estimates and projections. This leads to the need of external and independent audit and certification by experts.

Thirdly, with related to the second challenge mentioned above, the reliability of calculation of distributable profits in danger of being eroded. Though the appropriate calculation of distributable profits is one of the core requirements for corporations, it is explicitly examined neither by the corporate auditors or the audit committee of the company nor by the external auditor. It might lead to arbitrary calculation. In this regard, the calculation should be subject to an audit by an appropriate body of the corporation.

V  Corporate Accounting Laws and Regulations of Corporate Disclosure

Yasuhiro OSAKI

Legal disclosure requirement has several positive functions: to offer material corporate information to the stakeholders; to substantialize the stakeholders’ rights; to equalize their legal status; to deter any occurrence of wrongdoings by corporations. Therefore the Japanese Corporate Law and Securities Law have adopted the mandatory or compulsory disclosure system and such regulations have been constantly reinforced. However, in legal sense, we can ask what the reason or justification is for laws to compel corporations to disclose their material and undisclosed information to the public. In the case of securities laws, the need for full disclosure of corporate information could be an answer. For fair price-making in the securities market, it is considered reasonable to require each listed corporation which has necessary information for evaluating its stock price to disclose its material information. As for listed corporations, they would avoid offering to the public any “disadvantageous” information which might reduce their market stock prices unless there is a legal full disclosure requirement. So such legal compulsion is needed to keep the stock market credible and to maintain its integrity. I believe that the mandatory disclosure requirement in securities laws has good reason to be maintained. In contrast, how we explain the mandatory disclosure requirement in corporate law is more difficult, because that law also covers mid-small corporations which do not finance money from the stock market and have fewer stakeholders who need corporate information. Corporate creditors of those kinds of corporations can get corporate information through face-to-face negotiation, or get some collateral security from the corporation if needed. Some opponents strongly insist that to compel such corporations to disclose their material information should be abolished from a cost-benefit point of view. Moreover, even listed corporations, they indicate, may suffer from cost increase by dual application of disclosure requirements by securities laws and corporation law.

In this report, I will treat various issues regarding the current legal disclosure systems. First, I will point out some issues on disclosure requirement of “Kaishahou” or Japanese Corporate Law, which covers not only listed corporations but also mid-small
Then, I will suggest that the necessity for separate legislation suitable for the characters of corporations, recognizing the difference of corporate characters between large corporation and mid-small size corporation. Each has different kinds of stakeholders. Also I will refer to some current financial accounting issues (e.g. IFRS) or disclosure issues (e.g. non-financial information or “integrated reporting.”), its influence on accounting law (e.g. regulations of distribution), and how laws should react to them.

VI The Concept of Dividend in Tax Law

Tetsuya WATANABE

Tax law has adopted the dividend concept from company law, namely “dividend of surplus”. On the other hand, tax law also defines constructive dividend (“deemed dividend”) in statutes, i.e. Income Tax Act, Art.25 and Corporate Tax Act, Art.24. Under those provisions some transactions are taxed as dividend. Such transactions are (i) liquidating distribution; (ii) dividend accompanied with the decrease of the amount of capital surplus; (iii) acquiring treasury stock; (iv) non-qualified merger; and (v) non-qualified corporate division. These are different dividend concepts from company law. In calculating the amount of deemed dividend, the key is “the amount of capital etc.” which is the capital concept in tax law.

For example, in the case of (i) liquidating distribution, if the sum of the amount of money and the value of assets exceeds “the amount of capital etc.” corresponding to the stock in the liquidating corporation that a shareholder holds, the amount of the excess shall be deemed as the dividend distribution. A liquidating distribution isn’t dividend under company law but tax law treats it as a dividend. In the case of (ii) dividend accompanied with the decrease of the amount of capital surplus or (iii) acquiring treasury stock, “the amount of capital etc.” corresponding to the stocks of the issuing corporation shall be calculated proportionally under certain formula.

“The amount of capital etc.” represents the basis (base value) under income taxation. That’s why it is an important concept. The amount of money and the value of asset distributed by the corporation over basis should be taxable for the shareholder. Such an exceeding part has already been taxed at the corporate level (as corporate tax) but not at the shareholder level (as individual income tax). Accordingly, when such a part is transferred from a corporation to its shareholders in some transactions, Japanese tax law treats them as a dividend. As a matter of legislation, we could have another rule that such an exceeding part shall be taxed as capital gains and not dividend, as if the shareholder sold the stock to the issuing corporation. From a comparative law point of view, the U.S. Internal Revenue Code (sections 301, 302, and 311), court decisions and rerated literature may provide useful suggestions in this regard.