



Asia-Pacific
Economic Cooperation

2006/CSOM/008
Agenda Item: IV

Update on SELI Reporting Mechanism

Purpose: Consideration
Submitted by: CTI/SELI



Concluding Senior Officials' Meeting
Hanoi, Viet Nam
12-13 November 2006

Executive Summary

Background

Following up on the broadening of OAA in 2002, the SELI coordinating group has agreed to start its reporting mechanism which is aimed at sharing member economies' best practices while making the report template flexible enough to meet the diverse social backgrounds of members.

In 2004 twelve (12) member economies submitted reports in the template agreed in 2003 and the outcome was welcomed by the Ministers. In 2005 SELI members have agreed to revise templates to make reports more in line with other reporting templates in APEC, namely IAPs. Thirteen (13) member economies submitted reports in the new template and the outcome was welcomed by the Ministers.

Members discussed an idea of creating a new IAP template for SELI at SELI 2 in September 10, 2006. Some members are of the view that it is worthwhile to consult the Economic Committee (EC) and present SELI's idea in improving its reporting mechanism, since in light of EC's new mandate their report is currently restructured focusing on Structural Reform. This is to avoid duplication of reporting from member economies and to be sure that the improving of the SELI reporting mechanism may add value. Others, expressed concern that since the IAP peer review process for some economies is underway, the proposed new reporting mechanism may be burdensome for concerned agencies at domestic level, and thus suggest not incorporating/aligning the SELI reporting into the IAP template. In conclusion, while in the meantime the Convener will consult the EC on this issue, he wished to float the idea and report back on the outcomes of his consultation with a discussion paper for deliberation at the next SELI meeting in 2007. In addition, it is decided that SELI maintain the current reporting mechanism for the time being. Five (5) member economies submitted reports for 2006 as attached.

Attached:

SELI Reports from Australia, Canada, Hong Kong, China, Japan, New Zealand

Recommendations

It is recommended that SOM :

- Take note of the attached reports; and
- Agree to make SELI Reports for 2006 publicly available on the APEC website.

Strengthening economic legal infrastructure

Objective

APEC economies will enhance well-functioning economy within the global marketplace in the Asia-Pacific region by:

- a. ensuring a fair, transparent and consistent application of the rule of law in the commercial and corporate domain
- b. strengthening economic legal infrastructure in order to minimize the risk of future economic crises and building business and investor confidence

Guidelines

In accordance with the provisions of the Cooperation Framework for Strengthening Economic Legal Infrastructure, each APEC economy will:

- a. consider strengthening legislation and regulations or institutions and administrative procedures with a view to promoting the fair, transparent and consistent application of the rule of law
- b. update relevant professional capabilities and ensure an effective and ethical legal profession
- c. feed back information on individual economies' efforts to APEC for as a reference; and
- d. establish and maintain a dialogue on strengthening economic legal infrastructure with the business community

Collective Actions

APEC economies will;

- a. hold seminars to discuss individual economies' legal designs, if necessary
- b. provide assistance if requested, when designing legal institution and developing human resources for the implementation of legal system
- c. work in closer cooperation with international institutions, Finance Ministers Process and APEC fora, in particular CPDG (Competition Policy and Deregulation Group)

Economy: Australia

Year: 2006

1. Recent Progress on Economic Legal Infrastructure and Related Activities

Links to other chapters//Hyperlinks

*Area(s) in SELI MOO {Corporate Law, Competition Policy}
Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.*

National Legal Profession Project:

The National Legal Profession Model Laws Project has seen the development of model provisions as a basis for consistent laws and rules that apply to lawyers. The aim is to remove the existing barriers to the practice of law across borders and harmonise standards of regulation. A range of amendments to the Model Bill were approved by Ministers. A new version of the model legislation was published on the Law Council's website after the April 2006 SCAG meeting.

<http://www.lawcouncil.asn.au/natpractice/currentstatus.html>

New South Wales and Victoria have passed legislation implementing the Model Bill. The New South Wales Act commenced on 1 October 2005, and the Victorian Act commenced on 12 December 2005.

Relevant changes in NSW and Victoria as a result of this legislation include:

- automatic recognition of the right to practice where a lawyer has a practising certificate from any other State or Territory,
- enabling practitioners to practise law through Incorporated Legal Practices and Multi-Disciplinary Partnerships, and
- costs disclosure requirements being harmonised across Australia, reducing compliance costs for national firms and standardising consumer protections.

Competition Policy

National Competition Policy

On 10 February 2006, The Council of Australian Governments (COAG) announced its commitment to deliver a substantial new National Reform Agenda, embracing human capital, competition and regulatory reform streams. The competition stream is a substantial addition to, and continuation of, the highly successful NCP reforms. It focuses on further reform and initiatives in the areas of transport, energy and infrastructure regulation. The regulatory reform stream focuses on reducing the regulatory burden imposed by the three levels of government.

<http://www.coag.gov.au/meetings/100206/index.htm#related>

2. Outlook of Changes in Economic Legislation

Links to other chapters//Hyperlinks

Area(s) in SELI MOO { Corporate Law, Competition Policy }
Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

Financial Sector Laws

General Insurance

The Australian Government has accepted a recommendation from an independent review into the role of direct offshore foreign insurers (DOFIs) in the Australian market. The recommendation relates to access arrangements for foreign insurers not authorised by APRA. Legislative changes will be made to allow DOFIs marketing insurance in Australia to be exempt from prudential regulation in Australia only if they are domiciled in a country

APRA considers to have comparable prudential regulation. (See also Operational Requirements section).

Corporate Governance

Consultations are underway on whether to introduce a guarantee scheme into the Australian financial system. The Australian Prudential Regulation Authority is consulting industry on proposals to strengthen corporate governance in the banking and insurance sectors and enhance prudential supervision of corporate groups involving general insurers. The reforms will result in changes to various existing prudential standards made under the *Insurance Act 1973*.

Competition Policy

Measures to Deal with Horizontal Restraints

The Trade Practices Legislation Amendment Bill (No. 1) 2005 was passed by the Australian Parliament in October 2006. In accordance with the recommendations from the Dawson Review, the Bill replaces existing exemptions granted to joint ventures under the TP Act with a broader joint venture defence. It also establishes a notification system to facilitate collective bargaining by small businesses.

The Trade Practices Amendment Bill (2006 Measures No. 2) 2006 is currently being drafted to implement criminal penalties for serious cartel conduct.

3. International Cooperation for Strengthening Economic Legal Infrastructure (Received/Provided)

[*Links to other chapters//Hyperlinks*](#)

Area(s) in SELI MOO { Capacity and Institutional Building, Corporate Law, Competition Policy }

Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

Australia co-sponsored workshops in Bangkok and Beijing in August 2006 on strengthening International Commercial Dispute Resolution in the APEC region. The workshops were run by two of Australia's most reputable professional legal educators.

Australia continues to participate actively in the competition law and policy-related activities of APEC, the OECD, the WTO and the ICN.

Australia actively participates in, and contributes to, the work on competition issues within APEC.

Australia seeks to encourage the exchange of information on developments between APEC economies and develop a forum for dialogue to deepen understanding of competition policy within APEC.

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Economy: Canada

Year: 2006

1. Recent Progress on Economic Legal Infrastructure and Related Activities

Area(s) in SELI MOO {Competition Policy}

Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

In May 2005, the Competition Bureau published its revised "Information Bulletin on Private Access to the Competition Tribunal" in order to provide greater transparency and predictability for businesses in Canada.

The Bulletin provides:

- better guidance on when the Commissioner may choose to make written representations to the Tribunal regarding a private party's application for leave to bring a matter forward;
- clarification on when the Commissioner may choose to intervene in a private access proceeding or a consent agreement between private access litigants; and
- an example of when the Commissioner may decide to file an application to the Tribunal directly instead of intervening in a existing private access proceeding

In November 2005, the Competition Bureau published a draft Technical Bulletin on "Regulated" Conduct for comment on the role of the regulated conduct defence (RCD) in relation to competition law. The Bureau also issued its "Information Bulletin on Section 11 of the Competition Act". This information bulletin provides general information on the practice of the Commissioner with respect to the use of section 11 of the Act. Section 11 orders allow the Commissioner to obtain information from persons who have or are likely to have information that is relevant to a matter under inquiry.

In September 2006, the Bureau posted on its website the written submissions received as part of the consultation process to update its "Bulletin on Corporate Compliance" which started in June of 2006.

Measures to Deal with Horizontal Restraints

The Competition Bureau is currently reviewing section 45 of the Competition Act for possible reform. Since the completion of the most recent consultation process, the Bureau has undertaken a systematic analysis of different models in the relation to an existing provision. Consultations and discussions with stakeholders will continue while the analysis is ongoing.

Measures to Deal with Abuse of Dominant Position

On September 23, 2004, the Bureau made significant changes in its approach to the enforcement of the Competition Act in relation to the airline industry. The Bureau sent an open letter to all major Canadian airlines and outlined the changes. In light of these developments and the information obtained from different industry stakeholders, the major points of this policy will be to enforce the predatory pricing and abuse of dominance provisions of the Act.

Measures to Deal with Mergers Acquisitions

On September 22, 2006, the Competition Bureau published its Information Bulletin on Merger Remedies in Canada. The Bulletin provides guidance to businesses and legal counsel on the objectives and general principles applied by the Bureau when it seeks, designs and implements remedies to resolve competition concerns arising from proposed transactions.

In August 2005, the *Report of the Advisory Panel on Efficiencies* was submitted to the Commissioner of Competition and is available on the Bureau's website at: <http://www.competitionbureau.gc.ca>

Area(s) in SELI MOO {Deregulation/Regulatory Review}

Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

The November 30, 2004 Joint Statement by Canada and the United States on a New Partnership in North America outlined an agenda to increase security, prosperity, and quality of life. It identified the objectives of expanding economic opportunities and increasing the competitiveness of North American businesses through partnerships, consensus standards, and "smarter" regulations that result in greater efficiency while enhancing the health and safety of citizens.

On March 23, 2005 the Security and Prosperity Partnership (SPP) was announced. The SPP sets out an ambitious agenda for improved North American co-operation across a range of sectors between the United States, Mexico and Canada. In June 2005, lead ministers from the three countries released work plans including the development of a trilateral regulatory co-operation framework, to be finalized by 2007, to encourage regulatory co-operation and compatibility, and a reduction in redundant testing and certification, while maintaining high standards for health and safety.

A number of government-wide initiatives continue to improve federal coordination of regulatory activities by focusing on themes that reflect government priorities and stakeholder interests. In March 2005, the Government published its first *Smart Regulation: Report on Actions and Plans* and announced its implementation strategy for the Smart Regulation Initiative reported in the previous IAP by noting that the initiative will focus on three strategic areas: Strengthening Regulatory Management, Enhancing Regulatory Cooperation, Achieving Results in Key Sectors and Thematic Areas. In October 2005, the Government published its second *Smart Regulation: Report on Actions and Plans*. The second report noted results and the status of Implementation of Smart Regulations.

The cornerstone of the government's implementation strategy is to strengthen and expand the scope of the federal regulatory policy based on Smart Regulation principles. This and related policies will be designed to strengthen the development, implementation, and evaluation of regulatory regimes, and create a "life-cycle" approach that will enable regulation to be continuously improved in all sectors.

In 2005, progress was also made on a number of important sectoral regulatory reform initiatives. A 58% increase was noted in process efficiency concerning drug approvals; a public/private sector Advisory Committee on Paper Burden Reduction was created in March 2005 and met a number of times to consider concrete proposals for reduction; and a bill was introduced to allow First Nations to assume direct control over oil and gas resources on reserve lands. Other key sectoral reform initiatives continued development in 2005, including those in the areas of nuclear safety, biotechnology, environmental sector sustainability, and fish habitat protection.

Lastly, with regards to *Amendments to Canada Business Corporations Regulations, 2001*, regulations were brought into force in March 2005 to enable federal corporations governed by the US Securities and Exchange Commission to prepare and audit their financial statements using generally accepted US accounting principles. This initiative will reduce overlapping requirements and eliminate the need for federally incorporated business (that are subject to American securities regulation) to prepare and audit two sets of financial statements.

2. Outlook of Changes in Economic Legislation

Area(s) in SELI MOO {Competition Policy}

Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

In September 2006 the Competition Bureau launched a consultation process seeking public comment on its Draft Bulletin on the Abuse of Dominance in Telecommunications.

The Bureau's goal is to develop enforcement and educational tools through an open and transparent process.

The Bureau developed the Bulletin in anticipation of greater reliance on the *Competition Act*, rather than sector-specific regulation, with a view to being more transparent and predictable.

This process is ongoing and the Bureau is still taking in input.

Area(s) in SELI MOO {Deregulation/Regulatory Review}

Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

The following initiatives are complete and currently being implemented:

- *Cosmetic Ingredient Labelling*: Regulations will come into force on November 16 2006. As a result of this initiative, consumers and health care practitioners will know all ingredients used in cosmetic products. As well, adverse reaction will be treated more effectively.

- *Environmental Assessment MOUs for East Coast Offshore Oil and Gas Development:* MOUs have been signed, facilitating implementation of a streamlined process for the next large-scale offshore development project in Nova Scotia or Newfoundland and Labrador. This initiative will eliminate duplication and delays and will result in a more competitive investment climate in offshore industries.

3. International Cooperation for Strengthening Economic Legal Infrastructure (Received/Provided)

Area(s) in SELI MOO { Capacity and Institutional Building, Corporate Law, Competition Policy, others }

Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

Co-operation Arrangements with other Member Economies

On May 4, 2006, the Competition Bureau signed a *Cooperation Arrangement* with the Korean Fair Trade Commission to improve competition law enforcement in areas such as cartel investigations and deceptive marketing practices.

In February 2005, the Competition Bureau partnered with law enforcement agencies and prosecutions services in Atlantic Canada and the United States to tackle the problem of cross-border fraud. The goal of this partnership is to effectively reduce, identify, investigate and prosecute deceptive marketing practices and fraudulent criminal activities.

An agreement was signed between the Government of Canada and the Government of Japan to improve competition law enforcement in areas such as international cartels and merger review. The Agreement includes provisions for enforcement cooperation and coordination, notification of enforcement activities, consultation, positive comity and confidentiality safeguards.

Activities with other APEC Economies and on other International Fora

Canada continues to take a leadership position and is an active member of the International Competition Network (ICN). The Commissioner of Competition, Sheridan Scott, has been elected the new Chair of the ICN Steering group.

Canada continues to take leadership position and to be an active member of the International Consumer Protection and Enforcement Network (ICPEN). The Deputy Commissioner of the Fair Business Practices Branch of the Competition Bureau is serving on the Advisory Group. A Bureau representative is chairing the ICPEN Fraud Prevention Month Working Group and co-chairing the ICPEN Mass Marketing Fraud Working Group.

In November 2005 a trilateral meeting to discuss antitrust matters was held with the United States and Mexico. A bilateral meeting was also held to discuss consumer matters with the United States. A bilateral meeting was held with Japan in March 2006.

Consultations

On August 20, 2005, the Competition Bureau announced that it had begun consultations on its draft "Information Bulletin on the Communication and Treatment of Information under the Competition Act". The revised bulletin was updated to reflect amendments to the Act since the original policy was

introduced in 1995. On January 19, 2006, the Bureau posted on its website the written responses received as part of the consultation process.

The Bulletin provides:

- Example of when information is communicated to Canadian law enforcement agencies;
- Examples of the Bureau's interpretation of matters that fall within the administration or enforcement of the Act; and
- Clarification on how information is treated when it is communicated to or received from foreign authorities.

Area(s) in SELI MOO { Capacity and Institutional Building }

Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

Canada, together with Malaysia, will co-organize an APEC SYMPOSIUM ON INTERNATIONAL ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISMS, in Malaysia, in early 2007. This symposium will cover such topics as international ADR instruments including the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards and UNCITRAL Model Law on International Commercial Conciliations, as well as sessions on ADR in capital markets and recognition and enforcement of ADR awards. These mechanisms would ultimately reduce trade transaction costs in the region and promote greater investment and trade.

ADR is of particular significance to developing economies as international business, in an effort to reduce costs and promote consistency, is increasingly using ADR mechanisms to settle disputes. This project will also be of significant benefit to SME, ME and women-owned enterprises as they often do not have the resources to resort to costly and time-consuming legal proceedings to settle commercial disputes. They could therefore greatly benefit from ADR practices.

Strengthening economic legal infrastructure

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Economy: {Hong Kong, China}

Year: {2006}

1. Recent Progress on Economic Legal Infrastructure and Related Activities

[Links to other chapters//Hyperlinks](#)

Area(s) in SELI MOO {Corporate Law, Competition Policy}
Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

1.1 Corporate Governance

Enhancing Hong Kong's corporate governance (CG) regime is a priority of our work. The Government, together with other relevant parties, attach much importance to uphold our CG standards in line with international standards. Good progress has been made in the past few years. For example, the Government together with the Securities and Futures Commission and the Hong Kong Exchanges and Clearing Limited had drawn up a CG Action Plan in 2003. All the initiatives under the Action Plan have been completed or are near completion.

One of the key proposals is the establishment of the Financial Reporting Council (FRC) to enhance the regulation of auditors and check the compliance of the financial reports of listed entities with the relevant legal, accounting and regulatory requirements. The Financial Reporting Council Ordinance, which provides for the legislative framework for the establishment of the FRC, was enacted in July 2006. With the enabling legislation, the start-up of the FRC is now underway.

The Hong Kong Financial Reporting Standards (HKFRS) are fully converged with the International Financial Reporting Standards (IFRS) since 1 January 2005. This uniform accounting platform, well understood by global investors and financial analysts, is conducive to the comparison of corporations and their results in different jurisdictions and leads to greater confidence in the transparency and quality of Hong Kong's financial markets.

The Government is embarking on a major exercise to review and rewrite the Companies Ordinance (CO) starting this year to ensure that the new CO will provide Hong Kong with an up-to-date legal infrastructure attuned to our needs in the 21st century through streamlining and modernizing its provisions, strengthening its existing corporate governance framework and leveraging company law developments around the world.

1.2 Review of Legal Education and Training

The Department of Justice (DoJ) has played an active part in the work of the Steering Committee on the Review of Legal Education and Training, which was established in late 1999 to oversee a comprehensive review of legal education and training.

Having regard to the recommendations of a detailed consultancy report, the Steering Committee proposed various reforms to improve the standards of legal education and training. For instance, the Steering Committee endorsed the recommendation of the consultants that the Bachelor of Laws programme should be extended from three to four years in order to achieve its proper objectives. With the approval of the University Grants Committee, the new course commenced in September 2004.

In order to keep up the momentum of reform of the legal education and training system, and to keep under review the future direction of that system, legislation has been enacted to establish a new Standing Committee on Legal Education and Training (“the new Standing Committee”). It is currently chaired by the Solicitor General and comprises representatives of stakeholders as well as lay members, and began its work in September 2005. It has taken over the work of the previous Standing Committee and also the Advisory Committee on Legal Education. The new Standing Committee oversees the implementation of the reform of legal education and training and monitors the future direction of legal education.

The Chinese University of Hong Kong established Hong Kong’s third law school in 2005-06. In November 2005, two representatives of the Chinese University of Hong Kong joined the new Standing Committee in order to ensure that the third law school is monitored by, and participates in, the work of that committee in the same way as the existing law schools.

1.3 Competition Policy

HKC currently adopts a sector-specific approach to promoting competition. This approach includes adopting measures not necessarily limited to legislation, but ranging from licensing conditions, contractual provisions, codes of practice, administrative means, public censure, to provisions against anti-competition in specific legislation. This approach affords HKC flexibility to take into account the different circumstances and

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<p>specific operating environment of different sectors.</p> <p>HKC has enacted specific legislation against anti-competition behaviour in the telecommunications and broadcasting sectors, and is in the process of drawing up a code of practice for retail payment services to promote market access, competition and efficiency in that sector.</p> <p>In September 2003, the Competition Policy Advisory Group (COMPAG), the Government's high level forum chaired by the Financial Secretary dedicated to examining, reviewing and advising on competition issues, promulgated a set of guidelines to provide the business sector with objective pointers, benchmarks and principles to assess HKC's overall competitive environment, define and tackle anti-competitive practices. The Government is proactively encouraging various sectors to set up voluntary codes of conduct or self-regulatory mechanism based on the guidelines.</p>	
<p>2. Outlook of Changes in Economic Legislation</p>	<p><i>Links to other chapters//Hyperlinks</i></p>
<p><i>Area(s) in SELI MOO {Competition Policy}</i> <small>Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.</small></p> <p>2.1 Competition Policy</p> <p>To ensure that the Government's competition policy caters for present day's circumstances and enables Hong Kong to maintain its competitive edge, COMPAG appointed on 1 June 2005 an independent committee, the Competition Policy Review Committee (CPRC), to review the existing competition policy and the composition, terms of reference and operations of COMPAG. The CPRC, chaired by a non-official with members drawn from different sectors of the community completed its review in mid-2006 and in the light of the committee's recommendations, the Government will consult the public on the way forward for competition policy.</p>	
<p>3. International Cooperation for Strengthening Economic Legal Infrastructure (Received/Provided)</p>	<p><i>Links to other chapters//Hyperlinks</i></p>

Area(s) in SELI MOO { Capacity and Institutional Building, Competition Policy}

Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

3.1 Competition Policy

HKC has benefited from international cooperation under the APEC Training Program on Competition Policy. In 2006, two government officials attended the training programme, which increased HKC's understanding of competition policy and international development in this area.

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Economy: {Japan}

Year: {2006}

1. Recent Progress on Economic Legal Infrastructure and Related Activities

[Links to other chapters/Hyperlinks](#)

Area(s) in SELI MOO { Corporate Law }

Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

(1) The revisions of the corporate laws

Expanding choice of management systems (2002 ordinary session of the diet)

Entered into force on April 1, 2003. Under the amended Commercial Code, a “large company” (including a “deemed large company”) was allowed the option to adopt a new type of corporate governance system which was widely accepted in the United States. More specifically, a company adopting such a system (a "Company with Committees") was entitled to establish an Appointment Committee, Auditing Committee and Compensation Committee. Such a company also had officers but could not have a corporate statutory auditor (an Auditing Committee was responsible for the internal audit). More than half of the members of each committee mentioned above were required to be outside directors. At a Company with Committees, the board of directors could delegate substantial portion of its management authority to officers. For example, the board could delegate to officers the authority to approve issuances of new shares of capital stock and bonds.

Improvement of stock-option system (2001 Extraordinary Session of the Diet)

Became effective on April 2002. Under the amended Commercial Code, stock options, which had traditionally been perceived as incentive compensation for directors or officers of a corporation, were classified as a variation of Stock Purchase/Subscription Warrant that could be issued at a favorable price and allotted to a wider range of persons than previously permitted. Before this change, stock options had been treated as a unique instrument and, therefore, the Commercial Code made special provision for it. Under the amended Commercial Code, the restrictions that had been placed on (i) persons to whom stock options could be granted and (ii) the maximum number of shares that could be issued by exercise of stock options and (iii) the permissible exercise period no longer existed. Moreover, though a special shareholders' resolution was still necessary to authorize certain facets of stock options, the breadth of those facets had been reduced.

Utilization of IT (2001 Extraordinary Session of the Diet)

Under the amended Commercial Code, shareholders could exercise voting rights through the use of electronic devices (e.g. e-mail) upon authorization to do so by the board of directors. Companies could use the Internet or other electronic means to provide notices of shareholders' meetings and other similar communications to shareholders upon their individual consent. Companies were permitted to meet their mandatory disclosure requirement for balance sheets (and profit and loss statement for "large companies") by making the full text available for 5 years in an electronic format (such as the company web site.)

Area(s) in SELI MOO { Corporate Law }

(2) Enactment of the New Corporate Code (2005 Ordinary Session of the Diet)

The new Corporate Code was enacted on June 29, 2005 and put into effect on May 1, 2006. The new code revised and unified the relevant legislations on business corporations such as the Commercial Code (Part II), Yugen Kaisha Law and the Law for Special Provisions for the Commercial Code Concerning Audits. The new code also modernized the text of such laws by using a colloquial style and hiragana, (a more reader-friendly style), replacing the previous literary style and katakana (old-style Japanese). Highlights of the newly enacted code are as follows:

Elimination of the minimum capital requirements

The new code abolished the minimum capital requirements under the Commercial Code which were 10 million yen for a Kabushiki Kaisha (joint-stock corporation) and 3 million yen for a Yugen Kaisha (company with limited liabilities).

Providing for a flexible designing of corporations

The systems of Yugen Kaisha was integrated into the system of Kabushiki Kaisha, and the new system allows flexible design of governance structures, for example, a closely held corporation with only one director named and consequently without a board of directors.

Japanese versions of LLC and LLP

The Japanese version of LLC, Godo Kaisha (GK), which is similar to the Limited Liability Company in the United States, has been introduced by the new code. The investors (i.e., equity holders) of GK are not liable for liabilities of the corporation, while they have the power to manage the company by themselves.

IAP Chapter 4
Investment
Section: Business
Facilitating Measures
to Improve the
Domestic Business
Environment

The Japanese version of the Limited Liability Partnership (LLP), Yugensekinin Jigyo Kumiai, came into force on August 1, 2005 under the Law Concerning Yugensekinin Jigyo Kumiai Contracts. Yugensekinin Jigyo Kumiai, while limiting liability of partners and allowing for flexible internal governance, is a partnership so the entity itself is not subject to corporate taxation, but the profit is taxed as part of an individual investor's aggregate income.

【本パラグラフは、経済産業省の所管】

The changes made by the amendments of the Corporate Code as mentioned in the above paragraphs are basically maintained under the new code.

Area(s) in SELI MOO {Competition Policy}

(3) The amendment to the Antimonopoly Act

The Government of Japan submitted the bill to amend the Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade (Antimonopoly Act: AMA) to the Diet on October 15, 2004. The bill was approved by the Diet on April 20, 2005. The amended AMA includes the following items which are expected to strengthen the enforcement power of the AMA.

- (1) Increase of surcharge rate in case of violation of AMA
- (2) Introduction of a leniency program
- (3) Introduction of compulsory powers for criminal investigations, etc
- (4) Change in procedures, etc

Tentative Translation for the Amended Act Concerning Prohibition of Private Monopolization and Maintenance of Fair Trade is available at the JFTC website.

The amendments came into effect in January 4, 2006 and are expected to significantly strengthen the JFTC's capabilities to enforce the AMA and to eliminate and deter anti-competitive activities, in particular hard-core cartels and bid-rigging activities.

IAP Chapter 8
Competition Policy

<http://www.jftc.go.jp/e-page/index.html>

<p>2. Outlook of Changes in Economic Legislation</p> <hr/> <p><i>Area(s) in SELI MOO { }</i> <small>Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.</small></p> <p>N/A</p>	<p>Links to other chapters//Hyperlinks</p>
<p>3. International Cooperation for Strengthening Economic Legal Infrastructure (Received/Provided)</p> <hr/> <p><i>Area(s) in SELI MOO { Capacity and Institutional Building, Corporate Law, Competition Policy, others }</i> <small>Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.</small></p> <p>APEC Training Course on Competition Policy</p> <p>The purpose of this project is to build capacity in the area of competition policy by better utilizing the accumulated APEC knowledge and expertise on competition policy, which will contribute to the implementation of “APEC Principles to Enhance Competition and Regulatory Reform” and “Structural Reform.” The proposing economies (Japan, Philippines, Thailand, Malaysia and Indonesia) plan to hold short-tem training course in the field of competition policy once a year from 2005 to 2009.</p> <p>The first APEC Training Course on Competition Policy was held in Manila, the Philippines on August 2-4, 2005. Sixty three experts from fourteen member economies and international organizations such as OECD and UNCTAD made active discussions and exchanged their views on competition policy and law.</p> <p>It was conducted in the form of plenary sessions and break out sessions (small group meetings). In the plenary session on the first day, as a starting point of small group discussion, two university professors made their keynote speeches regarding the following themes;</p> <p>(1)Theme of Group 1: “Abuse of Dominant Position” (2)Theme of Group 2: “Organization and Function of Competition Agencies”</p> <p>After the keynote speeches, participants were divided into two small groups so that all participants in different stages could acquire the full benefits from the training course. In the break out sessions, participants made active discussion following their presentation in each small group.</p>	<p>Links to other chapters//Hyperlinks</p>

The second APEC Training Course on Competition Policy was held in Bangkok, Thailand on August 8-10, 2006 under the themes of “Regulation of Business Combination” and “Competition Advocacy”.

It was conducted in the form of plenary sessions and break out sessions (two small group meetings). In the plenary session, as a starting point of small group discussion, the university professor and the official of international organization made their keynote speeches regarding the above mentioned themes. After the keynote speeches, participants were divided into two small groups so that all participants in different stages could acquire the full benefits from the training course. In the break out sessions, participants made active discussion following their presentations in each small group managed by moderator of the university professor. Last, the moderators made summary presentations of the each small group.

Strengthening economic legal infrastructure

Objective

APEC economies will enhance well-functioning economy within the global marketplace in the Asia-Pacific region by:

- a. ensuring a fair, transparent and consistent application of the rule of law in the commercial and corporate domain
- b. strengthening economic legal infrastructure in order to minimize the risk of future economic crises and building business and investor confidence

Guidelines

In accordance with the provisions of the Cooperation Framework for Strengthening Economic Legal Infrastructure, each APEC economy will:

- a. consider strengthening legislation and regulations or institutions and administrative procedures with a view to promoting the fair, transparent and consistent application of the rule of law
- b. update relevant professional capabilities and ensure an effective and ethical legal profession
- c. feed back information on individual economies' efforts to APEC for as a reference; and
- d. establish and maintain a dialogue on strengthening economic legal infrastructure with the business community

Collective Actions

APEC economies will;

- a. hold seminars to discuss individual economies' legal designs, if necessary
- b. provide assistance if requested, when designing legal institution and developing human resources for the implementation of legal system
- c. work in closer cooperation with international institutions, Finance Ministers Process and APEC fora, in particular CPDG (Competition Policy and Deregulation Group)

Economy: New Zealand

Year: 2006

1. Recent Progress on Economic Legal Infrastructure and Related Activities

Links to other chapters//Hyperlinks

Area(s) in SELI MOO {Corporate Law, Competition Policy}
Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

Securities Law

Securities Legislation Bill

The Securities Legislation Bill (*the Bill*) was passed by Parliament on 12 October 2006. The Bill is designed to ensure confidence in, and promote the efficiency of, New Zealand's capital markets by increasing the effectiveness of securities, securities trading, and takeovers laws. The Bill amends the Securities Act 1978, the Securities Markets Act 1988, the Takeovers Act 1993, and the Takeovers Code in force under the Takeovers Act 1993, with related amendments to other enactments. The principal matters addressed in the Bill include:

- introducing comprehensive prohibitions on market manipulation;
- strengthening the law relating to insider trading;
- improving the quality of disclosure and enforcement under the Investment Advisers (Disclosure) Act 1996;
- improving the law relating to substantial security holder disclosure; and
- increasing the range and size of penalties and remedies available for breaches of securities trading law.

Insolvency Law

The government initiated a two-tier review of the personal and corporate insolvency law in 1999. The focus of the review is to improve the effectiveness of current insolvency laws, and to modernise them, taking into account changes in both the domestic and international environments within which insolvency laws operate. The proposals in the draft Insolvency Law Reform Bill aim to make personal bankruptcy administratively efficient and cost effective, provide for further alternatives to personal bankruptcy and better access to alternate bankruptcy procedures. The Bill also aims to improve the business rehabilitative regime in New Zealand for financially

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distressed companies and pave the way for cross-border insolvencies to take place by adopting the UNCITRAL Model Law on Cross-Border Insolvency. The Insolvency Law Reform Bill has been through the parliamentary process and is due to become law in the very near future.

A discussion document on regulation of insolvency practitioners was released for consultation on 13 October 2006. Submissions on the document are not due until February 2007. Any policy decision on regulating the insolvency practitioners will not be made until mid to late 2007.

Competition Policy

The Commerce Act 1986 is the primary competition law in New Zealand. The general approach is to avoid industry-specific regulations as much as possible and to rely on general rules that apply across all sectors. Recent amendments to the Commerce Act have strengthened generic restraints on anticompetitive conduct and arrangements. Specific regulations to deal with monopoly and access issues have been introduced as required.

A discussion document was released on information sharing in September 2004. The Government is currently considering legislative proposals to enhance international cooperation with respect to enforcement of competition laws. These legislative proposals will enable the Commerce Commission to share confidential information and provide investigative assistance to similar regulators in overseas jurisdictions, subject to specific safeguards. The main impetus for this reform is to enhance co-operation between the Commerce Commission and the Australian Competition and Consumer Commission. The Government intends to introduce these legislative proposals by 2007.

On October 2005, the Commerce Commission released its anti-cartel enforcement procedures on its website, based on the International Competition Network template. Further information is available on the Commissions website www.comcom.govt.nz

A review of the Commerce Act is currently underway. A discussion document is to be released in 2006. The review will examine the provisions relating to regulatory control, (Part 4, 4A and ss70-74 of Part 5) and the provisions relating to the authorisation of restrictive trade practices and business acquisitions and the clearance process for business acquisitions (ss58-69B of Part 5). It is expected that that policy proposals will be put forward

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<p>for Cabinet consideration by late 2007.</p>	
<p>2. Outlook of Changes in Economic Legislation</p>	<p><i>Links to other chapters//Hyperlinks</i></p>
<p><i>Area(s) in SELI MOO { Corporate Law, Competition Policy }</i> <small>Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.</small></p> <p>Financial Sector Laws <i>The Review of Financial Products and Providers (the RFPP)</i></p> <p>In May 2005, the review of financial products and providers was announced by the Minister of Commerce. The key objective for the review is to develop an effective and consistent framework for the regulation of non-bank financial institutions and financial products.</p> <p>The RFPP will consider the regulation of:</p> <ul style="list-style-type: none"> • superannuation schemes; • insurance (health, life and general); • offerings of securities and collective investment schemes (unit trusts, group investment funds, contributory mortgages and other participatory securities); and • non-bank deposit taking financial institutions (friendly societies, credit unions, building societies, industrial and provident societies, finance companies). <p>The RFPP will be completed in four stages:</p> <ul style="list-style-type: none"> • identifying the outcomes/objectives and policy framework for the review (the Stage One Report to the Minister was completed in July 2005); • developing proposed options for reform in consultation with advisory groups; • distributing for consultation a discussion paper on the options and the proposed reforms in the second half of 	<p>http://www.med.govt.nz/buslt/bus_pol/financial-products/#pro</p>

2006; and

- developing policy proposals in conjunction with the advisory groups and based on feedback received. It is intended that policy proposals will be sent to Cabinet in mid 2007, with any legislation planned to be passed in 2008.

As at 31 October 2006, the RFPP is at the third stage, the release of discussion papers for consultation on the options for reform.

In addition to the RFPP, the New Zealand Treasury is leading concurrent work to determine which institution or institutions should be responsible for the various aspects of financial sector supervision.

Regulating financial intermediaries

The Task Force on the Regulation of Financial Intermediaries was established by the Minister of Commerce on 26 August 2004 to provide the government with options on the occupational regulation of the sector, including share brokers, mortgage brokers, insurance brokers, and financial advisers. The Task Force's final report, *Confidence, Change and Opportunity*, was released on 4 August 2005. The Task Force's report recommended that financial intermediaries should be regulated under a co-regulatory model, with both government and industry involvement.

In December 2005, Cabinet provided in principle agreement to the broad framework for the co-regulatory model recommended by the Task Force, and instructed MED to carry out the detailed work on the design of the regulatory regime. The latest step in the design work was the release of a discussion document which sought public submissions on options for the co-regulatory model, under which industry based approved professional bodies work with the Securities Commission to regulate financial intermediaries. This review is being combined with the Review of Financial Products and Providers (discussed above) to ensure the appropriate allocation of responsibilities for disclosure obligations between the financial services provider and the intermediary. Legislation is proposed to be introduced in 2007 and legislation implementing the framework enacted in 2007/2008.

KiwiSaver

KiwiSaver is a nation wide voluntary work based savings scheme. Under the proposed KiwiSaver scheme, savings

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will be automatically collected by employers and channelled to private providers via the Inland Revenue Department. Members have the right to opt-out of the scheme during the first eight weeks of new employment. The proposed KiwiSaver scheme will likely be a form of registered superannuation scheme and subject to the Superannuation Schemes Act 1989 and the Securities Act 1978. The KiwiSaver Act was passed on 6 September 2006. Officials are currently developing regulations that are necessary for the implementation of the scheme. KiwiSaver is planned to be launched on 1 July 2007.

Corporate Governance

On 29 April 2005 the government announced plans to update special partnership law by introducing new limited partnerships. The new limited partnership regime has been designed to help encourage the flow of venture capital investment into New Zealand. A Bill, modernising existing special partnership law and bringing the new limited partnerships regime into effect, is expected to be introduced in 2007. It is expected that the new limited partnerships regime will include: flow-through tax status; limited liability for investing partners and separate legal personality.

Competition Policy

Officials continually keep under review the Commerce Act and potential issues that may be considered in more depth in the coming year include:

- The regulatory control regime;
- Authorization and Clearance regime

3. International Cooperation for Strengthening Economic Legal Infrastructure (Received/Provided)

[Links to other chapters//Hyperlinks](#)

Area(s) in SELI MOO { Capacity and Institutional Building, Corporate Law, Competition Policy }
Select from SELI menu of options: Capacity and Institutional Building, Corporate Law, Competition Policy or others.

The Memorandum of Understanding between the Government of New Zealand and the Government of Australia on Coordination of Business Law (*the MOU*) was reviewed in 2005 and a revised MOU signed in 2006. The focus of the MOU is on reducing transaction costs, lessening compliance costs and uncertainty, and increasing competition

between New Zealand and Australia. The revised MOU reaffirms both countries' commitment to coordination of trans-Tasman business law. It also sets new priority areas for coordination and acknowledges developments in the trans-Tasman environment, such as the objective of a trans-Tasman single economic market.

New Zealand has regularly contributed to APEC and other international fora, including its work in the development of the APEC competition and deregulation principles adopted at the APEC Leaders' Declaration of September 1999.

In 2003 the Securities Commission became a signatory to the International Organisation of Securities Commissions' multilateral memorandum of understanding which enables cooperation between signatories to effectively enforce securities law. The Securities Commission also has bilateral memoranda of understanding with securities regulators in China, Indonesia, Malaysia, Australia, the United States, Hong Kong, Chinese Taipei, Papua New Guinea, Sri Lanka, Israel and Japan. An updated memorandum of understanding was signed between the New Zealand Securities Commission and ASIC, the Australian securities regulator, in August 2005.

The Commerce Act provides for a high level of cooperation between the Commerce Commission and the Australian Competition and Consumer Commission in the enforcement of abuses of market power in trans-Tasman markets. This extends to amendments to each country's respective laws on jurisprudence such that the courts may hold interlocutory proceedings on behalf of the other country.

The Commerce Commission entered into a trilateral cooperation agreement with Australia and Canada. It also entered into a trilateral cooperation arrangement with Australia and Chinese Taipei in 2002. In 2003, the Commission entered into a memorandum of understanding with the Australian Competition and Consumer Commission and the Office of Fair Trading of the United Kingdom.