

Editor's Note

The Asian-Pacific Law & Policy Journal is distinguished by its unique focus on legal issues germane to East Asia and the islands of the Pacific. Our objective is not only to advance scholarship on the region, but also to offer a lens into this part of the world for non-specialists who stand to benefit from its rich legal traditions and developments (and to this end we have offered translations of statutes and cases, and scholarship otherwise unavailable in English). We are also an electronic journal with a readership and authorship that literally spans the world.

Upon this foundation, the editorial staff of the Journal's ninth volume has been hard at work behind the scenes to improve this important forum for both our readers and authors. First, we have refined the scope of the Journal to include articles, book reviews, essays, and comments on current topics in comparative and transnational law with regard to the following countries or geographic entities: Australia, Brunei, Burma, Cambodia, China (including Hong Kong Special Administrative Region and Macau Special Administrative Region), East Timor, Fiji, Hawai'i, Indonesia, Japan, Kiribati, Laos, Malaysia, Marshall Islands, Micronesia, Mongolia, Nauru, New Zealand, North Korea, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, South Korea, Taiwan, Thailand, Tonga, Tuvalu, Vanuatu, and Vietnam. Second, in line with the electronic format of our Journal, we have moved to an all-electronic submissions model. Submissions are now accepted on an ongoing basis via e-mail. Manuscripts received by March 31 have priority consideration for winter publication, and those received by October 31 have priority for spring publication. Third, we are in the process of revising our website to improve both its aesthetic qualities and usability. Look for changes concomitant with the publication of our Spring 2008 issue. More details about these and other changes can be found on our website. Now let us turn to the current issue.

In March of this year former Co-Editor-in-Chief Daryl Takeno (Class of 2007) and current Managing Editor Marissa Lum (3L) jet from balmy island trade winds for the late-winter chill of southern Japan to attend Kyushu University's Annual Law Conference at the invitation of the university's Faculty of the Law. The conference was entitled "Corporate Governance in East Asia: Is Convergence on the Anglo-American Model the Future?" Inspired by the unique opportunity to meet with scholars and practitioners from countries throughout the Journal's region of focus, Daryl and Marissa returned to Hawai'i with commitments from several of the conference presenters to publish their papers in the Journal. We are fortunate to begin our ninth volume with the views of five conference presenters on developments in corporate governance in

China, Japan, and Korea. We are also privileged to begin the Winter 2007 issue with remarks from another conference presenter, Harvard Law School Mitsubishi Professor of Japanese Legal Studies, J. Mark Ramseyer.

Following Professor Ramseyer's introduction, Dan Puchniak, an LL.D. Candidate at Kyushu University in Japan and Member of the Ontario Bar in Canada, begins by challenging the assumption that Anglo-American corporate governance has reached an evolutionary telos. In his view, corporate governance in both the United States and Japan continue an adaptive evolution. In the process of adaptation, Japan has found its own way—corporate governance there is the product of varied responses to unique circumstances and history, neither converging nor diverging with the American model. Puchniak suggests that the convergence approach focuses our attention on the wrong issue. What is relevant, he writes, is not whether comparative models of corporate governance are converging, but what allows corporate governance systems to efficiently adapt to their distinctive and ever-changing environments.

Our second article is by Jie Yuan, who, like Puchniak, is also an LL.D. Candidate at Kyushu University. Yuan answers the Kyushu conference's central question with her reflections on China's independent director system. She argues that while China has adopted many elements of the American corporate governance model, there are two critical areas of divergence. First, there are important minor differences between the implementing regulations for the independent director system in China and the system that exists in the United States. Second, uniquely Chinese circumstances, such as China's shareholding structure, its dearth of qualified candidates to fill independent director slots, and two-tiered board structures create substantive differences between the two systems. In Yuan's estimation, neither the regulatory nor the circumstantial aspects of these differences are likely to harmonize. Total convergence is an illogical endpoint.

Our third article is by Peter Lawley, who writes about the impact of the committee system on the Japanese corporate governance environment. His article includes empirical analysis from interviews he conducted with twenty-four professionals who deal with Japanese corporate governance issues in their occupations including lawyers, auditors, ratings analysts, bankers, and institutional investors. Lawley suggests Japan's committee system, while not a panacea for all corporate governance and corporate performance issues, nonetheless offers benefits over the statutory auditor system, including stronger monitoring mechanisms in the form of mandatory committees and outside directors, and a means of enhancing the organizational flexibility of corporate groups. He concludes that only an awareness of these advantages, rather

than perfunctory adoption of an American-style committee system, will have real economic impact on Japanese companies.

Our fourth article is by Kenichi Osugi, Professor of Corporate Law at Chuo Law School in Tokyo, Japan. Professor Osugi asks if Japan's change toward corporate control bolsters proponents of the convergence theory. He first offers an overview of recent changes in Japanese takeover rules, comparing them with those in the United States and United Kingdom. Then he traces the recent public backlash against takeovers and demonstrates how Japanese companies have modified poison pill techniques adopted from America. Finally, he notes that the use of bargaining between corporate managers and institutional investors plays an essential role in the transformation of mergers and acquisitions rules and practices in Japan. Professor Osugi concludes that a unitary focus on convergence misses many of the most important aspects of the evolution of corporate governance law in Japan. Like Puchniak and Lawley, he suggests that a more complex analysis is needed.

Our fifth and final article of this issue is by Kon Sik Kim, Professor of Law at Seoul National University and audit committee member at two listed firms in Korea. Professor Kim uses his analysis of the audit committee in Korea to suggest that corporate convergence analysis is not moot. Rather than reject the idea, Professor Kim remarks that the Korean experience is actually an example of how convergence actually drives change and concludes that Korean statutes will become *more* like their American counterparts—at least in form. While substantive implementation is inevitably different in the near-term given differences between American and Korean social, cultural, legal, and business environments, Professor Kim does not discount the possibility of substantive convergence in the long term. In the end, the role of outside directors and the audit committee in Korea may grow to become as important as they are in the United States.

In closing, I extend special thanks to Dan Puchniak for his support in coordinating with the authors that appear in this issue. I also extend my gratitude to our faculty advisors for their sage advice and support throughout this term. Finally, I thank all of our board members, staff editors, and staff writers whose diligence and personal sacrifices ultimately made this publication possible.

John Donovan
Editor-in-Chief (2007-2008)
Honolulu, Hawai'i
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