

EDITORIAL

The present issue of the Journal presents a broad range of subjects. A certain emphasis is once more laid on corporate governance in Japan and the country's comprehensive company law reform. The ARTICLES section starts with an analysis by Hugh Whittaker and Masaru Hayakawa on recent developments in the corporate control environment in Japan and the correspondent takeover regulation and case law. The authors discuss what kind of defense measures are actually allowed under the new company law. They regard an enhanced input of practitioner wisdom as vital for the future. Their findings supplement contributions in previous issues, as does the ensuing article on corporate governance by Sanford M. Jacoby. It presents a case study of one institutional investor, the major U.S.-American pension fund CalPERS, and its efforts to change corporate governance in Japan over the past 15 years. Although CalPERS has had some success, economic and political factors have limited its influence and permitted the persistence of Japan's distinctive governance system.

The paper by Eiji Takahashi and Tatsuya Sakamoto casts a look at the first practical experiences with the new Japanese Company Code. The authors examine recent trends in business practices relating to shareholders' meetings held between 1 July 2005 and 30 June 2006 of companies listed on Japanese stock exchanges. Thereafter, Jörn Westhoff and Andreas Mayser concentrate on some practical problems that occur with the newly revised corporate legislation. Contrary to the legislators' aim, the new regulation causes unnecessary difficulties for small companies with regard to terms of office of auditors and their audit scope.

The ARTICLES section continues with two contributions dealing with patent law issues. Christopher Heath and Mineko Mōri critically analyze three recent Japanese court decisions that highlight the increasing economic importance of recycled products. The decisions are summarized in English by them in the CASE LAW section. At issue is the disputed distinction of the Japanese courts between (permissible) repair and (impermissible) reconstruction. The authors propose an alternative concept better suited as an appropriate guideline. Michiyoshi Mishiro highlights the different positions taken in Germany and Japan on international patent exhaustion. He observes that Japan's approach may be based on trade policy considerations that would better be left to the individual market participants.

In a shift of perspective, Marc André Wiegand picks up a constitutional topic, the role of the *tennō* as a "symbol" of the state under the present Japanese constitution. The author argues that, contrary to public opinion, no substantial change emerged from the enactment of the Constitution of 1946 in this regard, because in previous centuries, too, the *tennō* predominantly served as a means of identification for the Japanese people. The following extensive essay by Emily Flahive is a comparative critique of Australia's

and Japan's laws on refugees, immigration, and citizenship. In examining how ostensibly different countries such as Australia and Japan have developed similar refugee policies, the author sees an emergence of universal elements of national identity that might be used by refugee advocates worldwide. The ARTICLES section closes with a practical overview of Japan's customs regulation by Monika Zitzmann and Arne Fahje.

In a topical connection with the first four contributions, the LECTURES section carries an address given by Thomas Witty that illustrates the various alternatives of how to structure a stock corporation under the new Company Law of 2006, and the use of this and other newly introduced company types. Some practical examples are given. The section continues with a comparative lecture by Martin Kellner on recent developments and future perspectives of legal education in Japan, Germany, and the United States.

The short paper by Ronald Dore opening the SHORT ARTICLES section is once more topically connected with the first contributions. It deals with the current debate about corporate governance in Japan, indicating that a shareholder revolution has actually taken place there while making some suggestions regarding the possible shape of a stakeholder company system. The following paper by Thorsten Beyerlein gives an overview of the 2006 amendments to the Japanese intellectual property legislation with respect to patent, utility model, design, and trademark law.

The DOCUMENTATION section starts with a report by Noboru Kashiwagi about the efforts of the Japanese government to provide for English translations of Japanese statutes in a systematic and reliable way. The institutional framework was set up in 2006 and the project is already well under way. Thereafter, Yasuhiro Okuda and Kent Anderson present an English translation of the Act on the General Rules of Application of Laws of 15 June 2006. The previous issue already provided a German translation.

In addition to the decisions mentioned above, the CASE LAW section features a summarized translation of the *Ichitaro* decision of 30 September 2005, the first decision of the newly established IP High Court, by Thorsten Beyerlein.

The BOOK REVIEWS introduce a new (German) monograph about the historical developments in Japanese accounting after World War II (review by Christian Förster) and a (German) Festschrift commemorating the first twenty years of cooperation between the Wilhelms-Universität Münster and Chuo University (review by Harald Baum). Further, a review essay by Colin Jones presents a critical publication (in Japanese) on the real-life villainy of money lenders and their usury and unlawful debt collection that is a continuing serious social problem in modern Japan.

The REPORT section carries two contributions. Simon Schwarz and Eva Schwittek give a comprehensive report on the international conference on "Japanese and European Private International Law in Comparative Perspective" that was jointly organized by the Max Planck Institute for Comparative and International Private Law and the German-Japanese Association of Jurists on 1 and 2 March 2007 in Hamburg. Shigeo Yamaguchi reports about the third German-Japanese law and tax conference in Düsseldorf on 20 September 2006.

Harald Baum