

The Growth of Corporate Law Firms and the Changing Role of Lawyers in Japan

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I. INTRODUCTION

A long-standing image of Japan is one of a closed, informal society which functions without resort to the legal system and lawyers. The popularity of this cultural image of Japan was reinforced by objective factors such as the small number of lawyers and the

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difficulty of the bar exam. On a functional level, businessmen consulted government bureaucrats on an informal basis rather than legal regulations and lawyers to confirm whether an activity was permissible. Insularity was reflected in the Japanese bar's initial reluctance to allow foreign lawyers to engage in even limited practice roles in Japan.

In addition, for much of the postwar era the reality of legal practice in Japan seemed consistent with the image of a society which neither depended on nor highly valued lawyers. Lawyers generally practiced in small offices which provided general legal services with a focus on litigation. Big businesses utilized lawyers for corporate legal work only in the case of cross-border transactions. The best and the brightest among law faculty undergraduates were more likely to become government bureaucrats or businessmen rather than lawyers.

However, the overarching message from a recent panel discussion by prominent attorneys from Japan was one of change. Deregulation, administrative reform, globalization and other factors have led to significant and surprising, even shocking, changes over the last decade which strongly challenge long-held skepticism concerning the role of law and lawyers in Japanese society. During this time Japan has seen growth in both the demand for corporate legal services and the supply of lawyers, a major revamping of the legal educational system and the bar exam, an increasing attractiveness of the legal profession over more traditional government and business jobs, the rise of large corporate law firms, an increasing presence of foreign law firms and greater competition with Japanese firms, and law firm mergers – both domestic and international.

Japan can no longer be regarded as a “special case.” The issues generally discussed with respect to the legal profession in other developed countries, such as whether the practice of law has changed from a “profession” to a “business,” are highly relevant to Japan today.

All of these topics – and more – are covered as the panelists discuss the brave new world of Japanese lawyers.

II. PROCEEDINGS OF THE PANEL, MAY 12, 2007

Moderator : *Bruce Aronson*

Panelists:

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| <i>Hisashi Hara</i> | Chairman, Nagashima Ohno & Tsunematsu |
| <i>Toru Ishiguro</i> | Managing Partner, Mori Hamada Matsumoto |
| <i>Kenichi Masuda</i> | Administration Partner, Anderson Mori & Tomotsune |
| <i>John Roebuck</i> | Partner-in-Charge, Tokyo Office, Jones Day |
| <i>Shinichi Sugiyama</i> | Harago & Partners |
| <i>Toshiro Ueyanagi</i> | Tokyo Surugadai Law Offices |
| <i>Akihiro Wani</i> | Managing Partner, Tokyo Office, Linklaters |
| <i>Takashi Yoneda</i> | Senior Partner, Nishimura & Partners |

III. THE RISE OF LARGE CORPORATE LAW FIRMS

1. Demand – Emergence of Demand for Domestic Corporate Legal Services

Professor Aronson: The Appendix illustrates the growth of large Japanese law firms. In the early 1990s, any firm over ten lawyers was a large law firm. Now all large firms are well over 200 attorneys. During the period from 2000 to 2005 the major firms all virtually doubled in size.

We used to think that all corporate law in Japan was internationally oriented. The most striking point in a lengthy discussion of large corporate law firms which appeared last year in *Jiyû To Seigi*¹ was the very first one. The Japan Federation of Bar Associations sent out a questionnaire to the largest corporate law firms, which they assumed were international firms, or *shôgai jimu-sho* in Japanese, specializing in cross-border transactions. However, the response they received from every large law firm was “We don’t use the term *shôgai jimu-sho*. It’s obsolete.”

Is that true? What happened?

Mr. Hara: The answer is yes. I will touch briefly on the history of Japanese lawyers’ practice.

Other than the litigation area, we didn’t have any domestic market demand for lawyers until the middle of the 1990s. This was mainly because for many years Japanese companies were very confident that they could solve any problems in domestic transactions by themselves without using lawyers.

And due to administrative guidance, if they had questions they would go to government agencies rather than lawyers. As you know, from post-World War II until the middle of the 1990s, there was the famous “Japan Inc.” – the government working together with the private sector to enhance the interests of the private sector. Legal directions to the private sector came from government agencies, not from practicing lawyers. That continued until the mid-1990s.

Until that time, the real demand for lawyers was only for cross-border transactions. Japanese companies had no confidence about how to deal with cross-border transactions, especially if they had transactions with U.S. companies.

U.S. companies use many lawyers in a wide range of areas – negotiations, government regulations, everything. Japanese companies came to regret that they did not use practicing lawyers. So at the end of this post-war era (the mid-1990s) there was a large demand and a big market for Japanese companies to use practicing lawyers.

The domestic market has expanded rapidly for the last ten years. Ten years ago maybe 80 percent of our total corporate work represented cross-border transactions. Today only about 30 percent is cross-border, and 70 percent is purely domestic.

¹ See *Zadankai: Dai-kibo hôritsu jimu-sho no gendai to shôrai* [Roundtable: The Present and Future of Large-scale Law Firms] in: *Jiyû To Seigi* 57 (May 2006) 12, 46-49.

Until the middle of the 1990s, large law firms, excluding litigation, engaged only in cross-border transactions. That is why we were called *shôgai jimu-sho*. But after the mid-90s, the basic framework was broken and Japanese companies started to use practicing lawyers even in domestic transactions.

Mr. Yoneda: I believe the reason for the increase in our domestic corporate work is a change in the Japanese legal system.

In the late 1980s the Big Bang occurred in London and new financial services were introduced. As a result, U.K. law firms grew very rapidly. The same situation occurred in Japan, starting in the early 1990s and is still continuing today.

As you know, Japan had a bubble era from the mid-1980s to 1991. When the bubble burst, administrative practices which contributed to that disaster were strongly criticized.

Although this is not often emphasized, a significant change in the Japanese legal system occurred in 1993 when we adopted a new administrative procedure law that provides for administrative guidance procedures.² Since the Meiji Restoration in 1868, administrative agencies guided the Japanese people and Japanese society. If there were any question with regard to the permissibility of new businesses or other matters people always asked the administrative agencies for their advice. But now the situation is gradually changing.

What we call deregulation means that rules will be set in advance, and Japanese market participants can do whatever they believe is legal. If a particular act is found to violate a regulation, only ex post facto sanctions will be imposed.

Beginning in the 1990s, government officials began to say that they cannot answer questions regarding legal permissibility. Rather, businesses must decide for themselves, and if they are unable to do so they should consult a lawyer. So suddenly demand increased for substantive legal advice. The situation is very similar to what happened in the U.K. in the late 1980s.

Professor Aronson: If we have a traditional dichotomy that corporate work was international work and domestic work for smaller firms was litigation, are larger firms now engaging in litigation practice?

Mr. Ishiguro: Yes, we are engaged in a substantial litigation practice.

My firm may be a bit unique among the law firms represented here in that Mori Sogo, one of our predecessor firms, started with domestic litigation and corporate rehabilitation practices (rather than cross-border transactions). So we have a group of lawyers who have been engaged in litigation work from the beginning.

2 *Gyôsei tetsuzuki-hô* [Administrative Procedure Act] (Law No. 88 of 1993). For an English version, see Administrative Procedure Act, in: Law in Japan 25 (1995) 141 (Mark Levin trans.).

And, as previously discussed, the Japanese legal market has changed dramatically over the last 10-15 years. Before the collapse of the bubble economy, Japanese corporations pursued similar strategies and were simply competing hard for their share of the pie. As the pie itself was growing, there was no problem in doing that. It was very efficient, and the economy of Japan as a whole grew rapidly by utilizing this efficient model. However, when the bubble economy collapsed, Japanese corporations suddenly found it necessary to differentiate themselves from their competitors – to think independently and adopt unique business strategies. There was no one to give advice on how to do that.

At the same time, Japanese bureaucrats lost the confidence of Japanese companies due to several events such as the failure of Yamaichi Securities³ and the government's inability to help avoid bankruptcy by a number of large banks. Further, I think that Japanese society as a whole began to look to the law as a last resort to resolve problems or conflicts. So litigation, which used to be called “*soshô-zata*” – that means only unusual people think about it as a last resort – is now a very common method of resolving disputes.

This change in the perception of society has, in turn, affected the mindset of Japanese corporations. One recent example is litigation between Sumitomo Trust Bank and UFJ Holding which occurred in the banking industry, the most conservative industry in Japan.⁴ It would have been unthinkable five or ten years ago. But it is now quite common for unhappy shareholders to bring suits and Japanese courts have also changed and now reach a decision in such cases within a very short time period.

So our litigation team function has changed, and is changing rapidly to meet the changing function of litigation in Japan. And I think this also affects the strategy of Japanese corporations and how we advise Japanese companies in negotiations or litigation.

Professor Aronson: If there's an increased domestic demand for corporate legal services, are the large law firms the only beneficiaries or do small firms and Japanese lawyers generally also benefit?

3 The failure of Yamaichi Securities Company, one of the “Big four” brokerage firms in Japan, in November 1997 was the largest business failure in Japan since the Second World War and called into question the soundness of Japan's financial system. *See, e.g.*, STEPHANIE STROM, Big Japanese Securities Firm Falls, Putting the System on Trial, in: New York Times, Nov. 24, 1997.

4 UFJ Holdings signed a memorandum of agreement to sell its prized trust bank to, and enter into a business alliance with, the Sumitomo Trust group. Shortly thereafter UFJ instead negotiated a different deal to have its entire group (including the trust bank) be acquired by Mitsubishi Tokyo Financial Group. Sumitomo Trust brought suit to enjoin the transaction, which eventually reached Japan's Supreme Court. *See, e.g.*, T. ZAUN, Supreme Court in Japan Refuses to Stop Talks on Bank Takeover, in: New York Times, Aug. 31, 2004; C.J. MILHAUPT, In the Shadow of Delaware? The Rise of Hostile Takeovers in Japan, in: COL. L. REV. 105 (2005) 2171, 2177-2178.

Mr. Ueyanagi: Yes and no. Yes, a number of cases have been referred to my office by larger firms, maybe because of conflict of interest issues. Also, I formerly represented the plaintiffs' side in most cases, but nowadays I have a number of clients on the defense side who were sued by larger firms.

But my answer should partly be no, because my clients are small businesses. I'm afraid they are even poorer than ten years ago and they now encounter difficulty paying my fees.

2. *Supply of Lawyers – Legal Reform and Law Firm Growth*

Professor Aronson: In addition to an increased demand for corporate legal services, the growth of law firms also depends on the supply of lawyers.

It appears that becoming a lawyer generally, and joining one of the large business-oriented law firms in particular, is more popular now than it was ten years ago among Japanese college graduates and trainees at the Institute.⁵ Why? What's cool about being a lawyer these days?

Mr. Yoneda: The top-ranked job for law faculty graduates was to become a government official, but it has now changed to becoming a lawyer. The reason is that public officials are severely criticized and business lawyers are now viewed as a high income profession. That's one of the reasons why an increasing number of law school or law faculty graduates tend to become attorneys.

Professor Aronson: We know that traditionally Japan had a very low number of attorneys by any measure, such as population or GDP, and that in recent years the number has been gradually increasing and is scheduled to increase further.

Do we now have enough attorneys in Japan or do the law firms perceive that there is still a problem in terms of quantity or quality? Are there enough good lawyers?

5 The annual number of graduates of the Legal Research and Training Institute (the "Institute"), which all legal professionals (lawyers, prosecutors, and judges) attend following passage of the bar exam, had already doubled from about 500 in 1990 to 1,000 in the year 2000. After the year 2000, the number of Institute graduates again increased from 1,000 to 1,500 in 2006. The number of new lawyers per year increased to roughly 600 in 2001-2002, 700 in 2003 and over 900 in 2004. See NIHON BENGOSHI RENGOKAI (Ed.) [JAPAN FEDERATION OF BAR ASSOCIATIONS (Ed.)], *Bengoshi Hakusho: 2006 Nenpan* [Lawyer White Paper: 2006 Edition] at 3 [hereafter "2006 White Paper"]. The legal reform plan calls for another doubling of the number of Institute trainees from the current 1,500 to 3,000 by the year 2010. See THE JUSTICE SYSTEM REFORM COUNCIL, *Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century* (June 12, 2001), at ch. III, pt. 1-1; available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>. For an overview of the legal reform process, see, e.g., K. ROKUMOTO, *Overhauling the Judicial System: Japan's Response to the Globalizing World*, in: J. JAPAN L. 20 (2005) 7.

Mr. Masuda: Yes. I think the situation has dramatically changed during the last five years or so. As you mentioned, the number of lawyers has increased, and we have less difficulty hiring attorneys than five years ago. However, it has also become a large concern among law faculties that many of the graduates from the new law schools cannot find jobs in Japan. That will be a very significant problem for the legal profession in Japan.

But at the same time, I would say that because of the expanded number of graduates the overall quality of new graduates is unfortunately somewhat lower than before. So we need to spend much more time educating and training new lawyers to become good business lawyers.

Professor Aronson: Let me make the obvious point that in every country, including the United States which is often thought to have an oversupply of lawyers, large law firms always complain that there are not enough good lawyers. I think that's universal. So is it really true, or is it just law firms complaining that they can't get the very top people of the class for prestige and reputational purposes?

Mr. Wani: No, there are not enough good lawyers.

The problem is that the number of young lawyers to whom we would like to make offers remains the same (despite the huge increase in the total number of new candidate attorneys), and based on my recruiting experience most of the good candidates receive offers from other firms. The firms are very competitive against each other in terms of recruiting good candidates.

At my former firm (Mitsui, Yasuda, Wani & Maeda, which dissolved in December 2004) we competed quite fiercely with the Big Four firms and others. Our decisions on offers were not affected at all by the increase of the number of candidate lawyers.

On the other hand, the general quality of candidates under the new bar exam is getting worse. The new law school system is not operating effectively. U.S. law schools provide a professional legal education and do not prepare students to pass the bar exam.

In Japanese law schools, however, the emphasis is still on the passing rate of the bar.⁶ On the other hand, the professors, who do not have any experience in taking the

6 Under the old system the passage rate for the bar exam was in the area of 2-3%. Under the new law school and new bar exam, it was originally envisioned that the bar passage rate would be in the range of 70%. However, more law schools were created than anticipated. The actual bar passage rate for the first law school graduating class under the new system (2006) was 48.3% and this percentage is anticipated to fall to 37.7% in 2007 and stabilize in the area of 24% thereafter. See S. MIYAZAWA / T. YONETANI, *Nyûgaku tein no ichiritsu 3 wari sakugen to 3,000 nin gôkaku no dôji katsu sassoku na jisshi wo – shimurêshon ni yoru kinkyû teigen* [For the Simultaneous and Rapid Implementation of an Across-the Board 30% Reduction in the Number of Entering Students and 3,000 Bar Passers – an Emergency Recommendation according to our Simulation], in: *Hôgaku Seminâ* 628 (Apr. 2007) 60. The declining pass rate is a result primarily of law school students being divided into two groups with a two-year law school course for undergraduates with law majors and a three-

bar exam and who have been engaged solely in academic teaching and research, try to teach their students to pass the bar exam. This cannot lead to a good result.

For example, in last year's bar exam Hitotsubashi University's graduates showed great success, but the main reason is that they have an after-hours cram course in the law school. Given this, how can you expect new high-quality lawyers?

This is the reality. The law school system is not functioning well at present, and there also seems to be some difficulty in the lateral market. It appears that standardized lawyers' on-the-job training at the Big Four firms is also not working well. It would be better to receive more personal on-the-job training at a smaller firm.

So it is still very difficult to find qualified young lawyers from the lateral market. We can sometimes find good law school hires, but this market remains quite thin and it is very difficult to find good law school recruits.

3. *Law Firm Mergers*

Professor Aronson: I would like to move on to the topic of law firm mergers. I think that law firm mergers in Japan have really surprised people.

I read what I thought was a persuasive article in *Jiyû to Seigi* in 1998 by two lawyers who said there will never be a firm of several hundred lawyers in Japan.⁷ The authors of that article never contemplated the possibility that there would be mergers among significant Japanese law firms.

So I would like to ask how did mergers occur and what were the reasons.

Mr. Hara: Our firm undertook the first merger in the year 2000, and we became the first law firm with more than a hundred lawyers. Our motivation was quite simple. We had a good reputation in corporate law practice and we wanted to establish a capital markets practice. However, we were not successful on our own because the capital markets area is a small world in which the leading players know each other well, and the big securities firms (the major clients) also know which law firms are major players.

In this situation, we came up with the idea of a merger with the Tsunematsu firm, since they had a well-established practice in the capital markets area.

year course for non-law undergraduates. *Id.* As the non-law undergraduate majors complete the three-year law school course and begin taking the bar, there will be an increase in the total number of bar exam takers. In turn, this means that a significant majority of law school graduates will not pass the bar and may have difficulty securing appropriate employment. For another simulation by the Japan Federation of Bar Associations, see 2006 White Paper, *supra* note 5, at 14-15. Due to the low bar passage rate the reputations of Japanese law schools are closely linked to their students' success in the bar exam.

⁷ See S. NIWAYAMA / K. YAMAGISHI, *Nihon ni okeru kyodai hôritsu jimu-sho no kanô-sei* [The Possibility of Large-scale Law Offices in Japan], in: *Jiyû To Seigi* 49 (Nov. 1998) 34, 40.

We had earlier thought the corporate practice and the capital markets practice were quite independent, but gradually client needs emerged in large, complicated transactions where both capabilities were required. We wished to meet this market demand.

And also, as previously mentioned, Japanese companies had to become more creative, and differentiate themselves from their competitors. As a result, they came up with many complicated new ideas and big projects.

So responding to market demand required specialization of lawyers and also depth in terms of resources. Large transactions required teams of more than 10 or 20 lawyers, and there may be two or three such matters proceeding simultaneously. That means we need not just one large team, but two or three. We knew that to respond to that kind of new demand we needed to have some size. That was our overall thinking.

Professor Aronson: I think one reason why people were surprised by mergers was that some of us have what might be an older image of Japanese law firms from the 1980s, or maybe even the 1990s. It was quite typical that young partners who had a good practice would break away to become the boss of their own firm, instead of amalgamating to form larger institutions. What changed? Why were such people now willing to build larger institutions?

Mr. Masuda: I'm not sure whether anything has really changed. I think many young lawyers still want to set up their own law office. I think it's a matter of the individual's taste or view of life.

But in my case, I love being in a big firm because I'm personally and intellectually interested in that type of work. As previously mentioned, corporate clients now require speed and quality and because of that we need to have big teams to handle such matters in a way which is satisfactory to the client. So in order to continue providing such type of service, I need to be in a big firm to set up a large team for the client. That is why I am at a big firm.

Professor Aronson: The most recent merger, negotiations for which were announced about a year ago and which is scheduled for completion on July 1st, is between Nishimura & Partners and Asahi Law Offices, or at least the international group from Asahi Law Offices. How many lawyers will the combined firm have after the merger?

Mr. Yoneda: We have roughly 230 attorneys now and 90 or so from Asahi will be joining us. So the result will be 320 or more.⁸

Professor Aronson: As Mr. Hara mentioned, one of the main reasons given to date for mergers is that a firm wished to acquire another firm with a certain specialty, such as finance. That does not appear to be a motivation in this case. Is there any value to just being bigger than other firms?

⁸ At the time of the panel discussion, the firm was Nishimura & Partners; following the merger on July 1, 2007, it became Nishimura & Asahi.

Mr. Yoneda: Many attorneys, including us, view this merger as different from the mergers which took place previously. As Mr. Hara mentioned, the first merger (and other mergers to date) of large Japanese law firms was made to acquire a practice area which was lacking. However, our firm and Asahi are viewed as engaging in a similar scope of services. The reason we needed to expand our size is because, as Mr. Masuda mentioned, we need speed and quality, and to achieve this requirement we needed more attorneys. This merger is one way of accelerating the expansion of our size. Even after the merger, we will have only 300 attorneys.

In New York and London in the 1980s, the leading firms already had over 300 attorneys, and the firms I spent some time with had, for example, 50 tax attorneys. None of the large Japanese firms has such a number of tax attorneys; they have at most maybe ten or so. We decided to merge with the Asahi firm, which has a similar scope of services, because we need more attorneys to provide good service in a variety of specialized areas.

4. *Additional Issues*

Professor Aronson: I think that raises an interesting question. We've been talking a great deal in the last few minutes about mergers. Is most of the large law firm growth, that is, doubling in size in five years, due to mergers or to hiring new associates out of law school and the Institute?

Mr. Ishiguro: The answer is both.

The merger created a larger number of attorneys at one time, but it also helped us to be more competitive in recruiting. Many new attorneys appear to be attracted to larger firms. We do not know the exact reason, but it might be that they feel safer or more comfortable relying on a larger firm.

The other reason may be, as my colleagues on the panel have mentioned, that large firms have introduced a variety of in-house training systems. New attorneys can benefit from introductory lectures given by specialists in the firm, and the more they engage in complex, challenging transactions, the more they will build experience in the firm and can exchange information on those experiences with others in the firm.

Such activities are necessary for training new attorneys, but they also enhance the overall capability of the firm and, importantly, provide a greater sense of firm unity. They feel more involved in the firm and they appreciate human relationships through these activities. There may also be other reasons why they are attracted to large firms. But, in any case, the merger made it possible for us to be more successful in recruiting and we grew through both methods.

Professor Aronson: Looking at the data on age of attorneys and partner/associate ratios at the Big Four Firms, on the one hand it appears that there are a large number of young attorneys. On the other hand, it seems to be an associate-to-partner ratio of roughly three

to one. This would not be considered extreme for a U.S. firm, but I assume that represents some change for Japanese firms where traditionally the partner to associate ratio was quite low, more like 1:1. Does this represent a significant change? Is it a challenge to manage a large number of young attorneys?

Mr. Hara: Yes, there have been changes. First, now a young associate does not expect to become a partner. Years ago a new associate became a partner if he didn't make a big mistake, but nowadays that's not the case. And, as that has been true for the last 5 or 10 years, young lawyers' loyalty to the firm has naturally lessened and we need to change our management style in response to that kind of change.

And associates who cannot become partners need to go somewhere else, and management must consider how to aid them in finding comfortable positions. That is another management challenge. The market has changed and the expectations of young lawyers have changed.

Professor Aronson: How does the rise of large corporate law firms in Japan affect foreign firms? Do they need to do something different in order to be successful in Japan?

Mr. Roebuck: I think the answer depends on what the foreign firm in question is trying to do in the Japanese market. It is a mistake to view the foreign firms operating in Japan as monolithic or one dimensional.

There are a variety of foreign firms and their strategies and practices fall into several different categories. To give you just one example, some of the foreign firms apparently are content to remain rather specialized boutiques, particularly in the financial services area, and those firms, if they have added local or domestic capacity, have probably done it simply in order to provide some limited capacity to enable them to carry out their boutique missions.

Other firms have sought to add more substantial local (domestic) capability to their practices, and some firms have done it on a fairly large scale.

Those firms that are seeking to compete effectively with the larger Japanese firms across the full spectrum of their practice, or some large portion of it, will inevitably be affected by the growth that we've just heard about. They will need to respond accordingly by increasing their own scope and scale.

But I do not think that all foreign firms in Japan have elected to follow that strategy at this point, and frankly I'm not expecting all of them, or even a large number of them, to follow it in the future because of the obvious difficulties in carrying it out.

Among other things, the large Japanese firms from whose representatives we're hearing today have in the past succeeded in obtaining the best human resources and continue to succeed, and that presents obvious challenges to the foreign firms.

So my own impression is that the foreign firms, even those that are seeking to add substantial local capability, are being selective and they are picking an area or areas that

are either desirable in their own right in Japan or have some important relationship with practices that those firms have in their home markets, that is they are contenting themselves with achieving a necessary mass in those areas but not necessarily across the full spectrum.

Professor Aronson: Does the growth of large Japanese law firms also affect small Japanese firms. Do small firms need to grow larger or change what they do?

Mr. Sugiyama: It is not necessary to become a big law firm in my area because we are mostly dealing with complex litigation, mainly regarding real estate matters. And we generally have three lawyers in a team, with a similar number of support staff. We don't need large teams of 10-12 lawyers or more.

So I do not think it is desirable for us to make our law firm bigger than it is now. We have only 10-12 lawyers, but we feel that is enough. As Mr. Roebuck stated with respect to foreign law firms, in the case of small firms it depends on what you want to do.

IV. INTERNATIONALIZATION OF THE JAPANESE BAR AND LAW FIRMS

1. *Foreign Lawyers in Japan*

Professor Aronson: Let's turn to the topic of the activities of registered foreign attorneys (*gaiben*) and foreign law firms in Japan.

Although *gaiben* have had the same license for the last 20 years, has, in fact, their scope of activities or the way they are utilized changed substantially over time, either in foreign firms or in Japanese firms?

Mr. Roebuck: The legally permitted scope of activities has not changed.⁹ The legally permitted structures in which they may carry out those activities have changed, and as you have heard, the nature of legal practice has drastically changed over this period of time.

Taking a hint from what Mr. Hara just mentioned about what's happened in Nagashima & Ohno, I would like to mention what's happened at Jones Day as an example.

Jones Day started in Japan as a pure *gaiben* firm, and it remained in that niche until it was permitted to get out of it.¹⁰ And when it was permitted to add domestic capability, it did so as rapidly as it could. There were *gaiben* in the *gaiben* office from the beginning, and there are *gaiben* there now.

9 For a discussion of the permitted scope of activities of registered foreign lawyers in Japan, see, e.g., JOHN O. HALEY, Redefining the Scope of Practice Under Japan's New Regime for Regulating Foreign Lawyers, in: *Law in Japan* 21 (1988) 18.

10 This occurred on January 1, 1995 when an amendment to the *Gaikoku bengoshi ni yoru hôritsu jimu no toriatsukai ni kansuru tokubetsu sochi-hô* [Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers] (Law No. 66 of 1986) went into effect.

Plainly the *gaiben* who were in the *gaiben*-only office carried out their activities in accordance with the law and that meant that their practice was, in large part, an out-bound cross-border practice on behalf of domestic Japanese clients and directed principally to foreign markets.

But with the addition of domestic capability, the *gaiben* can now work in collaboration with their Japanese *bengoshi* colleagues.

And even though the outbound work is still present and the *gaiben* continue to work on it, now *gaiben* can also work on other things such as inbound work on behalf of foreign clients in collaboration with their Japanese colleagues.

So the answer to the question is that yes, the scope of activities, in that sense, has changed quite drastically.

Professor Aronson: How about at Japanese firms?

Mr. Hara: The answer for us is that the scope of foreign lawyers' activities has not changed over 20 or 30 years. Legally speaking, foreign lawyers can register as *gaiben* and can advise on their home country law, but we do not allow them to do that in order to protect our firm.

We would need specialists and sufficient legal materials (to give advice on foreign law), and a single American lawyer in our office should not answer any serious questions (of foreign law) from a client.

Their work is mainly limited to English documentation. This is still very important and we need to rely upon their capability.

2. *Hiring of Japanese Lawyers by Foreign Firms*

Professor Aronson: As a reminder, foreign attorneys were first licensed in Japan in 1987, and then by amendment in 1995 joint ventures between foreign firms and Japanese firms were permitted and the foreign firms were allowed to hire Japanese *bengoshi* for the first time. And then in 2005 full domestic partnerships within Japan were permitted, which essentially allows mergers between domestic Japanese firms and foreign firms.

Now that foreign firms can hire Japanese lawyers (since 1995), has that had any impact on the career path for lawyers or competition in recruiting?

Mr. Ishiguro: I think it did have some impact. For example, some U.K. firms started hiring Japanese *bengoshi* at a rather rapid pace by offering them the opportunity to practice or train through their global network. It is not a problem for us at present, as, from my point of view, this trend has not yet developed as broadly or rapidly as I feared. Nevertheless, it could make an attractive opportunity for young lawyers and allow these firms to become competitors.

3. *Joint Venture Firms and International Mergers / Significance of Liberalization*

Professor Aronson: I would like to focus on the difference between the joint venture type arrangement first permitted in 1995 and the fully integrated local partnership which became available in 2005. There has been pressure for decades on Japan to liberalize the activities of foreign law firms and now we're having similar discussions with Korea and other countries.

I want to ask Mr. Roebuck. I went to your office when you were a joint venture firm. I know you had two separate firms that were in a joint venture relationship, with separate books and administration. But when I walked down the hall, it looked like one law firm to me. Japanese and American attorneys had offices next to each other; there were just two firm names at the main entrance. My question is how different is it being a joint venture and being an integrated local partnership?

Mr. Roebuck: I believe that the principal difference is in perceptions of clients and, therefore, in effect, the presentation of services or method by which services are offered.

I think that the administrative structure and burden that was necessary for the joint venture arrangement was, as you just indicated, perhaps not much more than a paper-work kind of nuisance. However, some aspects of that arrangement were quite visible and apparent in terms of one's interactions with clients or presentations to potential clients.

And I believe that those aspects were considered to be a substantial disadvantage by those foreign firms who were seeking to penetrate the Japanese market, and my own view is that they were a substantial disadvantage, and that's primarily why people wanted to do away with them and to enter a world in which the paperwork administrative burdens were done away with.

Professor Aronson: We have one of the leading lawyers who has entered the brave new world of international mergers, Mr. Wani, and I would like to ask him about international mergers.

His firm, or a large portion of it, merged with Linklaters in 2005 and the merger became effective on the very day (*i.e.*, April 1, 2005) that the new liberalized law allowing international mergers became effective. Newspapers in Japan, the U.S., and the U.K. all reported that this international merger was a result of liberalization (of the activities of foreign law firms).¹¹

11 The press in both the West and Japan has portrayed this merger as being a direct result of liberalization of the legal restrictions on foreign law firms. *See, e.g.* J. SCHACHNER CHANEN, *Konnichiwa Bengoshi! Japan is Set to Relax Foreign Partnership Rules, and Competition for Mergers is On*, in: ABA J., Jan. 2005, at 19; *See also* 'Legal Entry: Japan's Lawyers Discover Globalization', in: *The Economist*, July 17, 2004, at 66; *Ei-hôritsu jimusho, mitsui yasuda wo kyûshû, kaisei gaikoku bengoshi-hô de hatsu* [English Firm to Absorb Mitsui Yasuda, First under the Revised Foreign Attorneys Law], in: *Nihon Keizai Shinbun*, July 12, 2004, at 1.

What motivated your firm to be the first significant Japanese firm to undertake an international merger; was it really primarily a result of liberalization?

Mr. Wani: No, not at all. The merger was based on two factors.

One is that after the deregulation many of the international players outside of Japan were planning to come to Tokyo and this seemed to affect the volume of work which we received from foreign clients. For example, Goldman Sachs or JPMorgan would like to use their London lawyers' affiliates rather than local Tokyo lawyers in regard to Japanese law matters.

The Big Four Japanese firms shifted to domestic work, but we wanted to stay on the cross-border transaction side. To choose that area of practice, we needed to accept internationalization.

Another reason is the law firm management issue. Although I pay due respect to my colleagues here, and the management of their firms is doing quite well, I regret to say that the domestic law firms are still five or six years behind the international ones.

So we merged based on these two reasons. But otherwise we still think of ourselves as Japanese practitioners, though we have more occasion than the Japanese Big Four firms to engage in pure cross-border transactions. It is not a substantial change from our former lives.

4. Influence of U.S. Law Firm Model on Japanese Law Firms

Professor Aronson: We've heard references to profitability and to putting greater effort into management as a firm grows bigger. We also know that most of the leading Japanese lawyers, including probably everyone here, has an LL.M. from a U.S. law school, and most of them have spent a year or some time working in a U.S. law firm.

To what extent do Japanese law firms view U.S. law firms as a model for addressing their new needs and challenges? And is there any difference between practice issues and management issues?

Mr. Hara: From the beginning our firm learned a great deal from the major U.S. law firms, not only in the practice areas but also in matters of management. This has been going on for quite some time. Although I am now quite senior, even back when I studied in the U.S. or worked in U.S. law firms, our Japanese firm had already adopted the U.S. system in terms of both legal practice and management.

It was the previous generation, such as Mr. Nagashima, the founder of our firm, who introduced many aspects of U.S. practice into our firm.

Mr. Ishiguro: I agree with *Mr. Hara*, but also note that management of large law firms is a recent phenomenon in Japan. So in that respect, I think the U.S. model – although there is no single, established model in the United States – is an important reference point for our management, too.

Professor Aronson: In the United States, it is often said that law firms have changed from being professional organizations to business organizations. It may be an exaggeration, but we often hear about it, usually in the form of a criticism.

We have also heard Mr. Wani mention profitability at Japanese firms, and that they will be focusing on it more. Is this generally true? Will a new emphasis on profitability affect how attorneys work, whether they make partner, and other firm activities, or are you happily going your own way?

Mr. Masuda: As the management of a big firm with more than 200 lawyers, we cannot ignore the profitability of the firm. But at the same time, I still believe that in Japan lawyers are considered to be *samurai*. And that means that even in big firms spending time and energy for socially beneficial work is highly respected and considered to be very important.

In our firm we, of course, are doing a great deal of work for corporate clients, but we also suggest to young associates that they spend time for pro bono work.

And we think that serving corporate clients is also good for Japanese society, and from that perspective we do not forget that lawyers are supposed to be servants of society.

Mr. Yoneda: All of us would like to live in a fair, wealthy, and happy society.

Our professional mission is to help establish a new order of law, and to do this we need to offer a high level of quality services. If we can do this, we will obtain remuneration commensurate with the substance of our service. So we do not need to seek profit, but we do need to provide and maintain high quality services which meet the demands of society's members.

Mr. Hara: Profitability of the large Japanese law firms has increased substantially, but that is not our intended goal. Japanese lawyers still pay attention not only to business, but also to professional tradition.

Just six months ago, LexisNexis published a monthly magazine in Japan, and they tried to model it after the American Lawyer by coming up with a law firm ranking of profitability. They asked me whether they could do this and my reaction was that they should not. But they proceeded with their original plan. So I talked with the leaders of the Big Four firms, three or four, and we jointly (and successfully) opposed it.

Professor Aronson: You formed an ad hoc cartel to oppose LexisNexis.

Mr. Hara: One of the reasons American law firms' management focuses on profitability is because of the American Lawyer publication.

Professor Aronson: Does it matter if you're as profitable, or less profitable, than large foreign firms if they have offices in Tokyo? As foreign firms grow larger, will you have to compete with them someday in terms of profitability to attract new lawyers, or you're not thinking about that?

Mr. Hara: If the profitability of foreign law firms becomes double ours, then we will have to worry about that. But fortunately, although we did not intend to emphasize profitability, the large Japanese law firms have achieved quite good profitability. So we have never considered it, although it may arise in the future.

Professor Aronson: Let me ask Mr. Ishiguro. He opened his firm's office in London some time ago and has good direct experience in comparing English firms with Japanese firms.

Do you need to change the way you operate in order to compete with American and English firms? Is there a global standard of how law firms operate?

Mr. Ishiguro: I think it is relevant, because the most important element of management of law firms is to keep attracting and recruiting talented lawyers in a variety of practice areas. So if we lose competitiveness in that aspect, then firm management will fail.

There are many elements which contribute to attractiveness and one of them may well be profitability. So we cannot disregard that aspect, but we also would not like to place too much emphasis on it.

And fortunately, at least at the moment, my sense is that Japanese lawyers on average are not very worried about profitability itself. This may or may not change. As I said, we should keep an eye on it but would not like to emphasize it.

Professor Aronson: For another perspective, I would like to turn to Mr. Wani. I read the phrase "global standard" in an interview he gave with a major newspaper following the merger of his firm with Linklaters. He seemed to have a different view on whether Japanese lawyers and law firms had to adapt different practices to compete with international competitors.

Mr. Wani: Law firms cannot survive without showing good profitability and performance. My former firm's profitability was probably better than some of the Big Four. But even so, I experienced new things after our merger with Linklaters. One example is the approach that you must concentrate on particular profitable clients and practice areas, and that sometimes it is necessary to cut ties with clients in order to improve profitability. I asked the attorneys at my firm to change their mindset and our profitability jumped; the London people were pleased.

But if asked whether I'm happy, I have to say I have mixed feelings. In a sense, I think that we gave up serving the public to some degree for the sake of profitability. That said, we still engage in pro bono and public interest work.

On the other hand, we must tackle these particular issues to survive in the international markets as Japanese *bengoshi*.

Lawyers in other countries (such as in continental Europe) have had similar arguments with firm headquarters in England or the U.S. But at the end of the day, they agree to shift their practice model to achieve better profitability. The practice of law is no longer a profession, but rather it is becoming purely a business. There is a risk that

our old beautiful world is collapsing, and we may need to wait some time for a new world to emerge.

V. THE SOCIAL ROLE OF LAWYERS

1. *Characterization of the Social Role of Lawyers in Japan*

Professor Aronson: One academic characterization of the social role of lawyers in Japan divides perceptions of the social role of lawyers in Japan into three periods: (1) an early postwar confrontational period when it was thought that private practitioners should oppose the establishment, (2) a period in the 1970s and 1980s when the focus was on a professional public interest role, in which private attorneys served both clients and the public as officers of the court, and (3) a more recent “rule of law” period which emphasizes that it’s a social good for lawyers simply to serve business clients, since this contributes to the development of markets and to the revitalization of Japan.¹²

What do you think of this academic characterization of the social role of lawyers?

Mr. Hara: Although I understand the reasons why such characterization might be made, I think it’s quite superficial and not substantive. Based upon my experience, the more important change, as discussed earlier, was in practice areas: the first stage was only litigation, the second stage was litigation plus cross-border transactions, and third stage for these past ten years has focused on domestic business activities.

And I think these are not a result of lawyers changing their approach or style, but rather because of changes in society.

For example, in the first stage of the so-called confrontation period, there were many employment disputes in Japanese society, and many lawyers worked for the plaintiffs because that was an important societal issue.

But nowadays, we don’t have many problems concerning, for example, the environment compared to 20 or 30 years ago, and we don’t have harsh disputes between employers and employees. As a result, the lawyer’s role naturally changed.

I think during the last ten years the lawyer’s social role has become more important.

For example, previously lawyers were never involved in business litigation or administrative activities, but these days many government agencies invite or request help from practicing lawyers. And many practicing lawyers worked substantially on recent important amendments to corporate law. So lawyers are more heavily involved in public activities and government activities, and lawyers are willing to be involved in those kinds of public interest or public activities.

12 In English see R. HAMANO, Japanese Lawyers in Transition, in: Rikkyo Hôgaku 49 (1998) 325 (also citing a number of prominent Japanese sociology of law professors in support of this view).

As my colleagues said we are placing more emphasis on pro bono activities and we are encouraging young lawyers to be involved in those activities. The big law firms focus on private transactions, and as a matter of course we must do our best to protect our clients' interests. But at the same time because of our size we have resources that can be used for public purposes. So I think that over the last ten years big law firms have contributed more to the public interest.

Mr. Ishiguro: I wish to make the observation that for a long time the visibility of lawyers in Japan was very low, due partly to a strict limitation on the number of lawyers. With the increasing number of lawyers now and in the future, I think the public perception of lawyers might well be changing quite substantially. Lawyers have become a more familiar presence – some of them even appear on TV variety shows.

Professor Aronson: How about lawyers in smaller firms? Is your view of the social role of lawyers any different from the views of your colleagues at the larger firms?

Mr. Sugiyama: I agree that the change of the role of lawyers comes from societal factors, not from the lawyers themselves.

In the early post-war period there were many serious issues such as pollution issues and labor issues which were primarily caused by the high rate of economic growth in Japan after World War II.

But nowadays we don't have many disputes on pollution issues; instead we have many other issues, such as medical or public health issues.

Mr. Ueyanagi: I was admitted to the bar in 1983, so in the 1980s I did work for the opposition political parties such as the Communist Party or the Socialist Party. But from around 1995 even the ruling party invited me to work on something. My position has not changed.

I represent what I call the public interest in Japanese society, but my role has changed a bit, perhaps due to what I call the institutionalization of Japanese society. Before 1995 my colleagues and I only criticized the government, but since 1995 or so the government was willing to listen to me. So I joined the Financial System Council (as a public representative) to amend the securities law. And I worked with Japanese Foreign Affairs Ministry to do some work related to Southeast Asia.

2. *Tension between Public Interest and Client Advocacy*

Professor Aronson: In the 1980s there were many general practitioners (including commercial lawyers at small firms) who participated in public interest activities such as environmental litigation. Is there less of this type of activity today?

Mr. Sugiyama: I do not think that there are fewer lawyers who are interested in so-called public interest issues, but public interest issues themselves have changed compared to 40 or 50 years ago.

I believe that many lawyers still have a strong interest in dealing with so-called public interest issues and are still active.

Mr. Ueyanagi: The quantity of such public interest work has not changed, but the percentage of their services which Japanese lawyers devote to such public interest work has decreased due to the increase in work advising large corporations in the financial sector.

My concern is that talented young people are going to large firms, like Nagashima Ohno, rather than joining my law office. More precisely, many lawyers would like to join my office, but my office cannot afford to hire them. To do public interest work requires spirit, but legal technique and experience are more important. Acquiring such experience takes a long time. Young lawyers work closely with senior lawyers.

Professor Aronson: One of the arguments we used to hear years ago from Japanese attorneys and the bar association who opposed increased activities by foreign lawyers was that these foreign lawyers would not fulfill their social role as lawyers in Japan (as generally expressed under Article 1 of the Attorney Law).¹³ What is the view of foreign firms operating in Japan on their social role and on how they can contribute to society?

Mr. Roebuck: This is an evolving area for the international firms and a challenging one. As everyone can appreciate, the international firms operating in Japan are hosts to two populations of qualified professionals: The Japanese *bengoshi* population and the foreign-only qualified (*gaiben*) population; and I think that the answer has to be given with respect to each population.

Now that some international firms have started to participate in the domestic market with domestic capability, they have encouraged their *bengoshi* population to fulfill their roles as they see them. And although we, Jones Day, do not have a fully structured pro bono program that I can describe to you in detail, I am aware that all of the *bengoshi* diligently carry out their obligations, and some of them go beyond that and voluntarily give their time in various contexts and to various organizations, and Jones Day as a firm encourages that since it values pro bono activities in whatever markets it is active.

13 “A practicing attorney is entrusted with a mission to protect fundamental human rights and to realize social justice.” *Bengoshi-hô* [Practicing Attorney Law], Law No. 205 of 1949, art. 1 (1). An English translation of the Practicing Attorney Law is available on the website of the Japan Federation of Bar Associations. See http://www.nichibenren.or.jp/en/about/pdf/pal_2002.pdf. See also, e.g., S. KOBORI, Symposium: Paris Forum on Transnational Practice for the Legal Profession, Discussion Papers, Presented by the Japan Federation of Bar Associations, in: Dick. J. Int’l L. 18 (1999) 109, 111-114 (examining the Japanese bar association’s emphasis on the social responsibility of lawyers and the independence necessary to maintain that responsibility). See also J.M. RAMSEYER, Lawyers, Foreign Lawyers, and Lawyer-Substitutes: The Market for Regulation in Japan, in: Harv. Int’l L.J. 27 (1986) 499, 504 (observing that the argument that foreign lawyers might not be able to fulfill these obligations has often been greeted with skepticism outside Japan, and not only by self-interested lawyers at international law firms).

With respect to the foreign-only qualified population, it is a more difficult question because, again, as everyone can appreciate, we are not fully entitled citizens in Japan. We don't have the right to vote, for example, and I don't expect that we ever will, and I think it's also a fair statement that although we may not be transients, we're also not fully integrated into Japanese society. And those are real constraints on what foreign-only qualified professionals can contribute as a practical matter.

My own view is that foreign qualified-only professionals can and should contribute to the extent that they can, and I would welcome some guidance from the Japanese Federation of Bar Associations and others, such as the Ministry of Justice, as to what would be appropriate.

Jones Day, again, encourages foreign lawyers to seek out opportunities to do that, but at the present time, they are rather limited and primarily directed at the foreign community that is resident or working in Japan and to some extent, Japanese citizens that may have legal issues in foreign markets where we are qualified to advise.

And I view it as a matter of personal obligation that foreign attorneys who are working in Japan should make an effort on an uncompensated or, perhaps, discounted basis to help people who are not major corporate clients address and solve those questions where it is within their permitted scope of activities. But as I said before, those opportunities tend to be fairly limited.

Professor Aronson: I would like to ask more specifically whether it's enough of a social good for lawyers to represent business clients.

By way of background I note the obvious point that lawyers everywhere have two roles: working for clients and working for the public interest, and there's a balance between them. In the United States large law firms have significant pro bono programs, but a cynic might say the purpose of these programs is more for publicity and training young associates rather than for a genuine belief about their social role as lawyers.

And so I wanted to ask: Is it really enough to represent business clients? And were public interest considerations given any thought in the context of law firm mergers?

Mr. Hara: After the merger we can better respond to the needs of our clients. But at the same time, by becoming a big business ourselves, we can better resist pressure from clients. Small firms may sometimes feel compelled to compromise their interests for a very important client.

But after the merger, we never did that and we can always reject an unreasonable request from a client. This may contribute to the public interest.

3. *Role of Lawyers in Corporate Governance*

Professor Aronson: We are fortunate to have with us, Mr. Ueyanagi, who is the best known lawyer in Japan for representing plaintiff shareholders.

One theory in the United States is that lawyers can contribute to the public good by playing a role in corporate governance to help act as an external monitor of corporations and their boards.¹⁴

Is there a sufficient plaintiffs' bar in Japan for lawyers to play a meaningful role in terms of monitoring and improving corporate governance?

Mr. Ueyanagi: The answer is yes and no.

Yes, we have a substantial number of lawyers in the plaintiffs' bar for shareholders litigation. But my concern is that the number has not been increasing.

One factor may be because good young lawyers have gone to other places, but another factor would be jurisprudence or court procedures. We have no class actions, no substantial discovery, and no equitable remedies. My concern is that because of such institutional restrictions we do not have room to expand.¹⁵

Professor Aronson: A related theory in the United States is that shareholder lawsuits may place corporate lawyers who advise businesses in a stronger position to reject unreasonable client demands, as Mr. Hara would say, and advise them to improve their corporate governance by holding out the threat of potential lawsuits.¹⁶

Has that, in fact, been happening in Japan?

Mr. Masuda: I think Japanese business has changed. They understand that they need to be fully in compliance with Japanese laws and regulations, as the concepts of compliance and corporate governance have been emphasized during recent few years. They now understand the importance of legal advice. And they are very concerned about the possibility of lawsuits. But I don't think it's because we (lawyers) advised them about

14 See, e.g., A.R. PINTO, Corporate Governance: Monitoring the Board of Directors in American Corporations, in: Am. J. Comp. L. 46 (Supp. 1998) 317.

15 For a general discussion of shareholder suits in Japan, see M.D. WEST, Why Shareholders Sue: The Evidence from Japan, in: J. Legal Stud. 30 (2001) 351. The best-known court decision was the Daiwa Bank case, in which a district court awarded \$775 million in damages to the plaintiffs for directors' breaches of fiduciary duties related to a \$1.1 billion loss incurred by a rogue trader at the bank's New York branch. *Nishimura v. Abekawa* (Daiwa Bank Case), in: Hanrei Jihô 1721 (Osaka Dist. Ct., Sept. 20, 2000) 3. For excerpts of the decision in English, see B.E. ARONSON, Learning From Comparative Law in Teaching U.S. Corporate Law: Director's Liability in Japan and the U.S., in: Penn St. Int'l L. Rev. 22 (2003) 213, 227-231. For an analysis of the decision, see B.E. ARONSON, Reconsidering the Importance of Law in Japanese Corporate Governance: Evidence from the Daiwa Bank Shareholder Derivative Case, in: Cornell Int'l L.J. 36 (2003) 11, 14-17.

16 See generally E.B. ROCK, Saints and Sinners: How Does Delaware Corporate Law Work?, in: UCLA L. REV. 44 (1997) 1009.

the potential for lawsuits; I rather think it is part of a broader societal trend. And in that sense, I would say the answer may be no.

Professor Aronson: So maybe you don't have to scare them because they are already scared?

Mr. Masuda: Right.

Mr. Ishiguro: I have a different view. I agree with Mr. Masuda's general description of the change in Japanese management, but sometimes I do refer to the risk of lawsuits to the top management of corporations, including very large ones, in order to remind them that risk exists if they pursue a certain kind of decision-making process or approach to doing business. And it's quite helpful to scare them, if I may use that term.

That said, I again agree with Mr. Masuda that they are very concerned and sensitive about any breach of fiduciary duty, and there is an increasing number of requests for advice in this area from clients, especially when they are going to make important decisions on important transactions.

Mr. Wani: These gentlemen are talking about shareholder suits, that is, management versus shareholders. But in the area of financial institutions, there is another "pressure," the FSA, the Financial Services Agency (financial regulator). The FSA's authority and actions pressure Japanese financial institutions to use outside lawyers to issue opinions on the appropriateness of their corporate procedures. FSA regulations also play an important role in enforcing corporate governance.

VI. CONCLUSION

The popular image of the unimportant role of law and lawyers in Japan was always exaggerated. It may now be obsolete. The panel discussion provides a clear snapshot of sweeping changes in Japan over the last decade that have elevated the role of corporate lawyers and law firms. As noted in the introduction, the issues generally discussed with respect to the legal profession in other developed countries, such as the change of the practice of law from a "profession" to a "business," are highly relevant to Japan today. It is time for considered analysis rather than reliance on unchanging, culturally based images.

The panelists' discussion of changes in the Japanese legal profession contained a number of surprises in all three of the principal topics: the rise of corporate law firms, internationalization of the Japanese bar and law firms, and the social role of lawyers. Leading corporate law firms have rapidly grown and transitioned from small internationally oriented boutiques to major domestic players. Law firm mergers have become commonplace, with the latest merger conducted for the stated purpose of increasing firm size rather than adding new practice areas. Legal reforms are producing a greater num-

ber of lawyers, but there are questions about the quality of their new legal education and even their job prospects.

With respect to internationalization, foreign law firms have already become substantial competitors to the leading Japanese firms in Tokyo for cross-border business. The major foreign law firms, with their strong capital base and global networks, may also have the potential in the future to compete for the best young Japanese attorneys and domestic business. The panel discussion also suggests that beyond a certain point (i.e., the ability to form joint ventures) liberalization of the activities of foreign lawyers may be less important to foreign law firm prospects than markets and competitive conditions.

The social role of lawyers in Japan is also under pressure at leading corporate firms. There appears to be an ongoing clash between the traditional image and social role of lawyers (as “*samurai*” who care about the public interest and lawyer’s autonomy far more than profits) and the business realities of big firm practice. Lawyers understandably continue to provide reassurance about their traditional social roles and professionalism in a time of great change. But one important question, i.e., whether it is a sufficient social role for corporate lawyers simply to represent business clients and thereby contribute to the support of competitive markets and the revitalization of Japan, was largely unaddressed. This is an area where Japan’s recent experience may also be significant for other Asian countries trying to develop the rule of law and transparent markets.

What do all these changes mean for Japan? Japanese society now has a legal profession which fills an important role in the transition from governmental “administrative guidance” to transparent markets. This role includes providing advice on capital markets’ products and services, corporate governance concerns, and policy issues. Corporate law firms in Japan face both unprecedented opportunities and challenges, as they try to meet clients’ and societal expectations and manage very rapid growth. Young Japanese attorneys face tradeoffs which are well known to American lawyers: greater opportunities among large firms for the top law school graduates and greater job mobility, but less chance to make partner or to pursue individual interests.

The Japanese legal profession has emerged from its insularity and limited social role. It must now face the tradeoffs and ambiguities which have become familiar in the United States and elsewhere: a more important role in society with potentially greater financial rewards, but at the cost of increasing pressure and competition. It must also give new consideration to the appropriate balance between serving clients and society. As one of the panelists noted, Japanese attorneys are exposed to a real risk that their prior “beautiful world” is disappearing. They will now need to face the brave new world of lawyers in Japan.

VII. APPENDIX

Largest Law Firms in Japan

| 1985 | 1998 | 2001 | 2005 |
|------|------------------------------------|--|--|
| 26 | <i>Nishimura & Partners</i> 63 | <i>Nagashima Ohno & Tsunematsu</i> 149 | <i>Mori Hamada Matsumoto</i> 198 |
| 25 | <i>Nagashima & Ohno</i> 62 | <i>Nishimura & Partners</i> 112 | <i>Nagashima Ohno & Tsunematsu</i> 197 |
| 23 | <i>Mori Sogo</i> 62 | <i>Mori Sogo</i> 94 | <i>Nishimura & Partners</i> 183 |
| 20 | <i>Anderson Mori</i> 50 | <i>Anderson Mori</i> 91 | <i>Anderson Mori & Tomotsune</i> 179 |
| 20 | <i>Asahi</i> 48 | <i>Asahi</i> 79 | <i>Asahi Koma</i> 140 |
| 20 | <i>Mitsui Yasuda</i> 36 | <i>Mitsui Yasuda</i> 65 | <i>TMI</i> 87 |
| 17 | <i>TMI</i> 33 | <i>Tokyo Aoyama Aoki</i> 58 | <i>Tokyo Aoyama Aoki</i> 68 |
| 17 | <i>Matsuo Sogo</i> 29 | <i>TMI</i> 54 | <i>Ohebashi</i> 64 |
| 16 | <i>Iwata Godo</i> 28 | <i>Hamada Matsumoto</i> 41 | <i>City Yuwa</i> 64 |
| 16 | <i>Ohebashi</i> 27 | <i>Ohebashi</i> 40 | |

Note: Numbers are for Japanese lawyers (*bengoshi*) only.

Sources: Jiyû To Seigi 39 (Supp. 1988) No. 13, at 61; S. NIWAYAMA / K. YAMAGISHI, *Nihon ni okeru kyodai hôritsu jimu-sho no kanôsei* [The Possibility of Large-scale Law Offices in Japan], in: Jiyû To Seigi 49 (Nov. 1998) 34, 35; ILS PUBLICATIONS, INC., *International Lawyers 2002*, 246-47 (2002); *Nihon Keizai Shinbun*, Feb. 25, 2005, at 1.

ZUSAMMENFASSUNG

Unser Bild von Japan ist das einer abgeschotteten Gesellschaft, die auf informellen Konsens Wert legt und in der die Juristen und das Recht keine wichtige Rolle spielen. Jedoch haben die Deregulierung und die Verwaltungsreform, die während der japanischen Wirtschaftskrise der 1990er Jahre eingeleitet wurden, im letzten Jahrzehnt zu überraschenden Änderungen geführt – eine neue Nachfrage nach Rechtsrat für Unternehmen, eine Zunahme der Zahl der Juristen, das Aufkommen großer Anwaltskanzleien und eine wachsende Betätigung ausländischer Rechtsanwälte. An einer Podiumsdiskussion, die vor kurzem an der Creighton University School of Law stattfand und die diese neue Welt des Anwaltsberufs in Japan zum Gegenstand hatte, beteiligte sich eine Gruppe angesehener Rechtspraktiker der führenden japanischen und ausländischen Kanzleien in Tokyo.

Dabei ging es um den Aufstieg von unternehmensrechtlich orientierten Kanzleien, die Internationalisierung der japanischen Anwaltschaft sowie die soziale Rolle von Anwälten. In Bezug auf die Zunahme von großen unternehmensrechtlich orientierten Sozietäten stellten die Diskussionsteilnehmer fest, dass sowohl die Nachfrage nach Rechtsberatung für Unternehmen im Inland als auch die Zahl der Anwälte in diesem Bereich in Japan während der letzten zehn Jahre stark gestiegen ist. Während Unternehmen in der Vergangenheit für eine Antwort auf die Frage, ob eine bestimmte Transaktion oder Praxis zulässig war, eher zum zuständigen Ministerium gingen, ziehen sie heute im Zweifel einen Rechtsanwalt zu Rate. Ab dem Jahr 2000 kam es verstärkt zum Zusammenschluß von Kanzleien. 2005 hatte bereits jede der fünf führenden Kanzleien mehr als 200 Rechtsanwälte.

Die Konferenzteilnehmer interessierten sich für die Auswirkung der Liberalisierung der Tätigkeit ausländischer Anwälte und Kanzleien in Japan. Der erste bedeutende internationale Zusammenschluss zwischen einer japanischen und einer ausländischen Sozietät fand zu der Zeit der jüngsten Liberalisierung 2005 statt, und die Presse hob hervor, dass zwischen beidem eine enge Verbindung bestanden habe. Jedoch betonte die Leitung der japanischen Gruppe, die am ersten internationalen Zusammenschluss beteiligt war, dass die Liberalisierung dabei keine Rolle gespielt habe. Die Motivation sei es eher gewesen, die grenzüberschreitende Tätigkeit weiter auszubauen und von den weiter entwickelten Geschäftspraktiken internationaler Kanzleien zu profitieren. Hinsichtlich des Einflusses der oben beschriebenen Änderungen auf die soziale Rolle der Anwälte betonten die Diskussionsteilnehmer aus den großen Kanzleien ihre neue, erweiterte Rolle auf den Finanzmärkten und bei regulatorischen Angelegenheiten sowie die Erweiterung der traditionellen pro bono-Programme der Kanzleien. Anwälte kleinerer Sozietäten, die aktiv an gemeinnützigen Aktivitäten beteiligt waren, sahen keine Abnahme des Interesses an solchen Unternehmungen. Sie beobachteten jedoch inhaltliche Änderungen weg von umstrittenen Arbeits- und Umweltbelangen hin zu medizinischen und gesundheitlichen Angelegenheiten.

(Übersetzung durch die Red.)