

context, minor discrepancies exist between the takeover rules depending on the jurisdiction in which they operate; in some cases, the same rule may have a distinctive function, due to the differences in stock ownership structures or underlying social norms. For a Japanese model of takeover rules, the following regulatory approaches may be considered:

1) imposition of restrictions to unlimited share trading by means of defensive measures and/or by providing relevant provisions in the Companies Act, but with minimum restriction possible to the tender offer rules (basic features of the American model)

2) development of an environment, which allows the shareholders of a target company to make an autonomous judgment in determining whether or not to apply for a tender offer (i.e. elimination of coerciveness) and on the basis of satisfactory information disclosure (basic features of the European model)

In reviewing the Japanese model, it is essential to acknowledge the background to and the significance of the regulatory context of takeover rules by returning to its basic structure and choose an option which best suits the realities of Japan.

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### 3. Introduction to the Findings of the Survey on Civil Proceedings Users in Japan in 2011

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#### 1 The Aim and Particulars of the Study

The Civil Procedure System Study Group, consisting of the researchers on Civil Procedure Law, conducted a survey on the users of civil procedure system in August 2011 and compiled its findings as a report submitted in December 2012 ('Survey on the Users of Civil Proceedings in 2011', The Civil Procedure System Study Group (ed.), Shoji-Houmu

(*Commercial Legal Affairs*), 2012). This survey aimed at finding out about the general impression of the parties who have actually participated in civil proceedings on the proceedings itself, as well as the participants, such as judges and attorneys, and the civil procedure system in general. The same survey has been conducted over the years, beginning with that carried out by the Justice System Reform Council in 2000. The present survey constitutes a third attempt, following the one conducted in 2006 (hereinafter: the 2006 Survey). The objective of these surveys is to obtain fundamental data with a view of creating a better civil procedure system, which reflects the opinions of its users. More specifically, it aims to reveal the current state of assessment provided by the actual users of proceedings with respect to the various aspects of the system, as well as to establish the underlying reasons, which led to such an assessment and to provide reference data for improvement of the system.

In the following sections, a brief introduction to the findings of the survey conducted in 2011 (hereinafter: the Present Survey) will be provided.

## 2 Methodology, Target and the Collection Rate

The Present Survey was conducted by means of postal inquiry in a form of questionnaire. This is the same method as the one used in the 2006 Survey. However, the Present Survey differed from the one conducted in 2006 in respect of the following points: 1) because of the outbreak of the East-Japan Great Earthquake a few months prior to the date of the survey, those cases that were administered by the district courts located in the prefectures severely hit by the earthquake (namely Morioka, Sendai, Fukushima and Mito District Courts) were excluded from the target due to the concern that these areas had not sufficiently recovered or been reconstructed at the time of the Present Survey (August 2011), and 2) cases concerning the refund of overpayments, which are recently increasing dramatically but for which no substantive trials are held, were also excluded.

The target were the participants (2406 in total, including legal persons) of ordinary civil procedure cases, which have been concluded by June 2011 in 133 courts in the country. There were 770 respondents and the collection rate was 32.0%.

### 3 Assessment Regarding the Time and Costs Required for Civil Proceedings

The questions in the Present Survey are very extensive (reaching 20 pages in total) and referring to various aspects of the proceedings, but only the main findings will be introduced here, due to the limitations in space.

#### (1) Estimation and Assessment of the Costs Required for Proceedings

The answers to the question: to what extent were you able to estimate the amount of costs associated with the proceedings, prior to the commencement of the proceedings concerned?, 61.8% of the respondents were able to make an estimation to some extent (the percentage indicated is the total of those who answered they could make either a 'fair' estimation or a 'rough' estimation), whereas 38.2% were not able to make an estimation at all. As in the 2006 Survey, the percentage of respondents corresponding to the former case was 51.6% and 48.4% for the latter, one can conclude that the proportion of those who could make some estimation has marked a 10-percent increase. Also, as regards the assessment of the total cost spent for the proceedings, 43.1% answered they considered it 'high', which is approximately a 5-percent fall from the 2006 Survey (48.3%).

#### (2) Estimation and Assessment of the Time Required for Proceedings

As regards the estimation of the time required for proceedings, in terms of estimation prior to the commencement of the actual proceedings, 46.6% of all respondents answered they were able to estimate it in some way, while 53.4% answered they could not make such an estimation at all. In the 2006 Survey, the percentage of respondents corresponding to the former case was 40.0% and 60.0% for the latter, which suggests that the proportion of those who were able to estimate the time of proceedings increased by around 6 points. Moreover, with respect to the assessment of time actually spent on the proceedings, 8.0% considered it to be 'short' or 'rather short', 34.0% thought it was 'reasonable', 44.2% answered it was either 'rather long' or 'too long', and 13.7% said 'difficult to say (none of the above)'. Although the majority assessed the process to be 'long', the proportion of those who think it to be 'reasonable' also reaches a considerable one-third out of all respondents. The 2006 Survey did not

include the choice of ‘rather short’, but if we assume it to be included into the ‘short’ option and draw a comparison between the two surveys, it becomes clear that the proportion of those who thought ‘difficult to say’ has dropped (23.8% in 2006) and the proportion of those who thought ‘long’ has slightly rose (41.5% in 2006). However, if we look at the composition of answers counted together as ‘long’, an increase is observed in the proportion of those who said ‘rather long’ (increased to 22.8% from 18.6%), while there is rather a decrease in the proportion of those who chose ‘too long’ option (dropped to 21.4% from 22.9%). A sign of improvement in the assessment can be seen here, as well.

#### 4 Assessment of the Trial Process

Concerning the assessment of the procedural aspects of the actual trial process, those elements for which over 50% gave a positive answer (includes both the answers corresponding to ‘rather positive’ or ‘very positive’, out of the 5-grade relative assessment) were such as: chance to ‘put forward own argument’ (56.6%), chance to ‘submit own evidence’ (62.0%), ‘fairness of the process’ (51.2%), and ability to ‘submit own documents’ (82.4%). The elements which were assessed positively by over 40% of the respondents were: ‘plain language used’ (42.6%), ‘understanding of the problem by the judge’ (45.7%), ‘directions concerning preparatory acts given by the judge’ (41.6%). On the other hand, the following elements received rather low proportion of positive answers (below 30%): chance to ‘understand the other party’s argument’ (22.7%), ‘meeting of the deadlines by the other party with respect to submission of required documents’ (26.2%), ‘level of concentration’ (24.6%). Rather small proportion of people positively assessed the ‘time-effectiveness’ (30.9%), as well.

In comparison with the 2006 Survey, there are no big changes to the proportions of positive and negative answers. In respect of the positive answers, the elements which showed a 5-points or more difference were: ‘inquiries made by the judge’ (drop from 36.7% to 30.6%) and ‘the level of meaningfulness’ (rise from 31.8% to 37.0%) only. Although the fact that the proportion of positive answers with respect to ‘the level of meaningfulness’ has risen is worth of appraisal, more far-reaching improvements are awaited in consideration of the fact that the percentage remains at the level of 30%.

## 5 Assessment of the Judges

With respect to the impression the respondents had toward the judges, the elements that received over 40% of positive answers were: 'neutrality' (43.2%) and 'politeness' (42.1%), while 'sufficient listening' (39.4%) and 'trust' (39.0%) reached almost 40%. On the other hand, the elements for which there was relatively low proportion of positive answers were: 'non-legal knowledge' (24.4%) and 'pre-trial preparation' (25.9%). In terms of the negative answers (including both 'rather negative' and 'very negative'), 'sufficient listening' and 'understanding of the sense of value' received at the level of 20% (21.6% and 21.2%, respectively), while other negative answers remained at the level of 10%. In particular, with regard to 'politeness', only 8.7% of the respondents provided a negative answer.

The 2006 Survey also contained more or less the same questions, and no outstanding features can be observed comparing to the tendency described above. The elements for which the positive answers marked a 5-points or more difference were: 'sufficient listening' (drop from 45.0% to 39.4%) and 'legal expertise' (drop from 40.1% to 33.4%). Although the Present Survey poses similar tendency to the 2006 Survey, it is worth noting that there has been a minor decline in the positive assessment concerning 'sufficient listening' and 'legal knowledge'.

In respect of the degree of satisfaction concerning the judges, 40.8% were satisfied and those not satisfied remained at 28.5%. It is not a big difference either, comparing to the 2006 Survey (in the 2006 Survey, 41.3% were satisfied, 28.5% were neutral and 30.2% were unsatisfied).

## 6 Assessment of the Attorneys

As regards the impression of own attorneys, for many elements, over 70% of the answers provided were positive. In particular, elements for which over 80% gave a positive answer were: 'adequacy' (85.3%), 'sufficient listening' (83.7%), 'polite attitude' (85.1%) and 'understanding of the background' (81.7%). As opposed to these, the lower 60% gave a positive answer to the elements such as: 'non-legal expertise' (68.5%), 'negotiation and examination skills' (69.9%), 'willingness to provide optimal solution' (62.0%). No significant differences were observed if compared with the 2006 Survey with regard to the questions commonly asked in both surveys, but some notable changes in the proportion of positive answers were observed with respect to the following elements: 'politeness'

(7-points rise from 78.1% to 85.1%), 'prior-trial preparation' (5-points rise from 70.8% to 75.8%) and 'explanation of the judgment / reconciliation' (5.7-points rise from 68.1% to 73.8%).

In respect of the degree of satisfaction towards the attorneys, 72.6% provided positive answers and 15.0% provided negative ones. In the 2006 Survey, 68.6% were positive answers and 18.3% were negative answers, which imply a 4-points rise in the positive answers and a 3.3-points fall in the negative answers. In respect of the attorneys, it seems that the general assessment has improved, which may be reflecting the possible effect (the competitive affect) of the system reformation.

#### 7 Assessment of the Respective Aspects of the Outcome

Regarding the assessment of the outcome, whether it was advantageous or not, 33.5% answered the outcome was 'disadvantageous', 23.0% said it was 'in-between' and 43.5% said it was 'advantageous'. In the 2006 Survey, the respective percentages were 34.5%, 25.1% and 40.4%, and therefore it can be concluded that the proportion of those who considered the outcome to be 'advantageous' has slightly increased from the 2006 Survey.

In respect of the assessment of other aspects of the outcome of the proceedings, the elements for which more than 50% of the respondents provided a positive answer were those such as: 'acceptance of the outcome' (58.1%), 'fairness of the outcome' (50.1%), 'compatibility with the law' (55.0%) and 'persuasiveness of the outcome' (51.9%). When compared with the 2006 Survey, a minor rise in the positive answers can be observed regarding 'fairness of the outcome' (rise from 48.2% to 50.1%), 'compatibility with the law' (rise from 50.8% to 55.0%), 'acceptance of the outcome' (rise from 55.6% to 58.1%) and 'persuasiveness of the outcome' (rise from 50.2% to 51.9%). This may be due to the fact that there has been an increase in the number of respondents who thought the outcome was 'advantageous', when compared to the 2006 Survey.

In terms of the degree of satisfaction concerning the outcome of the proceedings, 48.6% provided positive answers, 15.9% assessed it to be in-between, and 35.5% were negative. Almost half of the respondents were positive about the outcome. The corresponding percentages in the 2006 Survey were 49.1%, 16.0% and 34.9%, and therefore a 0.5 point decline in the positive answers and a 0.5 point rise in the negative answers can be

observed. Although this is a tiny difference, in light of the fact that the bigger proportion of the respondents (when compared to the 2006 Survey) considered the outcome to be 'advantageous', it was estimated that there would be more positive answers provided here. These findings require a more in-depth analysis.

Furthermore, the questionnaire also asked about the 'intention for reuse' (if you are willing to use the judicial proceedings again in the future, in a similar situation) and the 'willingness for recommendation' (whether you are going to recommend the use of judicial proceedings to the others), the proportion of positive answers gave for each of these questions dropped (50.4% from 53.5% and 34.6% from 45.5%, respectively). To sum up, it deserves an affirmative recognition that there is an improvement in the assessment of the aspects such as 'fairness of the outcome', 'compatibility with the law', 'acceptance of the outcome' and 'persuasiveness of the outcome'; nevertheless, what definitely requires a further analysis, is to find out the possible mechanisms which led to the worse assessment concerning '(future) intention for reuse' and 'intention for recommendation'.

#### 8 Overall Assessment of the System

Lastly, with respect to the assessment of the system in general, those elements for which there was more positive answers than negative ones were: 'role of conflict resolution', 'fairness of the judicial system', 'fairness of the law' (the proportion of positive answers gave were 45.5%, 39.8% and 38.1%, respectively). On the other hand, those elements for which the number of negative answers exceeded the positive ones were: 'usability of the system', 'consistency of the law with the actual realities', 'satisfaction in judicial system' and 'realization of rights' (the proportion of negative answers gave were 45.0%, 35.4%, 37.0% and 32.2%, respectively). The lowest number of the respondents gave a positive answer to 'consistency of the law with the actual realities' (19.9%) and 'satisfaction in judicial system' also remained rather low (20.7%). If compared with the 2006 Survey, some differences observed are: less negative answers concerning 'role of conflict resolution' (4.5-points drop), less negative answers concerning 'accessibility of the system' (3.4-points drop) and less positive answers concerning 'satisfaction in the judicial system' (3.4-points drop).

## 9 Concluding Remarks

The findings of the Present Survey suggest that there have been some improvements in the assessment of the time and costs required for the proceedings and that concerning the attorneys, when compared with the 2006 Survey. These elements may be implying the system reformation has brought some favorable results. On the other hand, in spite of these improvements, there is no major difference in the overall assessment of the system, as indicated by the findings concerning ‘satisfaction in the judicial system’. It may be worth of conducting a further study in order to analyze the factors which prevent the assessment of ‘usability of the system’ from getting improved, even though the number of participants satisfied with the elements such as time and costs, as well as attorneys, has increased.

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