves against the corporation's interest. This institution corresponds to the representative action by a share-holder in a stock company, and is an example of a precise construction of the system of a Juridical Person in the act.

2. The General Foundations

The General Foundation is established when the founders contribute an asset of more than 30 million yen, and form the articles, and register them. The provision of the articles that the founder has a right to have the residue distributed is unavoidable. The foundation must have the Councilors (*hyôgiin*), the Board of Councilor's Meeting (*hyôgiin-kai*), the Board of Directors' Meeting and the Auditor-Secretary. The articles of the foundation can be amended by a decision of the Board of Councilor's Meeting.

3. Public Corporation and Public Foundation

The General Corporation or the General Foundation can become a Public Corporation or Public Foundation by the qualification act. Getting a Juridical Person position (*hōjin-kaku*) is separated from the recognition of a public character.

4. The Provisions of the Civil Code after the amendment

The improvement act excludes many provisions of the Civil Code on

the Juridical Person, with the enactment of the act. In the Civil Code, 5 articles are left. Art. 33 corresponds to the present art. 33. Art. 34 corresponds to the present art. 43. This provision relates to the Capacity of the Juridical Person. Art. 35 corresponds to the present art. 36. This provision relates to the Foreign Juridical Person. Art. 36 and Art. 37 correspond to no provisions in the present. The former relates to the register and the latter to the register of the Foreign Juridical Person.

**Editorial Note:**

We can appreciate the introduction of the unified Judicial Persons system, abolishing the present system which is plural and complicated. But the relation between the General Judicial Person system and the Judicial Person systems in special acts (e.g. an educational foundation, a religious corporation) is left unclear, although the General Judicial Persons and the Stock Corporations are actively compared. Especially, the establishment of the General Foundations system probably leads its function to be similar to that of a trust, so we need to discuss the relation between the Judicial Persons system and trusts.

## **4. Law of Civil Procedure and Bankruptcy**

**Act Revising the Consumer Contract Act**

Law No.56, June 7, 2006 (effective on June 7, 2007)

**Background:**

The Consumer Contract Act was promulgated in May 2000, and enforced in April 2001, in light of the recent rapid increase in the number of conflicts in the area of the dissolution and cancellation of consumer contracts concluded between consumers and businesses. The purpose of this Act is to protect the interests of consumers, and thereby to contribute to the stabilization and improvement of the general welfare of the people's life and to the sound development of the national economy by permitting, in consideration of the gap in quality and quantity of information and negotiating power between consumers and businesses, the avoidance of decla-