

New Leap as a Global COE - Deepen Our Research Activities -

As the 21st COE (Center of Excellence) selected and funded by the government in FY 2003, Waseda Institute for Corporation Law and Society (Creating New Legal System for Corporation and Society) has engaged in conducting research. At the end of March in 2008, we successfully ended its granted five-year period. Since then, aiming for the Global COE which is an extended program of the 21st COE, the Institute has deepened its research accomplishments and reconstituted the objects: creating a mature civil society and reconstructing legal systems for the mature civil society. No one surely knew whether our program was selected because a very few programs would be selected among the highest rated 21st COEs. However, with all the great efforts by all concerned, we were selected as the Global COE on June 18, 2008. The theme is "Creating New Corporate Legal Systems for Mature Civil Society - Restructuring Legal Systems of Corporation, Finance, and Capital Market, and Asian Challenges". It clearly articulates the Institute's will to continue expansively the objective of the 21st COE, "to pursue what Japanese society should be by conducting historical and philosophical in-depth research on the fundamental structure of the system concerning urgent matters for Japan".



We aims at "understanding the real nature of the Western legal systems which have a long history since Roman law, without being constrained by the superficial form of statute laws, forming theories about the parts which the Western nations rely on experience, and developing a full-fledged theoretical model of the stock corporation system integrated with the capital market which causes disaster if mishandled. We overcome the lack of experience with intellect and theory, learn weakness in the Western models, and serve national interests of Asian countries with the same problems." Such point of views is our COE's vision.

In such vision, we share the purpose of pursuing corporate or financial/capital market legal systems which fully respect and enhance the values such as justice over freedom and distribution, fundamental human rights, culture, history, ideologies, attractive cities, and care for the vulnerable as well as coexist with such values. In other words, we aim at establishing a corporate society integrated with reconstruction of a civil society which truly respects human beings. The phrase in the theme, "Creating New Corporate Legal Systems for Mature Civil Society" shows our intentions as such. Japan has to design a corporate society with such a high goal which non-Western nations have never reached yet and should not be misled by a temporary success at the expense of the values which we respect.

Our Institute will continue various cross-sectoral research among different fields of law studies with the common focus on key words "corporation, market, and civil society", which is a kind of ambitious research never undertaken before. We were determined to promote research, aiming to understand the essence of the Western corporate legal systems for the mature society and even surpass Europe and the U.S. in logic. Otherwise, carrying no gene of failure in this field, Japan cannot deal with corporate legal systems integrated with capital markets which could cause disaster.

Creating theories means critical recognition of current situation as well as challenge to widely-accepted belief or notion. Waseda University has the founding sprits as "academic independence" and "enterprising spirit" and the founding philosophy of thinking with common people's view. So, this is the task Waseda must tackle forthright and to carry out the task is Waseda's responsibility to the society.

Our Institute aims to create jurisprudence as true social science integrated with history, ideology and sociology as well as fully understand the most updated theoretical conditions. Aiming to reconstruct a full-fledged comparative law studies close to the dynamics of society, we always show the opposing axis of a theory, and for shaping public opinion, show our presence based on solid studies. The time is over when only those involved with corporations gather to discuss corporate society or corporate legal systems. In that sense, we proudly announce that we have three special advisors for our Institute, Mr. Takayasu Okushima, former President of Waseda University and

specialist of corporate law systems, Mr. Nobuyuki Idei, Former CEO of Sony and Chairman of Waseda University Board of Trustees, and Professor. Yoichi Higuchi, a leading constitutional law scholar in Japan and associate member of *Institut de France*. It symbolically shows the expansion of our Institute, giving tremendous power to us.

Trends, which mass media easily formed in Japanese society, are intellectually unfiltered in general. It seems the larger the number becomes, the more likely it is to be wrong. Our mission is quite large and we keenly feel our responsibility. Even though our Institute has such ambition stated before, there might be a large possibility that we make huge mistakes. We strongly hope the continuous support and suggestion by all the concerned.

Tatsuo Uemura, COE Leader, Professor,
Dean of the Faculty of Law and the School of Law

Final assessment of our program as the 21st COE (selected in FY2003 and ended in March 2007)

Final assessment by the 21st COE Program Committee

(Overall Assessment) The goal was fully achieved.

(Comment) It was assessed that the goal of enhancing Japan's legal power by conducting a cross-sectoral research with the common keywords, "Corporation, market, and civil society" was fully achieved. The overall project included various activities such as many international symposium/workshops, exchange with Asian legislative bodies including China, and development of Asian IP English DB. It publicized information both domestically and abroad through quarterly publication, "Corporation Law and Society", and monthly email magazine.

In terms of human development, the program accepted many doctoral students and conducted various measures to develop younger researchers, achieving some progress. However, the number of doctoral degree is not enough yet. In terms of research, the program achieved significant result through vigorous activities and new development is being deepened including views of comparative law. The program is highly promising because Waseda seems to be fully aware that, as its social responsibility, it will continue the Waseda Institute for Corporation Law and Society, the research base which has a think tank role, as well as the Asian IP DB project after the 21st COE program ended.

※ The "Global COE (Centers of Excellence) Program" was established based on assessments of the "21st Century COE Program" and verifications of its results to date carried out by Japan's Ministry of Education, Culture, Sports, Science and Technology (MEXT) from FY2002. The program will provide funding support for establishing education and research centers that perform at the apex of global excellence to elevate the international competitiveness of the Japanese universities. The program will strengthen and enhance the education and research functions of graduate schools, to foster highly creative young researchers who will go on to become world leaders in their respective fields through experiencing and practicing research of the highest world standard.

<http://www.jsps.go.jp/english/e-globalcoe/>

New Organization of Research Projects

Selected as the Global COE, our Institute has established three centers: "Research Center for the Legal System of Corporation and Financial/Capital Markets", "Research Center for the Legal System of Intellectual Property", and "Research Center for the Corporate and Accounting System". "Research Center for the Legal System of Corporation and Financial/Capital Markets", which is the core center of the Institute, conducts cross-sectoral law research with the common keywords, corporation, market, and civil society from various perspectives including basic concepts in the legal system of corporation as well as civil law, constitutional law, or labor law. "Research Center for the Legal System of Intellectual Property" focuses on the Asian IP precedents database project, which has been acclaimed since the 21st COE, and conveys proposals on IP legislation to the world. Also, "Research Center for the Corporate and Accounting System", which is newly established to strengthen the relations between corporate legislation and business administration, economics, or audit, facilitates academic exchange in depth between corporate legislation and business administration/economics.

Each project group has a project leader and many concerned parties are involved in executing research projects such as external and internal researchers and research assistants. As the Global COE, we aim to facilitate research projects of the highest world standard and to foster younger researchers by developing the relations further with many research institutions, international organizations, and legislative bodies.

Research Projects

A Research Center for the Legal System of Corporation and Capital Market

1 Basic Juristic Principles and Theories of Civil Society

A1-1 Critiques of Basic Juristic Concepts

(Yoshiki Kurumizawa)

A1-2 Economic Law and International Economic Law

Research (Kazuhiro Tsuchida, Takao Suami)

A1-3 Theoretical Studies of Civil Society, Juridical Person and Corporation (Michiatsu Kaino, Hideo Sasakura)

A1-4 Studies of Contemporary Issues of Comparative Law in Books and in Practices (Michiatsu Kaino)

2 Constitution and Economic Order

A2-1 Constitution and Economic Order

(Toru Nakajima, Koji Tonami, Imaseki, Motonari Imaseki)

3 Civil Laws for Corporations and Markets

A3-1 General Civil Law Research

(Kaoru Kamata, Tatsuo Uemura)

A3-2 Reconstruction of Civil Commercial Legal Framework

(Kaoru Kamata, Tatsuo Uemura)

A3-3 Corporations, Markets, and Civil Liability (Makinori

Goto, Yasuhiro Fujioka, Michitaro Urakawa, Takehisa Awaji)

A3-4 Corporations / Citizen and Land Legislation

(Katsuichi Uchida, Teruaki Tayama)

A3-5 Globalized Market and Mortgage Legislation (Koji Ohmi)

A3-6 Comparative Legal Research of the Law of Trusts

(Hiroyuki Watanabe)

A3-7 Legal Issues on Human Materials

(Waichiro Iwashii, Katsunori Kai)

A3-8 Civil Liability and the Liability under Public Law

Regarding Environment (Tadashi Otsuka)

4 Sanctions and Dispute Settlement

A4-1 Corporations, Markets, and Criminal Sanctions

(Morikazu Taguchi, Katsunori Kai, Takehiko Sone)

A4-2 Corporations, Markets, and Dispute Settlement

(Tetsuo Kato, Michitaro Urakawa)

5 Corporations and Labor/Environment

A5-1 Research on Concept of the Corporation under Labor

Laws (Makoto Ishida, Yoichi Shimada)

A5-2 Takeover / Corporate Restructuring and Labor

(Makoto Ishida, Yoichi Shimada, Tatsuo Uemura)

A5-3 Labor/Civil Society and New Social Laws (Yoshimi

Kikuchi, Mutsuko Asakura, Makoto Ishida, Yoichi Shimada)

A5-4 Global Environmental Issues and Corporate Liabilities

(Tadashi Otsuka, Takehisa Awaji)

6 Financial/Capital Markets and Law

A6-1 General Research of Financial/Capital Markets and Law
(Tatsuo Uemura)

A6-2 Grand Design for Financial/Capital Market Legislation

(Shigehito Inukai, Tatsuo Uemura)

A6-3 Research on Financial ADR/Ombudsman System

(Shigehito Inukai)

A6-4 Asian Capital Market Legislation Research

(Shigehito Inukai)

A6-5 General Research on Financial Principles

(Shigehito Inukai, Tatsuo Uemura)

A6-6 General Research on Fund Laws (Tatsuo Uemura)

A6-7 Research on Financial Instruments and Exchange Law/

the U.S. Capital Market Legislation (Etsuro Kuronuma)

A6-8 General Research on Derivatives Trading (Yasuo Osaki)

A6-9 Insurance Contract Law (Hideaki Otsuka)

A6-10 Education Institute of Corporate and Financial

Legislation <plan> (Tatsuo Uemura, Kaoru Kamata,
Center for Professional Legal Education and Research)

7 Corporate Legal System

- Theories, Legislation, and Interpretation -

A7-1 General Research on Corporate Legal System

(Tatsuo Uemura)

A7-2 Research on Waseda Takeover Rule

(Hiroyuki Watanabe, Kenji Kawamura, Tatsuo Uemura)

A7-3 French Business Legislation Research

(Kyoichi Toriyama)

A7-4 German and EU Corporate Legislation Research

(Shosaku Masai)

A7-5 Empirical Research on Professionals Involved with

Corporate Behavior (Setsuo Miyazawa)

A7-6 Research on the Bankruptcy Legislation in the Next

Generation (Mitsuru Iwamura, Satoshi Nagano)

8 Corporate Society and Law in Asia

A8-1 Normative Integration of Civil and Commercial Law
in Asia (Koji Ohmi, Teruaki Tayama)

A8-2 Comparative Study on International Maritime Law and

its Legal System in East Asia (Takashi Hakoi)

9 Corporate Society and Laws in Russia,

Eastern Europe, and Scandinavia

A9-1 Corporations and Society in Northern European Laws

(Yasuo Osaki, Shin Matsuzawa)

A9-2 Corporations and Society in Russia and Eastern Europe

(Hiromichi Hayakawa, Hiroshi Oda)

10 Global Information System of Japanese Corporate Laws

A10-1 Global Information System of Japanese Corporate

Laws (Tatsuo Uemura)

B Research Center for the Legal System of Intellectual Property (Leader: Ryu Takabayashi)

B-1 Asian IP Precedents Database / IP Theories Research
(Ryu Takabayashi, Tatsuki Shibuya, Toshiko Takenaka)

B-2 International Trade Laws and IP Legislation
(Shoichi Kidana)

C Research Center for the Corporate and Accounting System (Leader: Hideaki Miyajima)

C-1 Corporate Governance and Economic Analysis (Hideaki Miyajima, Katuyuki Kubo, Shinichi Hirota, Yasuhiro Arikawa)

C-2 Changes of Corporate Activities and Disclosure,
Accounting, Audit, and Internal Control
(Eiko Tsujiyama, Yoshihide Toba, Yoshinori Kawamura)

C-3 Intellectual Property and Innovation
(Makoto Fujita, Tatsuhiko Inoue, Masami Taniguchi)

C-4 Japanese Corporate Governance: Historical Perspective
(Hideaki Miyajima, Syunsuke Hanai, Nao Saito)

Waseda Institute's New Special Advisers

We proudly announce that, in addition to Mr. Takayasu Okushima, former President of Waseda University, Mr. Nobuyuki Idei, former CEO of Sony Corporation, and Professor Yoichi Higuchi, a leading constitutional law scholar in Japan, became special advisers of our Institute.

Our Institute believes in conducting independent research activities, emphasizing the importance of “academic independence”, the founding spirits of Waseda University. However, we believe we should humbly listen to opinions by enlightened business experts rather than carrying out our research separately from the business world. Mr. Idei has valued the basic concepts and activities of our COE and placed more expectations on execution of our research objectives. With his excellent experience and insights as a business expert, he has given us a lot of confidence about what direction we should go forward. We hope he will inspire us to strive for achieving our goals.

Professor Yoichi Higuchi is a leading comparative constitutional law scholar and a renowned thinker in Japan. He is Professor emeritus of Tohoku University and Tokyo University and received an honorary doctorate of University of Paris. He is also a member of Japan Academy and an associate member of *Institut de France*. In 1975, he was awarded the Japan Academy Award for “the Modern Constitutionalism and the Contemporary State”. In the Declaration of the Rights of Man and Citizen in France,

freedom of association is prohibited. A sense of caution against corporation, group, or association rather emphasizes the freedom from association and reflects the way to establish a corporation. Such idea is the so-called Higuchi theory. Even though it is sometimes criticized by experts, the importance of his theory is compelling for corporate laws as a necessary “idealtyps” for Japanese corporate society. I would venture to say that, the idea of our COE's research objective: “Creating New Corporate Legal Systems for Mature Civil Society” means the end of the world where only business related parties gather to discuss corporate legal systems and corporate society. Stock market is a civil society and a stock holder is a laborer and consumer who is a flesh-and-blood person. In such idea, corporate law is a true social science, a king of social science, and must be a study coupled with human science and humanities. To have Professor Yoichi Higuchi as our special adviser symbolically shows the expansion of our Institute. We aim at creating corporate legal systems as human being's learning by absorbing his in-depth knowledge and wisdom as much as possible.

The 21st COE Series of “Creating New Legal System for Corporation and Society”

The series of books are being published by Nippon Hyoron Sha, based on our research during the first COE period (the 21st COE). ※Only available in Japanese language.

1. Corporation, Market, and Civil Society from the Viewpoint of Basic Law
2. Constitutional Basis of Corporations
3. Civil Law Theories and Corporate Legal Systems
4. Conditions and Issues in Corporate Legal Systems
5. Corporate Behavior and Criminal Regulations
6. Labor and Environment
7. Reconstruction of Intellectual Property Legislation
8. Frontier of Corporate Governance Analysis



(Publisher: Nippon Hyoron Sha)

Symposium & Seminar

■ Global COE Kickoff Party (2008/9/24)

At the restart of our research activities as the Global COE, we held a kickoff party inviting people who are interested in our Institute in order to confirm our future direction as well as introduce our new research organization, and further, renew our resolve by communicating closely with many people as much as possible.

After the Global COE Leader Tatsuo Uemura made a presentation about the overview of research projects, the special advisers of our Institute, Mr. Takayasu Okushima, former President of Waseda University, and Mr. Nobuyuki Idei, former CEO of Sony Corporation and among the guests, Mr. Kazumasa Iwata, President of Economic and Social Research Institute had remarks.



University and Professor emeritus of University of Tokyo, Mr. Atsushi Suemura, special editorial writer of Nihon Keizai Shinbun, and Professor Atsutaka Kaino, former Director of Waseda University Institute of Comparative Law, made a speech respectively, showing a lot of encouraging support to our Institute's further accomplishment as the Global COE from now on. Many people came to the party and we could exchange opinions with those. Ms. Meng Zhong Fang, who is a Chinese Pipa player and studies in Professor Uemura's class, presented a splendid performance to entertain the party.



■ Financial ADR Study “the Background of Development of ISO10003 (Quality Management-Customer Satisfaction – Guideline for External Dispute Resolution System)” (2008/ 8/27)

An open workshop was held about the background of development of ISO10003 at the building 8 of Waseda University, organized by Waseda GCOE Financial ADR/Ombudsman Study Group. ISO10003, which is one of the guidelines for dispute resolution system, is indispensable for the study of financial ombudsman system.

Attorney Syuji Yanase, who is Chairman of Financial ADR/Ombudsman Study Group established in 2007 and a former partner of Nagashima, Ohno&Tsunematsu Law Firm, and Ms. Keiko Tanaka, who is a representing director of Japan Mediation Center and Official of Financial ADR/Ombudsman Study Group, and Professor Shigehito Inukai of Waseda University joined the workshop. (They are members of Waseda GCOE Financial ADR/Ombudsman

For the guest speeches, Mr. Hirofumi Uzawa, Professor emeritus of University of Tokyo and member of Japan Academy, Mr. Koichi Masuda, Chairman of the Japanese Institute of Certified Public Association, Mr. Tetsuo Seki, Chairman of Japan Corporate Auditors Association, Professor Kenjiro Egashira, Professor of Waseda

Study Group). Professor Aya Yamada of Kyoto University, who was directly involved in the development of ISO10003, delivered a valuable lecture about the background of Financial ISO 10003, which should be an important guideline for establishing Financial Dispute Resolution System(Japanese Financial Ombudsman System). Then, enthusiastic discussion and valuable opinion exchange took place.

■ Asian Capital Market Forum: Vision for the Asian Common Capital Market (2008/9/8)

It is the most important task for people in the field of capital market in Japan as well as Asia to reconstruct and create various systems for market infrastructure in Asian common market such as creation of framework for self-regulatory rules, the innovation of new listing system, international convergence of accounting standards and so on, realizing the importance of improving domestic capital market and facilitating the harmonization of various market infrastructure between Asia and Japan in globalizing world capital market. Japan's initiative is also expected in this field. In that sense, a treasury of information is found in activities of multiple self-regulatory organizations for global capital markets in Europe and the UK. We could learn quite a lot of experience to develop various systems. With such viewpoint, our Institute is planning to hold a consecutive series of international forums. As the first forum, this forum invited Mr. Nobuyuki Idei, Founder and CEO of Quantum Leaps, Ex. SONY CEO, and Special Adviser of our Global COE Institute and Mr. Masaki Shizuka, Executive Officer, Tokyo Stock Exchange, and Mr. Toshihiko Sasaki, Executive Advisor, Japan Security Dealers Association as keynote speakers. After their keynote speeches, Professor Shigehito Inukai, who newly joined the Global COE, presented about what the Asian common capital market infrastructure should be.

In the panel discussion, leading capital market practitioners who has practical experience in European, Asian or Japanese capital markets led discussions about the possibility for creation of the Asian common capital market, based on what was mentioned in the keynote speeches.



Keynote I: Vision for the Asian Common Capital Market
Nobuyuki Idei, Founder and CEO, Quantum Leaps, Ex. SONY CEO, Chairman of Capital Markets Association for Asia (CMAA)

Keynote II: Outline of the London Stock Exchange's AIM Market and Purpose of Asian AIM Market

Masaki Shizuka, Executive Officer, Tokyo Stock Exchange
Keynote III: International Activities by Japan Securities Dealers Association (JSDA) -- Focusing on Initiatives Targeting Asia

Toshihiko Sasaki, Executive Advisor, Japan Security Dealers Association

Speech: What Is Market Infrastructure for the Asian Common Capital Market? – Possibility Of The Asian MTN Programme

Shigehito Inukai, Professor, Faculty of Law, Waseda Univ., Executive President, CMAA.

Panel Discussion by the Capital Market Practitioners: Possibility for Creation of the Asian Common Capital Market

Panelists:

Tony Grundy, Ex. Linklaters Tokyo Managing Partner, Advisor for CMAA.

Ryoji Sato, CEO, Hitachi Capital Insurance Corp.

Hisashi Sumiyoshi, General Manager, Capital Market Dept. Daiwa Securities SMBC Co. Ltd.

Nobusuke Tamaki, Executive Advisor to the Governor, Deposit Insurance Cooperation of Japan

Moderator:

Shigehito Inukai, Professor, Faculty of Law, Waseda Univ. Executive President, CMAA

■ Mini-symposium for Corporation, Market, and Civil Liabilities, Vol.1: “Responsible Lending in EU”

(2008/9/8)

We invited Professor Ian Ramsey, University of Kent, England, who is former President of International Association of Consumer Law to deliver a lecture on “Responsible Lending in EU”. Professor Hisakazu Hirose, University of Tokyo, participated as a commentator. Consumer credit has expanded with the recent economic development. Many consumers become to reach high-risk financial products and serious consumer problems have taken place. According to Professor Ramsey, in the UK, Financial Service Authority, FSA, an NGO organization, which is semi-private in a sense, imposes administrative regulations on corporations which bring about problems concerning customer credit. In the UK, they adopted an approach to request measures based on such regulations set by FSA.

The lecture was a very suggestive and useful. It was followed by an enthusiastic discussion with the participants.



■ Public Symposium: Convergence of Accounting Standards - “Reality in the EU”, a Lecture by Chairman of EFRAG -

(2008/9/24)

In the globalizing world capital markets, convergence of accounting standards is one of the most critical issues for people in capital market field in the world including Japan. It is not an easy task to balance between capital market globalization and domestic market disciplines while maintaining accounting standards as social norms in response to changes of economic society. With such backgrounds, this symposium invited two renowned experts in order to learn reality in the EU, which made IAS/IFRS mandatory as the regional standards from 2005, ahead of other countries in the world. One is Mr. Stig Enevoldsen, Chairman of European Financial Reporting Advisory Group, EFRAG. He takes a role to decide whether or not to adopt regionally the standards which the International Accounting Standard Boards, IASB

established, by examining the standards from the EU's point of view. The other is Mr. Paul Ebling who has the deepest knowledge in the world about international accounting standards as Technical Director, EFRAG. In the latter half, we invited Mr. Shunichi Toyota, Accounting Standards Board of Japan ASBJ and Mr. Yoshihiro Tokuga, Professor Yoshihiro Tokuga, Kyoto University. We had a symposium with the theme of “Adaptation, Business Report, and Revenue Recognition of the IFRS in the EU” to have discussions based on the lectures by two guests from the EU in the first part, chaired by Professor Eiko Tsujiyama, Waseda University. More than 350 participants including practitioners, business professionals, and academics came to the symposium. With useful lectures and discussion, it ended quite successfully.

■ IP Enforcement in India

(2008/10/2)

In the fields such as IT, automobile or pharmaceutical area, India has successfully developed their domestic industries. Since its entry in the WTO in 1995, India has developed various IP protections to fulfill its obligation based on the TRIPS agreement. In celebration of completing the Indian IP precedents database which the RCLIP had started, this seminar invited academics who involved closely with law revision, judges and attorneys who handled with the actual practice of enforcement from India to discuss current conditions and problems of various IP protections under the new system.



Keynote I: “History and Overview of Patent Law Revision in India”

S.K.Verma, Professor of Law, Delhi University

Keynote II: “Features in IP Enforcement”

Judge Arjan K. Sikri, Delhi High Court

Panel Discussion: Current Conditions and Problems of IP Enforcement in India

Panelists:

Poonam Dass, Delhi University, Lecturer at Law Dept.

Girija Varma, Attorney

Manoj G. Menda, Attorney

Commentators:

Ryu Takabayashi, Professor of Waseda University

Jim Patterson, US Patent Attorney

Moderator: Toshiko Takenaka, Professor of University of Washington, Visiting Professor of Waseda University



mutual collaboration between the initial response to problems within financial institutions and responses taken by financial ombudsman which is a third party, financial ombudsman's criteria of judgment, and code of conduct in British financial institutions, which has been evolved with development of financial ombudsman system in the UK.

Also, Mr. Syuji Yanase, Mr. Toru Ishiguro and Professor Shigehito Inukai participated in the International Network of Financial Ombudsman, INFO, held from September 29 to October 2 at a hotel in NY. Last fall in 2007, Mr. Yanase and Professor Inukai participated in the INFO held in the UK. They could obtain valuable information including the efforts cross-sectional financial dispute resolution system spread around the world including the UK or the EU. At the INFO held in New York this time, it was a good opportunity to know movements of financial ombudsmen in the US and others as well as the most updated information in the world.

Walter Merricks, CBE, chief ombudsman, FOS

David Thomas, principal ombudsman and corporate director, FOS

Shuji Yanase, Attorney at Law, Nagashima Ohno & Tsunematsu

Toru Ishiguro, Attorney at law, Mori Hamada & Matsumoto

Shigehito Inukai, Professor, Faculty of Law, Waseda University

International Conference in New York

on Financial ADR

(2008/10/2)

With kind consent by Mr. Walter Merricks and Mr. David Thomas, two top ombudsmen of Financial Ombudsman Service, FOS, in England, we held "International Conference in New York on Financial ADR" on October 2 at a hotel in New York, hosted by Waseda GCOE. Since National Institute for Research Advancement, NIRA, which is a research partner of Waseda COE, and others invited them to Japan in 2006, we have deepened relations with them by visiting them many times. Representing Waseda GCOE Financial ADR/Ombudsman Study Group, Attorney Syuji Yanase, Attorney Toru Ishiguro, and Professor Shigehito Inukai participated in the Conference.

The FOS of England attracts the world attention as the advanced model of financial dispute resolution system. Waseda GCOE is also conducting research referring to the advanced models of financial dispute resolution system in the UK or Europe such as FSO. It was significantly meaningful to hold a conference with the two top ombudsmen in the UK for establishing Japan's future Financial Ombudsman System. In the conference, valuable opinions were exchanged about various issues including



Column

Enhancing the ADR Functions Essential for Changing the Regulatory Framework

Giving consideration to the social environment that surrounds corporate activities in Japan, few people would disagree with the changes that are occurring in the regulatory framework from *ex ante* regulation by the administration to *ex post* regulation by the judiciary. However, not all disputes will be settled by the judiciary.

In terms of general orientation, we are attempting to convert a top-down regulatory framework such as is often seen in developing countries to a flexible legal regulatory system (an appropriate mixture of hard law and soft law) in the broadest sense of the term, as is suitable for a mature society. The factors which are increasing in importance as essential structural elements of this new system are various effective self-regulatory frameworks and alternative dispute resolution (ADR) mechanisms in which corporations should be major players.

Consultation, complaint handling and dispute settlement in relation to financial services in Japan seem to be inconsistent and insufficient as a whole. Their difficulty of access from the perspective of individual users has been indicated. Despite the fact that individuals who have purchased financial products consult the relevant financial institution when a problem occurs, they do not receive satisfaction in most cases. Financial institutions are able to sell the entire range of financial products at a single point of sale. Such a point of sale is unable to deal effectively with complaints – in some cases the individual making the complaint is sent from one department to another. Frustration is increasing on both the buyer and seller sides. The level of after-sales care provided significantly affects a company's credibility and customer satisfaction.

In such cases, there are various consultation services or organizations other than judicial trials available in Japan. There are 18 Industry-based financial ADR institutions, providing private ADR. Court mediation is available as judicial ADR. In addition, administrative ADR institutions such as the National Consumer Affairs Center of Japan or the consumer centers of local governments provide consultation services. These institutions all respond in their specific manners, but individuals who have problems have no idea where to go, and even if individuals consult with

one of these institutions, it does not always lead to an effective resolution.

Ultimately, there is the possibility of bringing a case to trial. However, dispute resolution by litigation entails considerable expenditure in order to file and maintain a suit, and a great deal of time is generally required to reach a settlement. It may also be difficult for individuals to present evidence. In addition, we cannot ignore the reduction of damages due to comparative negligence, and problems in terms of the protection of the privacy of individuals and families can also be indicated. In short, from the perspectives of simplicity, speed, and cost-effectiveness, it is difficult for consumers to choose the judicial system for small financial disputes. In such cases, an effective alternative choice of dispute resolution should be provided in the form of a third-party ADR mechanism specializing in financial issues which is fair, accessible, comprehensive and binding. No such system yet exists in Japan, but expectations regarding the establishment of a new system by private sector initiative are gradually increasing.

By contrast with conditions in Japan, a comprehensive ADR system specializing in financial disputes has been developed under the initiative of the private sector and commonly accepted in the UK. This comprehensive ADR system, which offers individuals the freedom to file a lawsuit, is based on the premise that the parties to the dispute must cover all costs and abide by the mediation agreement without exceptions. Following the UK's example, with efforts from both the public and private sectors, EU countries are also moving towards the establishment of simpler and more expeditious alternative dispute resolution systems to enable satisfactory resolutions to be reached more quickly and easily. These initiatives should be more widely known in Japan.

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INUKAI, Shigehito, Professor, Faculty of Law, Waseda University

Graduated from Keio University and joined Mitsubishi Corporation in 1975.



Worked in finance related departments for 19 years, including 6 years at Mitsubishi Corp. Finance PLC, London. Dispatched to NIRA, following completion of HBS AMP in 2002. Joined Waseda in July 2008. Official, Japan Financial ADR/Ombudsman Study Group

Upcoming Events

Please visit our Website for the most updated information.
<http://www.globalcoe-waseda-law-commerce.org>

■ Waseda University and Hokkaido University Global COE Joint Copyright Symposium

2008/11/29 13:00~17:30 at Waseda University, Bldg 22 Room 202

Panel 1: Future Vision of Copyright Protection

Moderator: Ryu Takabayashi, Professor of Waseda University, Director of Research Center for the Legal System of Intellectual Property, Waseda Global COE

1. Reports

Speakers:

Yoshiyuki Tamura, Professor of Hokkaido University, Global COE Leader

Katsuyuki Izumi, Professor of Tokushima University

Yuko Noguchi, Attorney at Law, Visiting Associate

Professor of National Institute of Informatics

Kazuhiro Ando, Professor of Hokkaido University

2. Q&A Session

Commentators:

Ichiro Nakayama, Associate Professor of Shinshyu University

Tetsuya Imamura, Lecturer of Meiji University

3. Discussion

Panel 2: Legal Protection of Applied Arts

Moderator: Tatsuhiro Ueno, Associate Professor of Rikkyo University

Panelists:

Yasuto Komada, Associate Professor of Sophia University

Masahiro Motoyama, Associate Professor of Kokushikan University

Koji Okumura, Associate Professor of Kanagawa University

Asuka Gomi, Patent Attorney, Researcher of Waseda

Global COE

LIU, Xiaoqian, Researcher at Hokkaido University Global COE

※Registration at our Website(in Japanese language only)

<http://www.21coe-win-cls.org/gcoe/info/reservation.php?sid=10517>

■ Critiques of Basic Juristic Concepts

Workshop Vol.1, "Terre-capital- Commons-Wastelands"
 2008/11/29 15:00-18:00 at Waseda University, Bldg 9, Conf. Room #1 on the 5th floor

Lecturer: Shigeaki Shiina, Professor emeritus of University of Tokyo

Theme: "Terre-capital- Commons-Wastelands"

※No registration is needed. No interpretation is provided.

■ Waseda/Berkley/Stanford Joint Seminar

"Corporate Crimes Investigation and Compliance in the U.S. after SOX"

2008/12/13 13:00-17:30 at Waseda University Bldg 26, Room B14

※Simultaneous interpretation is provided (English)

Moderator: Setsuo Miyazawa, Professor of Aoyama Gakuin University

Part I

Moderator: Setsuo Miyazawa

Lecturer: Charles Weisselberg, Professor of UC Berkley

Commentator: Tetsuya Ishii, Professor of Chiba University

Part II

Moderator: Kyoko Ishida, Research Associate of Waseda

University Institute of Comparative Law

Lecturer: Norman W Spaulding, Professor of Stanford

University

Commentator: Toshiro Ueyanagi, Professor of Waseda

University

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