EIJI TAKAHASHI

Kaisha-hō no keiju to shūren
[Reception and Convergence of Corporate Law]

Yūhikaku, Tōkyō 2016, XIII + 430 p., 8,500 ¥ ; ISBN: 978 4 64 113739 4

What is the relationship between Japanese corporate law and its German counterpart? What *should* it be in the future? In order to address these larger issues, this book sheds light on the following two aspects: the "reception" of German corporate law in Japan and "convergence" between the two laws. The author not only describes and analyzes these phenomena, but also suggests how Japanese corporate law can benefit from further "reception" and "convergence" through "mutual dialogue" with German law.

This book begins from the assumption that although Japanese corporate law was born and developed under the strong influence of German corporate law, since the end of World War II it has introduced new systems which cannot be explained by mere analogy to German law.[1] For example, the provisions concerning capital in Japanese corporate law had long been interpreted based on the "three principles of capital *(Prinzipien der Aufbringung/dauernde Erhaltung/Beständigkeit des Grundkapitals)*" imported from Germany. However, the author points out that since the Companies Act 2005 abolished some of the old systems, strong doubts have been cast on whether these principles of capital still apply in the same way.

Against this background, Part II of this book, entitled "Reception," suggests how Japanese corporate law should learn from its German counterpart regarding various topics.[2] This Part contains many articles focusing on corporate group law, to which the author has devoted most of his academic life. Although each article may seem to deal with a separate topic, the underlying argument is that Japanese law should establish the means to protect disadvantaged stakeholders in a corporate group (e.g., minority shareholders, creditors and labors in dependent subsidiary corporations).[3] At the same time,

---

1 *See* E. TAKAHASHI, 'Reception' and 'Convergence' of Japanese and German Corporate Law, in: ZJapanR/J.Japan.L. 38 (2014) 109.

2 *See, e.g.*, E. TAKAHASHI, Der Gleichbehandlungsgrundsatz im japanischen Aktienrecht als Aufgabe der Rechtswissenschaft, ZVglRWiss 108 (2009) 105; E. TAKAHASHI, Zur Reform der geschlossenen Kapitalgesellschaften in Japan, in: Bälz/Baum/Westhoff (eds.), Aktuelle Fragen des geberblichen Rechtsschutzes und des Unternehmensrechts im deutsch-japanischen Rechtsverkehr, ZJapanR/J.Japan.L. Sonderheft/Special Issue 5 (Carl Heymanns Verlag, Köln 2012) 29; E. TAKAHASHI, Der Schutz der Arbeitnehmer im Gesellschaftsrecht, in: Stürner/Bruns (eds.), Globalisierung und Sozialstaatsprinzip (Mohr Siebeck, Tübingen 2014) 133.

3 For example, in Chapters 2 and 3 of Part II of this book, in the absence of explicit provisions corresponding to those of German corporate group law *(Konzernrecht),* the author recommends the use of the principle of equality of shareholders. Chapter 4 suggests that Japa-

one remarkable aspect of Part II is that it also includes some proposals for the "reception" of Japanese law by Germany.[4] These proposals would never have been possible without the author's deep and comprehensive understanding of German law and highly detailed research on its history dating back to its origin.

Part III, entitled "Convergence," points out that the relationship between Japanese and German corporate laws has entered a new era of "convergence."[5] Recently, Japanese and German corporate law have increasingly begun to resemble each other through their reference to U.S. law without direct mutual exchanges between Japan and Germany. The author identifies this phenomenon as one type of "convergence."

Instead of such undesirable "convergence," in which Japan and Germany cannot share problems and solutions, the author suggests "mutual dialogue" between them. With a view to promoting such "mutual dialogue," this book makes not only suggestions from German law to Japanese law, but also suggestions from Japanese law to German law.[6]

As an example of the undesirable "convergence," the first article of Part III focuses on the business judgement rule. This article analyzes the process and result of the "convergence": Germany and Japan have separately introduced the rule from the U.S. and developed it in their respective contexts. Based on this analysis, the author suggests that Japan needs to introduce an explicit provision on the business judgement rule such as the one in Germany.

Also, Part III of this book addresses another phenomenon of undesirable "convergence." It occurs through the competition among corporate laws of different jurisdictions. The author examines the competition among limited liability company (GmbH) laws of EU member States resulting from the development of freedom of establishment by CJEU. To prevent a race to the bottom, he points out that it is necessary for the EU to adopt new directives concerning limited liability companies as is the case for stock corporations.

This book consists of the author's published articles regarding the "reception" and "convergence" of corporate laws between Japan and Germany. One of the greatest aims of this book is the introduction of the concept of "mutual dialogue." This can be regarded as a new type of "reception" involving U.S. corporate law. By comparing and con-

---

nese corporate law should import the duty of loyalty *(Treuepflicht)* of major shareholder and corporation from Germany. Chapter 7 of this Part shows the necessity to introduce a new provision similar to Section 117 (1) of German Stock Corporation Act (AktG).

4 For example, Chapter 6 of Part II suggests that German corporate law should evaluate the stock value on the basis of market value, when a corporation has to pay compensation *(Abfindung)* to minority shareholders for their stocks. Chapter 10 of this Part recommends that German corporate law should give a choice between one-tier board and two-tier board, and German Limited Liability Companies Act (GmbHG) should recognize shareholder derivative suits.

5 *See* TAKAHASHI, *supra* note 1.

6 For example, Part I argues that German law should loosen the conditions and simplify the procedures for the shareholder derivative suit in order to ensure good corporate governance.

trasting how Japan and Germany each learned from U.S law and developed such rules, both Japan and Germany can benefit from each other's experiences. Such "mutual dialogue" involving U.S. law has a great significance, because these days U.S. corporate law has great influence on corporate laws worldwide. This book can be a milestone for this new type of "reception" which focuses on the interaction among three States: Japan, Germany and U.S.

Takuma Naka[*]

* Dr., Graduate School of Law, Kyōto University.