

Newsletter

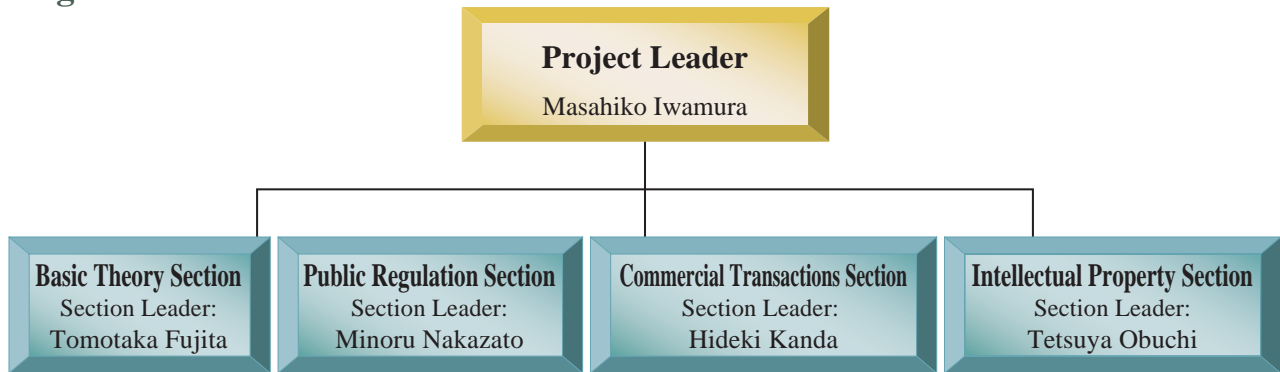
English Edition No.3 Academic Year 2010



Global Centers of Excellence Program Soft Law and the State-Market Relationship

1 Organization of Research and Education

Organization Chart



(Dated as of February 28, 2011)

Project Scholastic Member

<p>Tomotaka Fujita (Section Leader): Graduate Schools for Law and Politics (“GSLP”)/Commercial Law</p> <p>Mizuho Hata: GSLP/Civil Procedure</p> <p>Ryuji Yamamoto: GSLP/Administrative Law</p> <p>Noriyuki Yanagawa: Graduate School of Economics/Contract Theory</p> <p>Toshihiro Matsumura: Institute of Social Science/Industrial Organization</p> <p>Wataru Tanaka: Institute of Social Science/Commercial Law, Law and Economics</p>	<p>Minoru Nakazato (Section Leader): GSLP/Tax Law</p> <p>Shinsaku Iwahara: GSLP/Commercial Law</p> <p>Yoshihiro Masui: GSLP/Tax Law</p> <p>Tadashi Shiraishi: GSLP/Economic Law</p> <p>Keisuke Iida: GSLP/International Political Economy</p>	<p>Hideki Kanda (Section Leader):GSLP/Commercial Law</p> <p>Tomonobu Yamashita: GSLP/Commercial Law</p> <p>Hiroyasu Nakata: GSLP/Civil Law</p> <p>Shoji Kawakami: GSLP/Civil Law, Consumer Law</p> <p>Hiroyuki Kansaku: GSLP/Commercial Law</p> <p>Takahito Kato: GSLP/Commercial Law</p> <p>Keiichi Karatsu: Institute of Business Law and Comparative Law and Politics (IBC) / Corporate Law</p>	<p>Tetsuya Obuchi (Section Leader): GSLP /Intellectual Property Law</p> <p>Daniel H. Foote: GSLP/Sociology of Law</p> <p>Takashi Araki: GSLP/Labor Law</p> <p>Hiroki Morita: GSLP/Civil Law</p> <p>Kichimoto Asaka: GSLP/Anglo-American Law</p> <p>Hiroyasu Ishikawa: Institute of Social Science/Civil Law</p>
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<p>Project Professor</p> <p>Makoto Orihara: Trust Companies Association of Japan</p> <p>Kenji Shimazaki: National Graduate Institute for Policy Studies</p> <p>Hiroya Nakakubo: Graduate School of International Corporate Strategy, Hitotsubashi University</p> <p>Project Associate Professor</p> <p>Hiroyuki Kohyama: Graduate School of Humanities and Social Sciences, Okayama University</p> <p>Project Researcher</p> <p>Masao Ookawa: Bank of Japan</p> <p>Guang Wen Jiang: Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Yuki Sawada: Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Shuichi Takahashi: Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Masashi Takeo: Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Yoshihiro Tsukazaki: Tokyo Stock Exchange Regulation</p> <p>Yuko Tsuchiya: Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Shiori Nishii: Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Hyo Sook Park: Graduate Schools for Law and Politics, The University of Tokyo</p>	<p>Yoko Manzawa: Japan Securities Research Institute</p> <p>Hajime Miyake: Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Keiko Yamamoto: Institute for Monetary and Economic Studies, Bank of Japan</p> <p>Research Assistant</p> <p>Fang Wang : Doctorate Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Yang Shen: Doctorate Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Xiao Tong Wen: Doctorate Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Suk Hwan Choi: Doctorate Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Jo Lan Chen: Doctorate Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Fumiko Narita: Doctorate Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo</p> <p>Maiko Fuchi: Doctorate Program, School of Legal and Political Studies, Graduate Schools for Law and Politics, The University of Tokyo</p>
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2 Activities

GCOE Soft Law Seminars

No	Date	Topic	Speaker
19	January 28, 2011	Thoughts on the concept of uniformity of International Trade Law	Pierre-Jean Bordahandy, Senior Lecturer, University of South Australia

GCOE symposia

No	Date	Topic	Speaker
7	June 18, 2010	M&As and the Law	See, page 4 for detail
8	August 4, 2010	Modern Issues in American Law	See, page 5 for detail
9	March 8, 2011	Convergence of International Norms: Creating Norms without Hard Law	See, page 6 for detail
10	March 11, 2011	Seminar on Cross-Border Insolvencies: U.S. and Japan	See, page 7 for detail



The Seventh Symposium “M&As and the Law”

June 18, 2010 10:00-17:00

Roppongi Academy Hills 49, Conference Room #1&2

Presentations and Comments:

The Honorable Justice Jack B. Jacobs, Delaware Supreme Court

Professor Ronald J. Gilson, Columbia Law School

Professor Jeffrey N. Gordon, Columbia Law School

Professor Curtis J. Milhaupt, Columbia Law School

Professor John Armour, Oxford University

Associate Professor Li Guo, Peking University Law School

Professor Zenichi Shishido, Hitotsubashi University

Professor Tomotaka Fujita, University of Tokyo

Professor Kenichi Osugi, Chuo University

Associate Professor Wataru Tanaka, University of Tokyo

Professor Hideki Kanda, University of Tokyo

Presentation by Armour / Jacobs / Milhaupt: “A Comparative Analysis of Hostile Takeovers in the U.S., UK and Japan (With Implications for Emerging Markets)”

Presentation by Osugi: “Market for Corporate Control in Japan”

Presentation by Gordon: “Legal and Structural Barriers to M&A Around the World: An Empirical Assessment”

Comment by Shishido

Discussion

Presentation by Guo: “Some New Developments in Chinese M&A: Rules and Practice”

Presentation by Tanaka: “Going Private and the Role of Courts: A Comparison of Delaware and Japan”

Presentation by Fujita: “Uniqueness in the Takeover Regulation in Japan: A Comparative Perspective”

Comment by Gilson

Comment by Kanda

Discussion

Closing by Milhaupt / Kanda

Cosponsored by:

Center for Japanese Legal Studies, Columbia Law School

Global Center of Excellence Program, University of Tokyo Graduate Schools for Law and Politics

Program on the Financial Instruments and Exchange Law (Tokyo Stock Exchange), University of Tokyo Graduate Schools for Law and Politics

The Eighth Symposium “Modern Issues in American Law”

August 4, 2010 14:30-17:20

ANA InterContinental Hotel Tokyo, Banquet Room

Moderator: Hideki Kanda, Professor, the University of Tokyo

Introduction: Yoshiaki Miyasako, Visiting Professor, the University of Tokyo

Joseph L. Hoffmann, Professor, Indiana University Maurer School of Law
“Recent Developments in the American Law of Fraud”

Charles W. Mooney, Jr., Professor, University of Pennsylvania Law School
“Insolvency Regimes for Large Non-bank Financial Institutions”

Christopher H. Hanna, Professor, Southern Methodist University Dedman School of Law
“The Future of Tax Planning in the United States”

Veronica Taylor, Professor, Regulatory Institutions Network (RegNet), ANU College of Asia and the Pacific /
Affiliate Professor, University of Washington School of Law
“Exporting U.S. Rule of Law: Lessons from China”



The Ninth Symposium

“Convergence of International Norms: Creating Norms without Hard Law”

March 8, 2011 14:00-18:30
Auditorium, Roppongi Academy Hills 49

Chair: Professor Masahiko Iwamura, the University of Tokyo / GCOE Program Project leader

Opening Remarks

Professor Masahiko Iwamura

The Development of “Soft Law Project”

Professor Tomotaka Fujita, the University of Tokyo / GCOE Project Scholastic Member

Convergence of accounting standards

Speaker: Mr. Atsushi Kogasaka, Technical Director of Accounting Standards Board of Japan

Comment: Professor Keiichi Karatsu, the University of Tokyo / GCOE Project Scholastic Member

OECD’s Project on Enhancing Tax Risk Management: Convergence of Tax Administration Framework?

Speaker: Associate Professor Masao Yoshimura, YOKOHAMA National University

Comment: Professor Yoshihiro Masui, the University of Tokyo / GCOE Project Scholastic Member

The Convergence in Corporate Governance Rules

Speaker: Associate Professor Takahito Kato, the University of Tokyo / GCOE Project Scholastic Member

Comment: Professor Tomotaka Fujita

Conclusion

Professor Hideki Kanda, University of Tokyo / GCOE Project Scholastic Member

Closing Remarks

Professor Masahiko Iwamura

Support: Shoji-Homu Ltd.

The Tenth Symposium
“Seminar on Cross-Border Insolvency Law: U.S. and Japan”

March 11, 2011 14:00-17:00
University of Tokyo Law School Room #101

Presentation 1: The Honorable Bruce A. Markell
U.S. Bankruptcy Judge, District of Nevada

Presentation 2: Junichi Matsushita
Professor of Law, University of Tokyo

Comment 1: Jay L. Westbrook
Professor of Law, University of Texas

Comment 2: Hideyuki Sakai
Sakai, Mimura & Aizawa
Bingham, McCutchen and Murase
Tokyo

Discussion

Moderator: Charles W. Mooney, Jr.
Professor of Law, University of Pennsylvania

International Exchange

<Visitors from Overseas>

Name	Term	Activity
Associate Professor Merle Muda, University of Tartu	May 3 - 27, 2010	Research on Japanese Labor Law as a Foreign Researcher
Professor Ronald J. Gilson, Columbia Law School	June 18, 2010	Comment at the seventh symposium
Associate Professor Li Guo, Peking University Law School	June 18, 2010	Presentation "Some New Developments in Chinese M&A: Rules and Practice" at the seventh symposium
Professor Jeffrey N. Gordon, Columbia Law School	June 18, 2010	Presentation "Legal and Structural Barriers to M&A Around the World: An Empirical Assessment" at the seventh symposium
Professor Curtis J. Milhaupt, Columbia Law School	June 18, 2010	Presentation "A Comparative Analysis of Hostile Takeovers in the U.S., UK and Japan (With Implications for Emerging Markets)" at the seventh symposium
The Honorable Justice Jack B. Jacobs, Delaware Supreme Court	June 18, 2010	Presentation "A Comparative Analysis of Hostile Takeovers in the U.S., UK and Japan (With Implications for Emerging Markets)" at the seventh symposium
Professor John Armour, Oxford University	June 18, 2010	Presentation "A Comparative Analysis of Hostile Takeovers in the U.S., UK and Japan (With Implications for Emerging Markets)" at the seventh symposium
Professor Joseph L. Hoffmann, Indiana University Maurer School of Law	August 4, 2010	Presentation "Recent Developments in the American Law of Fraud" at the eighth symposium
Professor Charles W. Mooney, Jr., University of Pennsylvania Law School	August 4, 2010	Presentation "Insolvency Regimes for Large Non-bank Financial Institutions" at the eighth symposium
Professor Christopher H. Hanna, Southern Methodist University Dedman School of Law	August 4, 2010	Presentation "The Future of Tax Planning in the United States" at the eighth symposium
Professor Veronica Taylor, Regulatory Institutions Network (RegNet), ANU College of Asia and the Pacific / Affiliate Professor, University of Washington School of Law	August 4, 2010	Presentation "Exporting U.S. Rule of Law: Lessons from China" at the eighth symposium
Mr. Julien Mouret, Doctorate Program, University Montesquieu, Bordeaux 4	November 6-28, 2010	Research on Japanese Labor Law as a Foreign Researcher See, Page 9 for detail
Dr. Kim Boggi, Constitutional Court of Korea	November 12, 2010	Lecture "Social Security and Constitutional Adjudication in the Republic of Korea" at the eighth meeting of the Study Group on Social Law and Soft Law
Dr. Pierre-Jean Bordahandy, Senior Lecturer, University of South Australia	January 28, 2011	Lecture "Thoughts on the concept of uniformity of International Trade Law" at the nineteenth meeting of the GCOE Soft Law Seminars
The Honorable Bruce A. Markell, U.S. Bankruptcy Judge, District of Nevada	March 11, 2011	Presentation at the tenth symposium
Professor Charles W. Mooney Jr., University of Pennsylvania Law School	March 11, 2011	Presentation at the tenth symposium
Professor Jay L. Westbrook, University of Texas	March 11, 2011	Presentation at the tenth symposium

<The Project Members' Overseas Research Activities>

Name	Term	Activity
Professor Daniel H. Foote, Graduate Schools for Law and Politics	October 13 - 18	Reflections on Attending a Conference on Reforming Legal Education, Held at Harvard Law School



Julien Mouret

On January 6, the CGT (one of the main trade unions in France) boycotted the new year ceremony at the Elysée Palace, a first. This was to show discontent with the recent outcome of the reform of the pensions system and the attitude of the State towards social dialogue.

This event is a good opportunity to briefly recall the recent changes in social dialogue in France.

I. Before 2008: a long and superficial process with many steps

Since the middle of the 1990's, the social partners and the government tried to update and rejuvenate social dialogue and social bargaining trying to find new actors or setting a method for social dialogue and social policies.

A. Actors

Who Can bargain? Traditionally, trade unions. That would not be a problem if unions were present at every companies or workplace. However, like other industrialized countries, France is facing a decline in the unionization rate. In order to allow bargaining when unions are absent several laws were made.

The initiative came from an inter-professional national agreement of October 31st 1995. One of the aims of this accord signed by employers and unions was to allow the opening of negotiations with other actors than the union representatives in companies where they are not present. This was a disruption here with the past of industrial relations¹.

This solution was set in the law of November 12 1996, but only for a limited time. Like the agreement, the law allowed elected representatives of the company and employees who received a mandate from an union representative in the company to bargain. But there was some conditions, and this must had been allowed buy a branch level agreement.

This latter condition disappeared in the two laws concerning the 35 hours workweek. One point must be noticed: only employees who received a mandate from a representative union could conclude such agreement in the law of June 13th 1998. This comes from the fact that the experimental scheme of the 1996 law was still applicable. So, practically, the 2 different schemes were available at that time. However, only the staff representatives were allowed to conclude agreements with law of January 19th 2000. Thus, this law reduced the possibilities of negotiation.

However, the law of January 2003, called *Law concerning employees, work time and the development of employment* abolished theses schemes, not for long as the law of May 4 2004 was more or less back to the system of the law of 1996 with some adjustments. Thus, though it disappeared in 2003, in 2004, it became possible again for the employer to conclude a collective agreement with other persons that unions representative.

¹ See V. G. Coin, "L'accord interprofessionnel du 31 octobre 1995 sur la politique contractuelle", *Droit Social* 1996, p. 3.

B. Method

In the aftermath of the crisis that steamed from the CPE law, the French government ordered two reports in order to find a solution to renew the social dialogue in France². Based on these reports, a draft for a reform of the social dialogue was presented to the social partners in 2006. It became the law of January 31 2007.

The first article of the law adds in the Labor Code a preliminary Title called “Dialogue social” (Social Dialogue). Basically, this new title states that any project of the government reforming working relations, employment or vocational training must at first start with a period of dialogue with unions and management at the national level³.

The law also organizes, at the end of this period of dialogue with labor and management representatives, a general procedure of consultation of the usual bodies of the social dialogue⁴ about the text elaborated by the government.

We’ve just seen the process of changing the rules of social dialogue. It can seem a little contradictory, as the importance of bargaining and collective agreement and social dialogue was underlined but nothing was done to modify the rules concerning traditional actors, the trade unions. This was the task of the law of 2008.

II. The law of August 20 2008, changing the institutional actors themselves.

Going further, social partners, followed by the government, decided to overhaul the rules of representativeness. A common statement elaborated between labor unions and employers representative organizations of April 9 2008 was calling for this change. The law of August 2008 made this reform legal.

A. Change of criteria

1. Old criteria

Before, because of the principle of *représentativité* (representativeness) and the presumption of representativeness attached to it, any union belonging to one of the 5 main national unions federations was said to be representative of the employees, even if, in the fact, only a minority of employees belonged to one of these unions. They could bargain and sign an agreement with the management of the company that was applied to any employee in the company. This became a bigger problem after 1982 when the law allowed representative unions to sign dispensatory agreements (*accords dérogatoires*) that could contains provisions less favorable than the law⁵. In order to deal with this problem, the law of

² Habas Lebel Report and Chertier Report

³ However, this procedure will be put aside in case of emergency, clearly declared by the government, that informs labor and management sides.

⁴ the CES, the national Commission for social bargaining, the upper employment Comity and the national council for vocational training

⁵ *Cf. infra.*

May 4 2004 changed the situation⁶ slightly, for one type of agreements. From then on, in order to be valid, an agreement at the branch level must be signed by one or several unions representing a majority of the employees of the branch or within the company, considering the results of the latest elections of works council or staff representatives.

However, even if a union was not part of one of these 5 big confederations, it could prove it's representativeness if it could meet 5 criteria⁷ (table 1).

Table 1: old criteria.

1. Number of members
2. Independence
3. Trade unions fees
4. Experience length of existence
5. Patriotic attitude during German occupation

The jurisprudence used to consider that a union wasn't required to meet all the criteria⁸.

With the reform of 2008, this proven representativeness is to become the rule, though the list criteria has been updated.

2. New criteria

Where this reform is the most important, it's that it will end the representativeness presumption that existed until then, and that was a source of problems. From a dual track system (presumption and proven representativeness) the system is shifting to a unique track system: proven representativeness. There now are 7 criteria (table 2).

Table 2: new criteria.

1. Respect Republican values
2. Independence
3. Financial transparency
4. Being at least 2 years old
5. Sufficient results at the professional elections
6. Influence
7. number of members and trade unions fees

The fifth criterion is actually the most important. It will be evaluated after every elections at the company of plant level. Hence, according to the new rule, a union must receive at least 10% of the votes

⁶ For a detailed analysis of this question, see J.-E. Ray, "*Les curieux accords dits "majoritaires"*", *Droit Social* 2004, p. 590.

⁷ Article L-2121-1 of the Labor Code.

⁸ For example: Cass. Soc. 21 May 1986, Bull. Civ. V, n°236.

at the latest professional elections: elections for the employees representatives, the work council or the unique employees delegation, whatever the numbers of voters.

It is now expressly stated that all the criteria must be met by the union. The rigidity of the law can be discussed on that point.

B. Creation of a new representative: the union section representative.

Beside changing dramatically the notion of representativeness in France, the law also created a new representative of the union at the company: the union section representative (Représentant de la Section Syndical, RSS)

Any union who has a section at the company employing 50 persons or more but that is not representative within this company⁹ can designate a RSS who will represent the union at the company or plant. Any employee aged 18 years old or more, who works in the company for at least one year (4 month in case of creation of plant or company) and who has not lost his civil right can be a RSS.

The role of the RSS is to animate the union section. The aim is actually to make the union he represents representative at the company or plant in the future, getting votes for this union at the next professional election. The RSS enjoys the same prerogatives as the union representative (distribution of tracts, collection of trade union fees, freedom of displacement inside the company or plant) but can not do collective bargaining (except if he is mandated to do so by a representative union).

In fact, the RSS can be considered as a “junior union representative”, who in the future, has a vocation to become a full union representative once he managed to make his union representative in the plant or company.

So, though the rules seem to have been adapted, both at decentralized and national level it will take more than laws, namely, a long build of trust between the social partners and the government to appease social dialogue at the national level.

⁹ The unions that are representative can designate a union representative. This new scheme is only for union that are not representative.

GCOE International Internship Program

This program sends graduate students and other qualified young lawyers to foreign law firms and international organizations as a trainee or an intern. It also gives them opportunities to participate in international conferences or seminars. The followings are the activities in 2010.

Name	Term	Activity
Ryohei Kudo	July 26 - August 24	Clifford Chance London
Saori Maruyama	July 26 - August 20	Clifford Chance London
Hironori Yashiro	July 4 - August 3	Davis Polk & Wardwell New York
Hiroki Habuka	July 5-30	Herbert Smith Paris
Takashi Nakamura	July 5-23	Herbert Smith Brussels
Akiko Ikeda	July 9 - August 4	Lenz & Staehelin Zurich
Fumiko Tamate	June5-30	Kim & Chang Seoul
Shinko Uchiyama	August 9-27	Linklaters Brussels International Law Association Arendt and Medernach Luxembourg
Suguru Kimura	July 5 - August 9	DB in Frankfurt am Main
Mutsuhiko Yukioka	July 17 - August 16	The International Monetary Fund (IMF)
Motohiro Sugi	July 10 - August 2	Supreme Court of Delaware
Hatoko Hojo	June15 - September 12	Hague Conference on Private International Law

My Experience at Clifford Chance

Ryohei Kudo

Thanks to Clifford Chance LLP and University of Tokyo Law School, I had the precious opportunity of working at Clifford Chance's Tokyo and London offices as a GCOE special trainee during the summer of 2010.

The summer program at Clifford Chance, an international law firm based in London, offered many benefits to me such as the opportunity to gain meaningful work experience on variety of areas of laws and great mentorship from mentors called "Buddy" and "Supervisor".



First, the program was designed to expose trainees to variety of cases involving corporate, bankruptcy, finance, capital markets, tax, international law and litigations among other legal areas. The program also offered challenging and substantive assignments with perfectly complemented social and networking events during lunch, tea time and dinner. During the first week of the program, international trainees, comprising of Japanese and European law students and graduates, were placed to domestic offices at their home countries. I worked at Tokyo Office in Akasaka and received one-week intensive training, which consisted of a mixture of real cases and lectures, mainly designed to gain basic knowledge necessary to work in London such as how to utilize firm's network system covering international offices, an uniformed format for drafting documents at all offices, and basic legal knowledge mainly on financial laws. Furthermore, busy lawyers at Tokyo Office would visit trainees' room to make sure whether trainees were satisfied with the program and to give precious advice to work at London Office. Thanks to this preparation scheme and lawyers at Tokyo Office, I felt little anxiety about working at London Office. For the rest of the program, trainees worked at London Office. I worked on many challenging

projects and cases on corporate, finance, and international litigation in London. I was not only given assignments in designated practice area but also had the opportunity to participate in projects in other areas of my interests.

Second, the amount of mentorship I received at Clifford Chance was surprisingly great through a formalized mentorship program. Mentors assigned to each trainee named “Buddy,” comprising of junior associates, and “Supervisor, ” comprising of senior associates and partners, controlled assignments and made sure whether trainees were satisfied with the program on everyday basis. I could ask them about questions not only on assignments but also on life in London. The lawyers other than formal mentors were also friendly and informative. Despite their busy workload, lawyers were always friendly and supportive toward trainees so as to spare time for educating trainees and answering many questions arising through work assignments. Their doors were always open. For every assignment, lawyers who assigned works to me would provide a background lecture on laws involved and relevant facts, client’s situation, and tell me what are expected to each assignment. After finishing assignments, I was provided with constructive and informative feedbacks, and updated information with the project. Because I need not hesitate to seek feedbacks throughout the program on the completed assignments, it was not difficult to determine if I was on the right track or if there were problems which must be corrected.

Overall, I had a wonderful experience at Clifford Chance. Through the program, I could know the reason why Clifford Chance is a world-renowned international law firm: a sophisticated organization which makes it possible to form best team consisting of international and domestic lawyers which suits client’s needs, accumulation of knowledge on variety of international transactions stored in many years of legal practice, and excellent human resources from all over the world. Moreover, the culture at Clifford Chance was inclusive despite its size. Although I spent only one week in Tokyo Office and three week in London, I could feel like part of the firm thanks to friendly atmosphere. I would like to thank lawyers and staffs at Clifford Chance and GCOE office at University of Tokyo School of Law for great support given throughout the program.

A Summer in Davis Polk & Wardwell LLP (New York Office)

Hironori Yashiro

My Objective

In the summer of 2010, from 6th of July to 3rd of August, I worked as an internship trainee in the New York office of Davis Polk & Wardwell. Davis Polk is one of the most prestigious law firms in the US. The firm was established in 1849, and nearly 700 lawyers form the gigantic law firm.

At the time when I went to Davis Polk, I had just graduated University of Tokyo School of Law, which means that I had no experience working as a lawyer yet. I was anxious whether I had the ability to participate in any projects concerning US law. At the same time, I was excited to know how different the practice of New York lawyers is compared to the practice in Japan, because I have heard that New York lawyers are very aggressive when it comes to work. Under these conditions, I decided to set my objective of my stay to simply feel and know the atmosphere of the law firm.

Environment

The working environment of Davis Polk was great. On each even numbered floor, coffee was free. Also, there was a nice cafeteria, which was open all day. However, since most lawyers were extremely busy and overloaded with work, many lawyers bought food to go, and ate in their rooms while continuing on their work.

Summer Associates

I also had a chance to meet and know many law school students who was working as a summer associate.

There is summer associate program in Japanese law firms as well. However, the significant difference is that summer associates program in the US is much longer. In Japan, most law school students work as a summer associate for only a week. In contrast, summer associate program is usually a two-month program in US.

I am not sure which is better. In Japan, because the summer associate program lasts only for a week, many students have a chance to know several law firms. In contrast, if the program takes place for two months like Davis Polk, I believe that there is a better chance to know different practice groups of the firm.

I found that most of the summer associates were having a great time. Many events were prepared for the summer associates to participate in. Also, many lunch meetings were held by different practice groups of the firm, which provided a chance to decide which group to work at, in the future.

My Assignments

The first task I was assigned by the Financial Institutions Group(FIG), was to learn about the new financial

regulatory reform. I was told that this reform was an overhaul of the financial regulation laws in US since the great depressions. The main idea of the new law was to stop banks from getting involved in risky investments and other risky financial activities. The reason why the government of the United States thought that this new law was in need was to prevent another financial crisis to occur, like the one in 2008 which have brought serious economic consequences to the US, known as the Lehman shock. The bill was approved, and signed by President Obama while I was in New York. It was an exciting experience to see how lawyers played their role in legislating the new law. It was also exciting to see news on the Wall Street Journal, which had articles about the lawyers of Davis Polk.

I first read the summary of the new law, which was made by FIG. It was a very important document, and it was distributed through the office via intranet. It was very difficult to understand the new law thoroughly, because it included many technical terms, which I did not know, and also because the summary was more than hundred pages long, even though it was a summary.

I also had a chance to participate in a phone meeting with a client, to explain about the new law. This was much more exciting for me compared to reading the summary. It was a great opportunity for me to know how the lawyers in the US work with their clients.

Another interesting task I was given was related to the Investment Management Group (IMG). My task was to check the contract between the Fund Manager and the Fund, and to rearrange them in a chart to make it easier to check which provision was missing.

I had a hard time to figure out what the technical terms meant, especially the ones related to financing. Also, it was difficult for me to get used to the abbreviations, which I was not familiar much.

Conclusion

As I have written in the beginning of this report, my goal was to know the atmosphere of Davis Polk. However, I think that I have achieved much more. While I was doing my job, I was able to know many young lawyers who were just three or four years ahead of me. Through the process of working with these young lawyers, I learned how lawyers in New York work very aggressively, but also diligently at the same time.

I really appreciate the GCOE office and Davis Polk for the great experience.

The Report of the GCOE Internship Program at Herbert Smith Brussels

Takashi Nakamura

I. Overview

I was given a chance to work as a Summer Vacation Student in Herbert Smith Brussels from July 5th to 23th in 2010. The head office of Herbert Smith Law Firm is in London, consisting of more than 2,000 lawyers. The branch office in Brussels holds about 20 lawyers. The office is very close to EU headquarters and other EU agencies, so the firm is specialized in issues covering EU-law and WTO-law, and global issues as well where many countries are involved.

II. Objectives

This time I have two objectives for this program listed below.

1. What kinds of qualities are essential for a lawyer to compete in this international business?
2. How can a Japanese lawyer acquire such qualities?

III. What I did

The law firm which accepted me is very international. The lawyers working there are from different countries in Europe, so consequently English is the common language in the office. The issues are mostly those based on EU-law and WTO-law. Young lawyers as well as I examined the cases concerning the laws of carter and M&A regulations. I also assisted the lawyer who was scheduled to make a presentation in Japan, because there are only a few people who can speak and understand Japanese and have some knowledge about Japan. I spent some time helping the staff to examine Japanese laws. Other tasks I was involved in are as follows.

1. Explanation of the contents of the legislative bill of the privatization reform of Japan Post and the concept of “universal services”, currently discussed in Japan.
2. Investigation of the issues associated with WTO-law and the attendance of the telephone meetings
3. Survey and report on how Japanese drug companies should act in EU
4. Report on the comparison of the competition laws between EU and Japan
5. Assignments on the system of EU-law and WTO-law
6. Visit to EU agencies

IV. What I found

After three-week experience in the law firm, I found that what is required most as a lawyer working in an international law firm is the ability to understand laws and guidelines accurately, scrutinize precedents and cases, and apply all the knowledge he or she has to each case. That is exactly the basics of a lawyer. In that sense, even Japanese lawyers and young people who have just graduated from law school have some possibility to be a good lawyer, making use of what they have learned so far. We should not forget to develop such qualities and skills through practical experiences.

However I've found that, other than that, there certainly exist some abilities we have to acquire if we want to

actively deal with international issues. First, we need to have so-called “European common sense” if we want to work in Europe. However deep and much knowledge we have about EU-law, for example, when we practically negotiate the counterpart or authorities, or we analyze the present situation we are set in, we are required to have a wide variety of knowledge about historical and cultural backgrounds on our counterpart. Even jokes are sometimes necessary for smooth negotiation. I keenly realize the necessity of developing these credentials.

Second is the matter of language. The lawyers I met are fluent in both English and French, though those two languages are their second and third language. A student from Greece, who is of my age, energetically participated in the discussion during the meetings, while I had to keep silent because of my English deficiency. I felt the barrier of language is very high. How many times I wished I could speak English fluently and express my opinions! I wished I could be of any help to them.

So I conclude that the qualities necessary for an international cooperate lawyer are the ability to work in different cultures with common sense best fitted for each culture and the fluency of English as a business tool for this global world, let alone basic knowledge of law.

V. Close

Just three weeks was not long enough, and it is regrettable to say that I could not contribute to the company because of my inexperience and inadequacy of English fluency, but they accepted me open-mindedly and warm-heartedly. Thanks to their kind acceptance of me, I had a chance which might not come again. It was such a valuable experience to have an opportunity to see in my own eyes what European lawyers and law firms are like and how the lawyers whose mother language is not English are communicating and working in English to achieve goals. It is not easy for the Japanese to treat worldwide issues, mainly because of the reasons I have mentioned above, but my interest in dealing with global issues and my desire to become an international cooperate lawyer have become stronger and more distinct. This is all because of the precious experience I had through this program. Once again I would like to express my special thanks to all the staff of Herbert Smith Brussels.

Lastly, I strongly hope that more and more students will be given chances to have such a valuable experience in the early stage as a legal profession from now on as well. I am sure this will help Japanese lawyers to be international-minded and to act internationally in the near future, which will surely lead Japan to open to the world.



Report from DB in Frankfurt am Main

Suguru Kimura

Introduction

As a GCOE trainee, I flew to Germany for the first time in 13 years to make a one-month visit to Deutsche Bank AG (DB). DB is an international universal bank with its headquarters located in Frankfurt am Main, providing financial products and services to corporate and institutional clients along with private and business clients, and, as an intern in the legal department, I was given a chance to peek inside.

I vividly remember the day I arrived at Frankfurt, as it was extraordinarily hot with no air-conditioning. I felt as if the harsh weather indicated that the coming days of my stay would be hard, which in the end turned out to be wrong, as the stay was of great success and joy to me. My days in DB was a good opportunity to take a look at what it is like to work globally and what efforts you need to make in order to keep on working globally, and it made me think seriously about my future career.

Legal Department

Many in-house lawyers with different backgrounds are working in the legal department of DB. I spent most of my time with an in-house lawyer who had the experience of working previously in one of the Magic circle. She had taken care of a GCOE trainee before I, which saved me from explaining what I was there for.

During the intern period, I had many chances to sit next to her and see her do business. Through this, I found that my image of an in-house lawyer was completely wrong. The striking fact was that she was mostly working independently. She had a room of her own (my image was that you would be packed in a big room full of your colleagues and this image comes mostly from the typical picture of a Japanese firm) and she was attending meetings without her boss sitting next to her. Of course she needed consent of her boss on some important issues, but once given the consent, she did anything on her own; she had the POA to transfer of shares and she was the one representing DB in the telephone conference. Not only the independence of her work surprised me but so did the importance of her work. She was in charge of a big M&A project which was necessary to reorganize and reconstruct the global networks of DB branches and subsidiaries.

I found life as an in-house lawyer very fascinating, and if in-house lawyers in Japan could work like they do in Germany, I would definitely think it as a good choice for my career. However, I guess the situation in Japan is not yet there.

German Law and EU Law

During my visit, I studied mainly about company laws and banking law in Germany. It was interesting to know how GmbH and AG was different from each other, how banking license was given in Germany, and how a bank with a license of a EU country could give banking service in other EU countries. EU regulations and directives are original to EU countries and you wouldn't find something similar in different part of the world, so I was very happy that I could

actually see and ask a lawyer who makes practice in this field.

Another German system I found interesting was the notary. Using the notary is required in many occasions in Germany, such as transfer of shares of GmbH and purchase of land. Thanks to my mentor, I was able to go to the notary and see what kind of procedure is taken.

Other Intern

During my stay, I met an intern from Poland. In DB, many interns are invited in and out of Germany, but during my stay there weren't so many of them as it was summer holiday for many Germans. So it was my good luck to meet this Polish intern in the legal department.

When we first met and introduced each other, I was astonished at his backgrounds and his ability. There were so many differences between us, though we were similar in age. He was one year younger than I, but he was then attending the master course of both law and economics (he told me later in Christmas that he successfully graduated), while I had just finished law school. He had already passed the Polish bar exam and already begun his career as a lawyer in a well-known global law firm, whereas I had just taken the Japanese bar exam then. He was fluent both in English and German while I only manage to speak in English.

He was not only skilled but also he was energetic. He had a hard and solid vision on what he would like to do as a lawyer and what good he could do for his country. I hardly did this kind of communication in Japan, where students in law school are too busy studying for the bar exam to think about those matters, and I was somewhat ashamed of the fact.

What I need and want to do

Improvement of Spoken English: In Japan, I was arrogant enough to believe that I was able to communicate in English without problem, but in Germany I suffered so many times from this agony of not being able to express my opinion precisely due to my poor vocabulary and general knowledge. As I think that my future career would inevitably put me in the situation that I need to communicate business and legal matters in English (may be in other languages as well), I strongly decided to make continuing efforts to improve my communication skills, including English.

Meet new people: In Frankfurt, I talked with people with different backgrounds and it made me think. People have good and solid opinions and they aren't afraid of their opinions being different from others'. Instead, they express it openly to compare with each other and learn from each other. This kind of communication is something that you wouldn't find often in Japan, where people feel comfortable sharing one view.

Acknowledgement

As I have mentioned so far, my visit to DB broadened my mind. I would like to thank Professor Iwamura, Professor Kanda, Professor Fujita and staffs of GCOE for giving me this precious opportunity, and my deepest appreciation goes to Dr. Spengler and her colleagues in DB for supporting me during my visit.

Report on the Global COE training program

Mutsuhiko Yukioka

An overview

I worked as an intern for the International Monetary Fund (IMF) from 19th July to 13th August 2010. The IMF is one of the biggest and most influential international financial institutions in the world. I worked with the Technical Assistance and Legal Reform Team (TALR) in the Legal Department. TALR does such jobs as making legal frameworks to stabilize global financial system, designing international regulations on financial institutions, maintaining the international market infrastructure, and so on. The followings are what I felt and what I learned at the IMF during my training period.

Working for the IMF

Works at the IMF, which creatively aim to construct legal frameworks on a global scale, are really stimulating to me, because I spent most of my school days studying and solving individual legal problems such as transactions and litigations. Basically, these individual legal problems only require interpretation and application of laws that already exist. In contrast, working for the IMF requires thinking and creating an ideal framework for international affairs, and it turned out really intriguing to me to think about these international problems and to get engaged in such policy makings on a global scale. For example, they offered me an opportunity to research on legal frameworks in some countries which are designed to prevent a financial crisis from happening again, by mitigating counterparty risks of derivatives (such as credit default swaps). This task was connected with a global effort to make stable the international financial system, especially the clearing and settlement system. In doing this task, I learned that when pursuing global stability of the financial system, each country has to harmonize with each other. In order to achieve such harmonization, they need to agree on and set the standard that each country can refer to. The IMF, as I saw, makes contribution to such global efforts, and this contribution is of great importance to the global financial stability. This kind of task proved to be challenging to me, as well as useful and important.

In addition, the IMF exerts great influence on many countries and areas around the world, and therefore they work not for their clients, not for one specific country, but for the world as a whole. This means at least two things. First, they are working not in the private sector but in the public sector. When you work in the public sector, you can pursue what you think is good, whereas in the private sector you have to focus mainly on fulfilling your clients' interests regardless of your own opinion. (Of course, even when you work in the public sector, you have to follow the decisions of the organization you work for, but at least you do not have to obey your outsiders' opinions.) Second, their concern is not confined to certain country's interest; they are always seeking common good for the world. Perhaps this is a special virtue of working for an international organization. I was surprised to see how profound knowledge and understandings they had about a wide variety of international affairs. In Japan, on the contrary, it seems (at least to me) that people are not so much interested in international affairs as the people at the IMF are. After all, people in Japan are, even if they

work in the public sector, working in and for one specific country, namely Japan. As I spent my days at the IMF and listened to the staff's opinions, I found myself greatly fascinated by the joy of knowing and thinking about international affairs.

Studying economics

A large part of the works at the IMF is related to monetary policies and macroeconomics. It's a shame of me that I had known little about these fields before I worked for the IMF last summer. Working there, I learned that in order to work globally, especially in such fields as finance, monetary or banking sector, I have to obtain profound and accurate understandings of monetary policies and economics. After I returned from Washington DC last summer, I started studying macroeconomics seriously, and I found that studying economics is really interesting. It bears, to some extent, a kind of universality in contrast to the locality of laws (which are, basically, legislated and enforced only within the boundary of a country), and therefore it helps us to analyze international affairs in a way that laws alone cannot. For example, if you are to deal with and prevent financial crises, you have to analyze the mechanism of how such crises happen, and in order to analyze that mechanism, you need the help of economics. At the IMF, I often regretted that I should have studied economics more seriously during my schooldays. This experience has driven me to study economics much more seriously than before.

For the future

At the IMF, I met many nice people whom otherwise I would not have met in my whole life. Each of them had passed his or her unique career, and it was really attractive to me to know about his or her history. Some people were from the public sector, such as the central bank of their own countries and the European Central Bank. Others were from the private sector (namely, law firms). I myself am thinking of passing my career as a lawyer at certain law firm, but in the future I am also thinking of working for an international institution as a legal professional and of making contribution to global legal efforts. I heard during the internship period that the number of Japanese lawyers who work for the IMF is, if any, really small. I think this is very regrettable...I strongly wish more and more Japanese lawyers to work on a global scale. They told me that working for law firms, especially on such fields as finance, tax, and banking sectors, should be a great help if I wanted to work for the international financial institutions like the IMF.

Acknowledgement

I was able to spend wonderful and memorable days in Washington DC thanks to all the kind and nice people whom I met at the IMF. Without their support and hospitality, I could not have made this visit so successful. Especially, my feelings of gratitude to Mr. Bossu, who kindly showed me his works every day, are beyond my description.

I would also like to express my gratitude to Professor Iwamura, Professor Kanda, and Professor Fujita, who gave me this great opportunity to see and learn works abroad.

Report on Summer Internship at the Supreme Court of Delaware

Motohiro Sugi

Delaware and Its Supreme Court

The State of Delaware, the first state of the United States, is now a leading domicile for corporations. More than 50% of publicly-traded companies including 63% of the Fortune 500 have chosen Delaware as their legal home. The Delaware Judiciary is a forum for business entities, among others, and earned a worldwide reputation for fairness, experience and expertise.

The Delaware Supreme Court is the highest court there. It consists of a chief justice and four justices, and is located in Dover (state capital), Wilmington and Georgetown. I went to the placid town of Wilmington where Honorable Justice Jack B. Jacobs has his office.

Outline of Internship

During summer season, each justice has some interns. In my case, there were three. They are usually (i) assigned a case, (ii) reading briefs filed by the parties, (iii) researching precedents, (iv) drafting memorandum, (v) receiving comments from a law clerk, (vi) revising that memorandum, and (vii) mentored by the justice.

My travel was from July 10 to August 2, 2010, being in office for three weeks at the Court. I was allocated a derivative suit in which shareholders standing after triangular merger is in question, and, on the last day, made a presentation on it. I also had a opportunity to go to Dover and listened to the oral arguments in civil, criminal and administrative cases. The Justice mercifully spared some time for us to discuss on these cases, later. I was lucky to go for a short trip to the Court of Chancery, lower court which has jurisdiction to determine matters relating to equity such as corporate issues, trusts and other fiduciary affairs, too.

What I Have Learned

My days were full of priceless chances to see concrete cases from the Court's point of view and to learn from the virtuous Justice directly.

At first, electronic ways of doing business impressed me of its efficacy. E-filing and e-service are commonly used. Oral arguments audio recordings are obtainable on official website. Most of all, superb databases are available via internet. Cases are well organized and advanced queries can be used. Most law review articles are procurable, too. Together with published Delaware Code Annotated, we can research almost everything without a massive library. These infrastructures must be a great help to improve quality of legal services.

Then I was faced by the need to see a rule with consideration for another rules. For example, I encountered a tort case: the issue was whether it was legal or not to determine, as a matter of law, that one party had been more negligent than the other. To understand this problem, I have to know the principle of civil procedure that the jury is the trier of fact in this case. I realized that studying foreign law is not an easy thing to do. But it has a merit: perusal of foreign law is a step of comparative law and it enables me to comprehend Japanese law more exactly. There might be even some occasions to assist US lawyers to grasp their canons more precisely.

All along my stay, I was thinking of how Delaware case law achieved its fame. Before my departure, I had expected that the Delaware Supreme Court must have numerous staffs skillful in finance, econometric analysis, etc., and full of forefront theoretic deliberation to integrate economic surmise into legal debate. But the fact is there is only one clerk for each justice (chief justice has two) and contentions appear to be in a more traditional manner than I anticipated. I felt deflated at first, but finally I have got a hint. Justices and clerks are all familiar with those materials. So opinions rarely contradict with the inference from established theories, even if they do not have a direct reference to those theories. Do not leap at the latest fashion, examine it judiciously. Of course I have to know something to examine it. This is the way to go, I believe.

With a Broader View of Things

I lived a pleasant life in Wilmington; what is usual in Japan is unusual. I watched news on TV in my hotel room; might-be headlines in Japan are not and vice versa; the world looks like another world. I spent a lot of time talking with another interns came from local law schools; they illustrated me about the classes and texts of their law schools and courses after graduation. All of these made me to take a broader view of things, which must be a great help for me to contribute toward amelioration of legal systems domestically and internationally.

I am exceptionally thankful of Honorable Justice Jack B. Jacobs and other charming court staffs, members of Global Center of Excellence Program and friends I met, for these invaluable experiences.



Carvel State Building

The Delaware Supreme Court is on the 11th floor of this building.

Soft Law Journal

“Soft Law Journal” has been issued by the 21st Century COE Program “Soft Law and the State-Market Relationship: Forming a Base for Strategic Research and Education in Business Law” since January 2005. It was taken over by Global COE (Centers of Excellence) Program “Soft Law and the State-Market Relationship: Forming a Base for Education and Research of Private Ordering” from vol. 12.

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GCOE Soft Law Discussion Paper Series

This center distributes each research paper as a “Discussion Paper,” written either by each project member or each researcher outside our university. The “Discussion Paper” is available in hardcopy form and for download from our web site (<http://www.gcoe.j.u-tokyo.ac.jp/outcome/paper.html>).

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