

EDITORIAL

This edition of ZJAPANR / J.JAPAN.L. is a special issue that presents the contributions to the CONFERENCE “Reforming Company and Financial Market Regulation in Japan and Germany.” The conference was organized by the DJJV in cooperation with the Japan-German Center Berlin (JDZB). It was held in Berlin on May 9 and 10, 2003, under the patronage of the Japanese ambassador to Germany and the German Minister of Justice. This issue opens with the welcoming speeches. Regrettably, all contributions are in German because the conference language was German; however, each is supplemented with a detailed English summary.

The conference focuses on the far-reaching reforms that Japanese and German company law and capital market regulation are experiencing. Although these countries differ significantly in their structure and institutions, the need for reform is similar and is caused by intensified global competition.

The first contribution by *Hiroko Aoki* shows the fundamental changes in supervision and law enforcement in the Japanese financial markets. The political economy of the reform process receives special attention. The supplementary German report by *Jan von Hein* discusses the centralization of supervision in Germany as well as the major changes in stock exchange law in 2002 and the extended liability in capital market regulation.

Masaru Hayakawa deals with the amendment of the present procedures of amalgamation and the newly introduced rules of separation, transfer, and exchange of shares in the Japanese commercial code. The latter were introduced in connection with the recent lifting of the ban on holding companies. *Gerald Spindler* and *Lars Klöhn* report on a new controversial decision of the German supreme court. In the so-called “*Macrotron*” case, the court tackles the difficult question of protection of minority shareholders in cases of delisting. The authors see here a paradigmatic change from “voice” to “exit” in German corporate law.

Harald Baum gives an overview of the new German takeover law enacted in 2002. He criticizes parts of the new German law in a comparison with the Japanese concept of takeover regulation.

The next few contributions deal with corporate governance. Both Japan and Germany have undertaken great efforts to improve their corporate governance system. Whereas the Japanese reforms have taken place within a purely legislative framework and are aimed mainly at improving supervision, the German corporate governance codex of 2002 is based mainly on self-regulation, albeit with a legal backing. It contains rules of conduct. *Heribert Hirte* puts the German reforms in the broader perspective of the ongoing discussion about modernizing company law in Europe. *Eiji Takahashi*



evaluates the Japanese reforms positively, but warns that however detailed the regulation, it can never guarantee perfect corporate governance.

The two final contributions deal with the criminal sanctions for violation of company law and capital markets regulation. *Makoto Ida* analyzes the pertinent Japanese legal environment and emphasizes the fundamental difficulties in addressing white collar crimes with criminal law. *Susanne Walther* gives a detailed overview of the present German regulation and its specific problems when it comes to policing financial market crimes. In this area, comitology rather than legislative law-making seems best suited to do the job; however, it is highly controversial whether this is compatible with the rule-of-law standards generated by the German constitution.

The conference proceedings are followed by an ARTICLE by *Stacey Steele* that discusses the secured creditor's interests in insolvency under Japan's civil rehabilitation law. The new provisions dealing with extinguishing security interests shift the power balance in a civil rehabilitation procedure slightly away from secured creditors in favor of the debtor or the debtor's new sponsor.

In the section RECENT LEGAL DEVELOPMENTS, *Hiroshi Oda* reports on the intense current discussion about a further tightening of Japan's competition law. Unfortunately, the usual report by *Markus Janssen* and *Peter Schimmann* is missing due to technical reasons, but it will be reprised in the next issue of the journal. *Yuko Nishitani* reports on a major decision of the Japanese supreme court of September 26, 2002. In this decision, the court deals for the first time with the question of applicable law in cross-border patent infringements. *Hiroshi Oda* gives a summary of recent decisions by Japanese courts concerning remunerations for employee inventions.

Sigrid Asschmidt relates information about the introductory conference "Studying Japanese Law in Germany and Japan" organized by the DJJV and Cologne University on September 26 and 27, 2003. *Jens-Stefan Josch* gives a report on the fifth "Japanese-German Lawyers Meeting" held on July 18, 2003. And the first part of the journal closes with an amended and enlarged version of the "Rules of Citation and Guidelines for the Submission of Articles."

Harald Baum