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General Survey

The EPA Releases Its 2000 White Paper on the National Lifestyle

In November 2000 the Economic Planning Agency (EPA) released its fiscal 2000 *White Paper on the National Lifestyle*, the title of which might be translated as "Volunteer Activities and the Enrichment of Interpersonal Relationships."

This 2000 white paper featured volunteer activities. Several considerations were behind the decision to focus on such activities. First, Japan's economy and society have changed in ways that afford increasing opportunities for people to engage in such activities. The range of volunteer activities includes participation in various NPOs (Nonprofit Organizations). A second factor related to lifestyle is that volunteer activity is increasingly recognized as involving the creativity and the resourcefulness of citizens and represents an important way in which they can serve society. Third, the lives of many people in the community are enhanced significantly as a result of volunteer activity. The Great Hanshin-Awaji Earthquake in January 1995 did much to draw people's attention to the importance of volunteer activity. In 2000 volunteers also played a significant role in providing disaster relief when Mt. Usu erupted in Hokkaido and a similar thing happened on Miyake island in Metropolitan Tokyo. The white paper is now seen as fostering a society in which such activity will have an even greater part to play.

The white paper provides a useful overview of volunteer activities. It also underlines the need for increased donations to support the valuable work of NPOs.

The white paper draws on findings from the *Survey on Time Use and Leisure Activities* (1996) which show that the participation rate in volunteer activities (the proportion of people who have participated in some kind of volunteer activity in the previous year) was about 25 percent. It noted that the rate was substantially lower than the international level: 55 percent in the U.S. (1998), and 48 percent in the U.K. (1997). Among Japanese volunteers, the participation rate was high among those in their 30s and 40s, accounting for some 30 percent in each age group. Housewives accounted for 42 percent of all volunteers; retired people for another 16 percent.

The white paper cites the lack of time as a major constraint. According to the EPA's 2000 *National Survey on Lifestyle Preferences*, 60 percent of the people surveyed felt that a major obstacle preventing them from engaging in volunteer activities was the lack of time. The white paper stresses that it is necessary for private firms to provide an environment

which enables their employees to take days off and other leave for longer term commitments to volunteer activity.

Referring to the activities of NPOs, the paper highlights four major difficulties that such organizations face: the shortage of funds, the shortage of personnel, insufficient space for activities, and the need for various kinds of information. The white paper stresses the importance of administrative support for NPO activities, and of citizens choosing to put their energy into the activities best suited to their aptitudes.

Management and Coordination Agency's 1999 Survey on Service Industries

In 1989, 1994 and 1999 the Management and Coordination Agency conducted a Survey on Service Industries. The third survey revealed that in July 1999 there were 1.499 million firms in the service industry, an increase of 12.2 percent since the first survey in 1989. The total number of workers in the service industry was 11.717 million, an increase of 37.9 percent over the same period. Among those working in the industry, 916,000 were "self-employed and unpaid family workers" (representing 7.8% of workers in the industries as a whole), 866,000 were "paid executives" (7.4%), 9.449 million were "regular employees" (80.6%), and 486,000 were "temporary employees" (4.1%).

Looking at firms by sub-industry groupings, "laundry, hair salon, bath services" accounted for 408,000 firms (27.2% of the total number of establishments); "professional services," including individually-run educational institutions (e.g., tutors and crammers), certified public accountants and tax accountants, accounted for 315,000 firms (21.0%); and "religious organizations" totalled 95,000 (6.3%).

The "professional services" recorded the highest growth rate among the subgroups, with 61,000 new firms being established over the preceding decade. "Individually-run educational institutions" grew substantially between 1989 and 1994, and then declined between 1994 and 1999. However, the number of establishments categorized as "other individual instruction places" (such as private music schools and English schools) has grown.

The number of firms supplying "miscellaneous business services" increased by 20,000 and was the sub-industrial grouping with the second most rapid increase. However, only 6,000 of the 20,000 increase occurred between 1989 and 1994. The marked increase in the latter half of the 1990s was due to the rapid expansion of "other kinds of service establishments not yet classified" including worker-dispatching businesses, the spread of "building maintenance services," the rise in the number of "private job placement agencies," and the increased

demand for “security-related services." These trends reflect the increasing use of outsourcing as a major way of engaging labor.

IT Basic Law Enacted

In November 2000 an IT Basic Law came into being. A translation of the law's formal title might be rendered as the Basic Law on the Formation of an Advanced Information and Telecommunications Network Society. Its aim is to make Japan a society where every citizen can use information technology (IT) and fully enjoy the benefits of the IT revolution.

The law sets as the final target the establishment of the world's most sophisticated information network within Japan. The law calls for (1) the development of comprehensive measures to enhance the content of the information available and to improve skills required to access desired information, (2) the encouragement of fair competition, (3) an increase in the level of skills required to make use of information, (4) the training of specialists in the area, (5) the reform of regulations so as to facilitate the development of electronic commercial transactions by protecting and making proper use of intellectual property rights, (6) development of electronic government (slimmer government, improved efficiency, and greater transparency), (7) safeguarding the integrity of networks through better security arrangements and the protection of personal information, (8) support to be made available for creative research, and (9) international cooperation. The law stipulates that, in principle, the private sector ought to be taking the initiative to realize the envisaged IT society, and that the government's contribution should be in terms of minimizing hindrances to fair competition and in facilitating the creation of an environment in which firms will be able to display their true vitality.

With the enactment of the IT Basic Law, an IT Strategy Headquarters was established to promote IT measures. Headed by the Prime Minister, the headquarters is formed by the whole Cabinet together with non-governmental experts. The headquarters produces plans and specifies priorities and the period needed to achieve various targets.

To follow up, the government plans to introduce in the next ordinary session of the Diet in 2001 a series of laws related to IT which deal with the issues relating to the protection of personal information, the protection of intellectual property rights, and the facilitation of e-commerce.

To make the best use of IT in e-commerce and other areas via the Internet, overall

revisions are necessary in the laws regulating commercial agreements, job information and so on, which require that much more information be presented in written form. It is considered, in general, that if electronic mail, homepages, or floppy disks could be allowed as a substitute for a written document as a means of notification and confirmation, then the burden on business owners and many others would be substantially reduced, thereby accelerating an increase in the number of Internet users. On the other hand, however, some are concerned about the permanency of information kept in electronic form. They worry about contracts or conditions normally kept in some written form. There is some worry, for example, that information kept in electronic form might be easily altered. In order to protect people, it is desirable to obtain the consent of the people involved (such as consumers and job-seekers) before relying heavily on the electronic transfer of notifications and related documentation.

Working Conditions and the Labor Market

End to the Decline in Rate of Promised Employment

The proportion of university students graduating in March 2000 who had been promised jobs increased for the first time in three years according to surveys by the Ministry of Education, Science, Sports and Culture and by the Ministry of Labour. By October 1, 2000, 63.7 percent of all university students who graduated and wished to work had been promised employment. This figure was up 0.1 percentage points over the figure reported for the previous year. However, the figure for male students had dropped 0.4 percentage points to reach a record low of 66 percent, while that for female students rose two percentage points to 59.7 percent. The drop in the employment rate for female university graduates seen over the past few years has thus finally bottomed out.

Where high school graduates are concerned, the proportion of graduates who had been promised jobs stood at 42.5 percent, up from 41.2 percent the previous year. This too reversed a decline over the past several years. The ratio of job openings to high-school graduates to the number of students wishing to work stood at 0.89 in March, an increase of 0.04 percentage point compared to the previous year. This improvement is attributable to a 1.5 percent increase in the number of jobs offered and a 2.2 percent decrease in the number of high-school graduates seeking jobs. The Ministry of Labour views these changes as part of a longer-term trend whereby an increasing number of high school graduates change their minds about working and decide to go on to higher education because of the tight job market.

The estimated number of university students who were about to graduate without promise of employment totalled 142,000 (an increase of 1,000 compared to the previous year),

while that of high school students in a similar situation totalled 133,000 (a drop of 6,000). Although the success rate of promised employment before graduating has stopped falling, it still hovers at a low level. The Ministry of Labour takes the view that it is becoming more difficult for students to obtain a pre-graduation promise of employment.

This survey, which has been conducted on a telephone or interview basis since fiscal 1994, has a sample of 5,860 students from 108 national, public, and private universities and two-year colleges. The respondents are asked about their gender, whether they wish to get a job, whether they have been promised employment, and other matters which relate to their prospective employment.

Previously there was an agreement between firms and universities concerning recruitment, and the scheduling of recruitment activities and job-hunting was mutually arranged. The aims were to protect the integrity of the education program within the universities and to ensure that students all had an equal opportunity to obtain a good job. But this rather loose agreement was put aside in fiscal 1999. Since then recruitment activities have been brought forward, and it is now common for firms to actively woo third-year students to their organizations. In response to requests from universities and to the publicity given to the problem of lowered scholastic performance among university students, there have been moves in various quarters to reformulate the agreement. Nikkeiren (the Japan Federation of Employers' Associations), for example, has stated that its members will once more refrain from contacting third-year students.

International Relations

ILO Recommendation concerning the Hiring of Former JNR Workers

On November 17, 2000 the Governing Body of the International Labour Organization (ILO) approved a recommendation based on the report by the Committee on the Freedom of Association concerning the allegations related to the fact that, following the decision to privatize the Japanese National Railways (JNR) in 1987, the succeeding corporations known as the Japan Railway Companies (JR companies) did not hire former JNR workers who had belonged to certain labor unions solely on account of their trade union membership. The issue concerning the reemployment of former JNR employees remains controversial and the final outcome is still uncertain over a decade later.

Concerning the hiring of JNR employees by the new JR companies, the Japanese National Railways Reform Law ruled that members of the JR Establishment Committees in

each new JR company should establish hiring criteria, and that the JNR should prepare a list of candidates for the new companies based on those criteria. The law left each Establishment Committee to decide who to employ out of the list. In this process, some 7,600 employees belonging to the unions opposing the privatization including Kokuro (National Railway Workers' Union) and Zendoro (All National Railway Locomotive Engineers' Union) were not put on the JNR list, and were refused employment by any of the new JR companies and redeployed to the JNR Settlement Corporation. In 1990, about one thousand of these workers employed by the Corporation (who continued to seek positions in the JR companies) were dismissed. Kokuro and Zendoro claimed that the JR companies did not hire members of the two unions and that this was the result of discrimination which violated the right to organize as stipulated in the ILO Convention No. 98 concerning freedom of association. They brought the case to the ILO Committee on the Freedom of Association for settlement. The recommendation of the ILO's Governing Body was made when it approved the report produced by the Committee which had been studying the issue.

The Committee's report and the recommendation of the Governing Body attached importance to moves which had been taken to settle the matter within Japan. It pointed to the Four Political Party Agreement in May 2000 among the majority parties (the Liberal Democratic Party, the Komei Party and the Conservative Party) and the Social Democratic Party. The agreement called for Kokuro to recognize at its provisional national convention that the JR companies had no legal responsibility in hiring the workers in question. In return, however, it was agreed (i) that the majority parties should request that the JR companies guarantee employment for the Kokuro union members, and (ii) that the parties to the agreement shall consider among themselves the amount and the procedure of the payment of the reconciliation compensation. The ILO Governing Body positively viewed this agreement, commenting that it aimed at encouraging negotiations between the JR companies and the complainants with a view to rapidly reaching a satisfactory solution for the parties and which would ensure that the workers concerned are fairly compensated. The report of the Committee commented on Kokuro's allegation that the JR companies had discriminated against union members. The report concluded that the workers were not hired by the JR companies not because of discrimination against the labor unions but because their members had refused wide-area transfers to other regions.

It is still unclear whether Kokuro, one of the parties involved, will accept this political agreement. Its executive committee is ready to accept it, but one internal group is determinedly opposed to the idea of leaving the legal responsibility of the JR companies unquestioned. The matter has been discussed at three Kokuro conventions since July 2000, and each time there has been heated debate and the discussion has had to be postponed.

This issue has also been examined at labor relations commissions and courts within Japan. These bodies too have been trying to judge whether and where legal responsibility lies. The main points of the difference of opinions between labor relations commissions and courts include whether the JR companies should collectively bear any responsibility for the way in which the JNR drew up the list of workers to be selected for employment by the JR companies. This in turn invites questions as to whether the JNR should be regarded as an "employer" under the terms of the Trade Union Law. There has also been debate about whether the JNR engaged in unfair labor practices when it selected workers for employment by the new JR companies.

Many local labor relations commissions ordered the JR companies to take responsibility for the JNR's action on the grounds that JNR conducted recruiting activities − which belonged to the responsibility of the JR Establishment Committees under the JNR Reform Law − on behalf of the committees. According to that interpretation, if JNR engaged in unfair labor practices in making the lists of employees to be selected as candidates for the new positions and excluding members of the particular unions, then the JR Establishment Committees, and hence the JR companies themselves, ought to bear responsibility as "employers." Reinvestigating the issue, the Central Labor Relations Commission (CLRC) also concluded that quite a few cases constituted unfair labor practices.

On their side, the JR companies appealed to the courts for cancellation of the series of orders by the CLRC, and in 1998 the Tokyo District Court handed down two decisions that canceled the relief orders issued by the CLRC. In November and December 2000, the Tokyo High Court then rejected further appeals brought to it by Kokuro and by the CLRC. In both cases courts ruled that the rights of the JNR and those of the JR Establishment Committees concerning recruitment for the new JR companies were stipulated independently by the JNR Reform Law, and that the JR Establishment Committees were not qualified practically or specifically to exert influence or to make decisions in respect to the selection and the drawing-up of the list of employees to be selected for the JR companies for reemployment. Accordingly, the court ruled that the JR Establishment Committees did not bear the employer's responsibility as provided by Article 7 of the Trade Union Law.

The issue of not hiring former JNR workers for the newly established JR companies is still controversial. The focus will now shift to the terms of the practical settlement proposed in May 2000 and whether or not Kokuro is prepared to concede that the JR companies are not legally responsible.

Special Topic

Labor Law Issues Relating to Business Reorganization in Japan

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1.0 Introduction

In recent years, business reorganization has frequently occurred in Japan, and is continuing. This is mainly because Japanese corporations have been struggling to become more efficient organizations in the competitive global market. To carry out business reorganization, corporations have traditionally relied on legal measures, such as mergers and transfer of business undertakings. In May 2000, however, the Commercial Code of Japan was amended to introduce a new reorganization scheme called the "division of corporation." At the same time, since the division of a corporation may affect the workers of such corporation, a new statute called the "Labor Contract Succession Law"(1) was enacted to protect workers' interest. This article describes the new legislation and examines legal issues arising from business reorganization, focusing on the division of corporation and the Labor Contract Succession Law.

2.0 Merger and Transfer of Undertakings

2.1 Merger and Labor Law

In the event of merger, a corporation as a subject of merger (merged corporation) disappears in the legal sense, and its right and duties are automatically transferred as a whole to another already existing or newly established corporation that acquires the merged corporation. Employment contracts of the employees of the merged corporation are also succeeded by the other corporation, whether the employees give consent or not. This is also true with a collective bargaining agreement.

It is to be noted that the employer's right to discharge its employees is generally restricted under the abuse of right doctrine in Japan. Sometimes redundancy may arise from organizational restructuring as a result of merger. However, the employer may not freely discharge redundant employees. Under the case law, even when there is business necessity for the employer to carry out reduction-in-force, it must make reasonable endeavor to avoid

dismissals, select employees to be discharged in a fair manner, and consult workers or trade unions in order to obtain their understanding(2).

In addition, it is often necessary for the new employer to change the contents of the employment contracts of the succeeded employees in order to adjust them to the new environment or to unify the working conditions of the succeeded employees and incumbent employees. Where a trade union exists, concluding a new collective bargaining agreement is one of the most important measures. However, in such cases as when a minority union does not agree with the change, revision of work rules is another practical alternative. Case law provides that, although obtaining employees' or union's consent is a basic principle, an employer may unilaterally change working conditions by revising work rules, if such change is "reasonable" in light of such factors as the necessity of such change, contents of new working conditions, and the employer's effort to obtain the majority of worker's understanding(3).

2.2 Transfer of Undertakings and Labor Law

Transfer of undertakings is a measure to assign rights and duties that constitute an undertaking as a business organization to another entity. Unlike merger, the assignment of right and duties in this case does not automatically take place, but is carried out as the performance of a transfer contract. Also, the transferor does not always cease to exist, especially in the event of partial transfer.

One of the legal issues arising from a transfer of business undertakings is whether an employee of the transferor has a right to refuse to become a subject of transfer, that is to say, to refuse to become the transferee's employee. This issue has been debated, especially in cases involving partial transfer. Many courts have answered this question affirmatively, relying on Article 625 of the Civil Code(4). This article provides that the employer may not transfer its rights under the employment contract to another employer without the employee's consent.

Another issue is whether the transferor and transferee may exclude some of the employees from the subject of transfer. This issue will become particularly important if the transferor is to be dissolved as a result of the transfer, and the remaining employees are to be discharged. In EU countries, the so-called "acquired rights" directive (Council Directive 77/187) provides that the rights and duties of the transferor under an employment contract are automatically and mandatorily assigned to the transferee. In Japan, however, there is no such statute. Thus, a number of lower court decisions have held that it is up to the parties to the transfer contract (i.e., transferor and transferee corporations) to decide whether employment relationship is to be included as a subject of transfer(5).

Nevertheless, in cases where there is substantial identity between the transferor and transferee, some courts have held that the transferee may not refuse the succession of employment relationship. In effect, these rulings relied on the doctrine of piercing corporate veil, although only a few courts referred to it explicitly(6). Also, in cases where the contract of the transfer of undertakings does not contain a clear provision that includes employment relationship as a subject of transfer, courts have sometimes found an implied agreement to that effect(7).

3.0 Division of Corporation and Labor Contract Succession Law

3.1 Division of Corporation under the Commercial Code

As stated before, the amendment to the Commercial Code in May 2000 introduced a new scheme of business reorganization called the "division of corporation(8)." Under this scheme, a corporation (transferor) divides itself into two or more business undertakings and automatically assigns at least one of them to another corporation (transferee). For example, a corporation that has a hotel department and a railroad department may divide itself and transfer the hotel department to another corporation. The transferee may be a new corporation that is established through a resolution of the shareholders' meeting of the transferor (Chart 1), or an already existing corporation (Chart 2). In the former case, the division of corporation is carried out according to a division plan, which is to be adopted in the shareholders' meeting. In the latter case, the division is carried out according to a division contract between the transferor and transferee, which is also to be adopted in the shareholders' meeting of both corporations.

Chart 1. Division of Corporation to Establish a New Corporation (B)

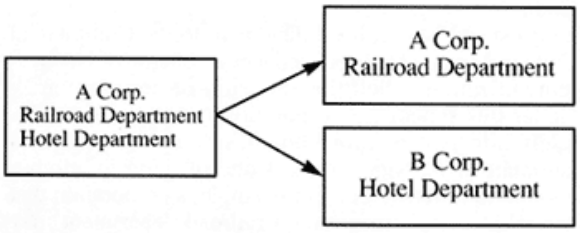
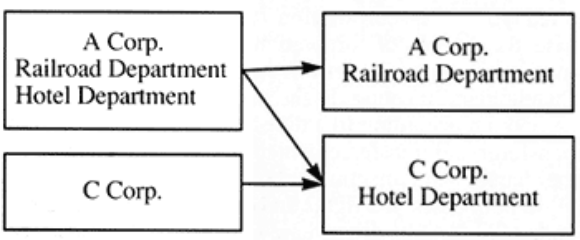


Chart 2. Division of Corporation to Assign to Existing Corporation (C)



In both cases, the rights and duties that constitute the undertakings to be divided are assigned to the transferee as a result of the adoption of the division plan or contract by the shareholders' meeting. The division plan or division contract determines which rights and duties are to be assigned to the transferee. Like merger, this assignment takes effect automatically, i.e., without any contractual arrangement to assign rights and duties. Although the debtors may change as a result of such assignment, the consent of the transferor's creditors is not necessary. Instead, the transferor corporation shall disclose the contents of the division plan or contract and take certain procedures to protect its creditors, such as giving them an opportunity to file an objection or providing payments or collaterals to those who have filed the objection. The assignment takes effect when, after such procedures are completed, the fact of the division is registered.

When the Diet discussed the bill to amend the Commercial Code, one criticism was that such a scheme would be used to discard an unprofitable department and the employer could easily discharge employees working therein. Thus, the amended Commercial Code requires the transferor and transferee to demonstrate that both corporations are financially competent to perform the obligations they will assume after the division. This presupposes that each corporation will not fall into the state of insolvency as a result of the division. To this extent, the amendment provides for a safety valve to prevent discarding an unprofitable department.

3.2 Labor Contract Succession Law

3.2.1 Necessity of Legislation

Under the amended Commercial Code, the transferor corporation, with the agreement of the transferee corporation (if the transferee already exists), may freely determine through the division plan or contract which rights and duties are to be succeeded by the transferee, so long as the subject of transfer constitutes an undertaking as a business organization. Since the Code does not exclude employment relationship from the coverage of this scheme, the transferor employer can determine freely which employees are to be assigned to the transferee. Moreover, since Article 625 of the Civil Code, which requires the employer to obtain the consent of its employees in the event of transfer of employment contract, does not necessarily apply to such automatic succession as merger and division of corporation, an employee whom the transferor determined to transfer does not have a right to refuse the transfer.

Thus, under the amended Commercial Code alone, an employee of the transferor who has been engaging in the work of the department to be split off will not be able to move to the transferee even if he/she wants to, if the division plan or contract excludes him/her as a

subject of transfer. The disadvantage of exclusion from transfer would become serious when such an employee has been working mainly in the department to be split off. On the other hand, an employee who has been working in such a department will be forced to move to the transferee if the division plan or contract includes him/her as a subject of transfer. The disadvantage resulting from such forced transfer becomes serious when such an employee has been working in the department only ancillarily or in an ancillary capacity, e.g., only one day a week in the department while working in another department for the rest of the workweek.

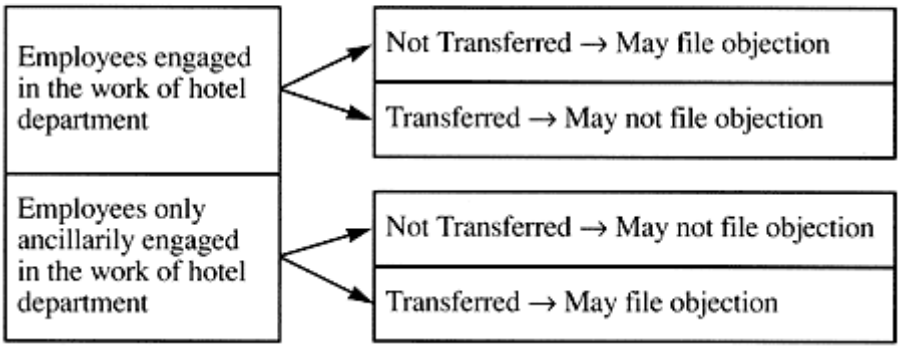
In this sense, the amended Commercial Code will cause problems in terms of the protection of workers. This is one of the main reasons why the Labor Contract Succession Law was enacted at the same time as the amendment of the Commercial Code. This legislation was mostly based on the proposal in the report prepared by the study group on labor relations law relating to business reorganization(9). This group was established by the Ministry of Labor (now Ministry of Health, Labor and Welfare) in 1999 as an advisory board, headed by Professor Kazuo Sugeno of the University of Tokyo.

3.2.2 Succession of Individual Employment Contract

In order to avoid serious disadvantages to employees involved in the division of corporation, the Labor Contract Succession Law has several provisions regarding the employee's rights to request the transfer of employment contract and to refuse forced transfer. The contents of these rights are as follows (Chart 3):

Chart 3. Employee's Right to File Objection in Division of Corporation

Employees engaged in the work of hotel department to be divided



a. Inclusion in the transfer (Article 4)

As regards employees who have been engaging mainly in the work of the department to be split off and are excluded under the division plan or contract from the subject of transfer, they have the right to file an objection to such exclusion. If this objection is filed in a timely manner, their employment contract shall be automatically and mandatorily assigned to the

transferee. On the other hand, such employees do not have the right to exclude themselves from the transfer (Article 3).

This treatment is based on the idea that the disadvantage of employees who have been engaging mainly in the work of the department to be split off is particularly serious when they are excluded from the transfer, since they will be separated from the work in which they have been mainly engaged. On the other hand, the disadvantage of such employees as a result of automatic transfer is not so serious since they can continue to work in a substantially similar organization and the contents of their employment contract remain unchanged after the transfer(10).

b. Exclusion from the transfer (Article 5)

As regards employees who have been engaging only ancillarily in the work of the department to be split off and yet are included under the division plan or contract in the subject of transfer, they have the right to file an objection to such inclusion. If this objection is filed in a timely manner, their employment contract shall be automatically and mandatorily excluded from the transfer and they continue to belong to the transferor. The Law granted the right to object to the employees who have been engaging only ancillarily in the work of the department to be split off, because the disadvantage to such employees is quite serious if they will be separated from the work in which they have been mainly engaged.

It is to be noted that employees who have not at all been engaging in the work of the department to be split off shall not be subject to the scheme of the division of corporation. Thus, the division plan or contract may not provide for the transfer of such employees, and the consent of such employees is necessary under Article 625 of the Civil Code, if the transferor wants them to be moved to the transferee(11).

c. Advance notice to employees

In order to provide employees who may be affected by the division with an opportunity to ponder and file an objection, it is necessary to notify them whether they are included in or excluded from the subject of transfer in the division plan or contract. Therefore, the Labor Contract Succession Law requires the transferor employer to give notice to its employees regarding their treatment at least two weeks before the shareholders' meeting that determines the adoption of the division plan or contract (Article 2).

d. Criteria to determine the scope of automatic transfer

Several issues remain unaddressed by the Law itself. Among them, the most important one is how to determine whether an employee has been engaging “mainly” or “only ancillarily”

in the work of the department to be split off. In December 2000, the Ministry of Labor promulgated a guideline regarding the enforcement of the Labor Contract Succession Law(12). While this guideline contains a number of items, such as the working conditions that must be maintained after the transfer, the criterion for distinguishing between “mainly” and “only ancillarily”regarding the employees engaged in the work of the department to be spit off is as follows:

Whether an employee has been engaging in the work of the department to be split off mainly or only ancillarily shall be determined at the time of the making of the division plan or contract. However, even when an employee is mainly engaging in the work of the department to be split off at that time, such an employee shall not be deemed to be working mainly in such department, if his/her work is only temporary (e.g., because of training) and it is clear that the employee at issue will not be engaging in the work of such department when his/her work is completed. Also, even when an employee is not working mainly in the department to be divided at the time of the making of the division plan or contract, such an employee shall still be deemed to be working mainly in such department, if it is clear that such an employee will be engaging in the work of such department and is working in another department only temporarily.

In the event that an employee is engaging in the work of the department to be split off as well as in the work of other departments, whether the employee is engaging in the work of the former department mainly or only ancillarily is determined in light of the totality of circumstances, including how much time such an employee has spent for the work of the department to be split off, the role that the employee has been playing in respective departments, and so forth.

With respect to an employee who is working in an administrative department in charge of general affairs, human resource management, accounting, and financial management in banking, if such an employee is exclusively working for the department to be split off, he/she shall be deemed to be engaging mainly in the work of that department. When such an employee is also working for another department at the same time, his/her status shall be determined according to the totality of circumstances as stated above. When it cannot be determined under the totality of circumstances whether such employee is engaging in the work of the department to be split off mainly or only ancillarily, he/she shall be deemed to be engaging mainly in the work of that department, if the majority of transferor's employees (except for the employees at issue) are to be transferred to the transferee, unless extraordinary circumstances apply.

Finally, if the transferor changes, before making a division plan, the job or workplace of the employee who is clearly supposed to be transferred or not to be transferred to the transferee in light of his/her past job history with an intention to exclude such employee from the transferee or transferor, the determination shall be made on the basis of his/her past job history.

e. Effect of transfer

Since the division of corporation is a scheme to carry out automatic succession as in the case of a merger, the transferee succeeds the rights and duties that constitute the business undertaking as a subject of transfer with their contents unchanged. Therefore, when the employment contract of an employee is succeeded by the transferee, his/her working conditions under the contract remain intact. The guideline of the Ministry of Labor clarifies this by stating that both the transferor and transferee shall not unilaterally change the working conditions adversely because of the division of corporation. As regards the change of working conditions before or after the division for reasons other than the division itself, basic principles under the law of employment contract or collective labor relations apply, as stated before regarding merger. Thus, although the consent of individual employees or trade unions is basically necessary for such change, there may be certain exceptions under the case law doctrine of reasonable modification of work rules. Also, the guideline confirms that the transferor and transferee shall not discharge their employees just because of the division of corporation.

Another issue is the scope of working conditions to which the transferee is supposed to succeed. So long as the conditions have become the contents of the employment contract through an explicit document such as the work rules or an implied agreement under Article 92 of the Civil Code, there are few problems about succession. This is also the case with fringe benefits that employees are entitled to receive under the employment contract. Meanwhile, difficulty arises with respect to benefits, the conditions of which are provided under social security legislation. Basically, the treatment of such benefits is determined under each statute. However, if an employer has made a promise under the employment contract to make arrangements to implement such benefits, its promise will become the contents of the contract and therefore shall be succeeded by the transferee.

3.2.3 Succession of Collective Bargaining Agreement and Related Matters

a. Succession of collective bargaining agreement

With respect to collective labor relations, an important issue concerns the effect of the division of corporation on a collective bargaining agreement. Here again, a number of problems will arise if there is no special legislation other than the amended Commercial Code.

Among other things, if the division plan or contract provides that the employment contracts of trade union members shall be assigned to the transferee, but that their collective bargaining agreement shall not, the union members will not enjoy the protection under the collective agreement regarding working conditions(13).

Thus, there is a need for legislation to provide for the succession of a collective bargaining agreement. However, if such legislation provides merely for the automatic transfer of a collective agreement, employees who remain with the transferor will be excluded from its coverage and lose its protection. Therefore, the Labor Contract Succession Law provides that when the employment contacts of the members of a trade union are succeeded by the transferee, it shall be deemed that a collective bargaining agreement which has the same contents is concluded between the transferee and the trade union (Article 6 (3)). Due to such a provision, trade union members can enjoy the normative effect of collective agreements under Article 16 of the Trade Union Law, whether they remain with the transferor or are assigned to the transferee.

As a result of this regulation, there may be cases where the transferee has two or more collective bargaining agreements with different trade unions so that members of each union are subject to different working conditions. Similar situations will occur in the event of merger, however, and the unification of working conditions may be achieved through the conclusion of new collective agreements or the unilateral revision of work rules under the reasonableness doctrine.

b. Partial transfer

Another question is whether it is possible to divide the contents of a collective bargaining agreement and transfer a portion of its contents. Although it is doubtful or at least not clearly possible to do so under the amended Commercial Code, there are situations where such partial transfer is appropriate. For example, suppose a collective agreement provides that a trade union has a right to use for union activities two company rooms, and these rooms are located in two buildings, which turn out to belong to the transferor and transferee respectively. In such a case, it would be a better arrangement that the transferor and the transferee respectively owe a duty to rent out the room located in the building that they own.

For these reasons, the Labor Contract Succession Law provides that a division plan or agreement may include stipulations regarding the transfer of a part of a collective bargaining agreement (other than clauses providing for working conditions), and that in such a case the transferee succeeds to the agreement according to the division plan or contract (Article 6 (2)).

c. Advance notice to trade unions

Trade unions that have a collective bargaining agreement with the transferor have a keen interest in the treatment of their agreement in the case of transfer, and there may be a necessity to consult the transferor with respect to the partial transfer as stated above. Thus, as in the case of employees, the Labor Contract Succession Law requires the transferor to give notice to such unions at least two weeks before the shareholders' meeting that determines the division plan or contract regarding the treatment of collective agreements (Article 2). Although the law itself requires such notice only with respect to unions that have a collective agreement with the transferor, the guideline issued by the Ministry of Labor recommends that the notice be given to all the unions, the members of which are employed by the transferor.

3.2.4 Worker-Management Consultation in the Case of Division of Corporation

a. Individual consultation

A number of issues were debated when the Diet discussed the bill for the amendment of the Commercial Code and the Labor Contract Succession Law. Those issues include whether an employee shall have the right to file objection when he/she is included in the subject of transfer, and whether a trade union or affected workers shall have the right to joint consultation in the course of the division of corporation. As to the former issue, it turned out that, as stated before, only the employees who have ancillarily engaged in the work of the department to be split off shall have the right to file objection to the transfer. As regards the latter issue, however, the bills were amended by the Diet to provide for two types of consultation.

First, the amended Commercial Code provides that the transferor employer shall consult in advance its employees who are engaging in the work of the department to be split off. This is to give such employees an opportunity to express their voice regarding their status in the event of a division. Thus, it is individual employees that the employer shall consult, and the subject of this consultation is basically limited to the status and working conditions of such individual employees in the event of the division. However, a trade union may request a consultation if it has obtained the delegations of its members. If the transferor commits a substantial violation of this duty, there is the likelihood that a court will declare the division of corporation itself null and void, although the standing for such action is limited to shareholders, directors, auditors, and creditors (including employees, such as those who have claims for unpaid wages or severance allowances) who do not consent to the division(14).

b. Collective consultation

Furthermore, the Labor Contract Succession Law provides that the transferor

corporation should endeavor to obtain the understanding and cooperation of its employees (Article 7). Although the text of this provision is ambiguous, the Enforcement Ordinance of the Labor Contract Succession Law clarifies the contents of the transferor's duty, providing that the transferor should endeavor to obtain the understanding and cooperation of its employees through consultation with a trade union that organizes the majority of employees in each workplace or a person representing majority of the employees if no such union exists, or by measures that are equivalent to such consultation (Article 4).

Unlike the consultation under the amended Commercial Code, this consultation is collective in nature, since the purpose of this provision is to encourage the transferor to hear the voice of workers regarding the implementation of the division of corporation. Thus, the scope of this consultation is wider than that of the individual consultation. For example, this consultation may cover such matters as the background and reason for the division of corporation, the criteria to decide whether the transferor's employees are engaging in the work of the department to be split off mainly or only ancillarily, the treatment of collective bargaining agreements, and so on. Also, according to the guideline of the Ministry of Labor, this collective consultation should begin before the individual consultation, and may continue afterwards if necessity arises. Still, since this duty to consult is merely a "duty to endeavor," no legal effect is directly given to the violation of this duty.

4.0 Conclusion

The amended Commercial Code and the Labor Contract Succession Law will take effect on April 1, 2001. A newspaper article reported that a large number of major corporations are considering to utilize the scheme of the division of corporation(15). In fact, several major corporations are preparing for the division, including Mizuho Holdings, which was established in 2000 as a result of the merger of Nihon Kogyo Bank, Daiichi Kangyo Bank, and Fuji Bank. In order to implement the division of corporation smoothly, the treatment of labor relations, whether individual or collective, is quite important. Thus, it is necessary for companies not only to be familiar with the contents of the Labor Contract Succession Law as well as the related ordinance and guideline, but also to conduct consultations in good faith with their employees or trade unions.

Also, the Labor Contract Succession Law does not contain provisions regarding the protection of workers in the event of merger and transfer of undertakings other than the division of corporation. It is because there is no substantial disadvantage to workers (especially in the case of a merger) or case law has provided substantial protection as stated before (especially in the case of transfer). Still, when the Diet passed the law, relevant committees in the Upper and Lower Houses made a resolution that further research and

examination should be conducted regarding the necessity for the protection of workers in these types of business reorganization. Thus, it is necessary to pay attention to further developments on this issue*.

Notes:

(1) Its formal name is "Kaisha no Bunkatsu ni Tomonau Rodo Keiyaku no Shokei tou ni kansuru Houritsu" (Law Relating to Succession of Labor Contract and Other Matters in the Event of Division of Corporation), Law no. 103 of 2000.
(2) *See generally* Kazuo Sugeno, Japanese Labor Law 407-410 (Leo Kanowitz trans. 1992).
(3) See, e.g., Sato v. Daishi Ginko K.K., 710 rodo Hanrei 12 (Sup.Ct. Feb. 28, 1997).
(4) E.g., Umemura v. Maruko K.K., 881 Hanrei Taimuzu 151 (Nara Dist.Ct. Katsuragi Branch, Jun. 18, 1992).
(5) *E.g.*, Ito v. Ibaraki Shohisha Kurabu, 628 rodo Hanrei 12 (Osaka Dist.Ct., Mar. 22, 1993).
(6) *E.g.*, Matsuyama Seikatsu Kyodo Kumiai v. Nakagawa, 18 Rodo Kankei Minji Saiban Reishu 890 (Takamatsu High Ct., Sep. 6, 1967).
(7) *E.g.*, Yamaguchi v. Shin Kansai Tsushin Shisutemuzu K.K., 668 rodo Hanrei 48 (Osaka Dist. Ct. Aug. 5, 1992).
(8) *See generally* Masahiro Maeda, *Kaisha Bunkatsu ni Kakaru Shoho To no Ichibu Kaisei ni Tsuite* (Partial Amendment of the Commercial Code Regarding Division of Corporation), 1182 Jurisuto 2 (2000).
(9) Kigyo Soshiki Henko ni Kakaru Rodo Kankei Hosei to Kenkyu Kai Hokoku (2000).
(10) As stated later, working conditions of such employees may be changed unilaterally by their new employer after the division through the revision of work rules. But such unilateral change may take place regardless of the division of corporation, and there are certain restrictions on such revision based on the reasonableness doctrine established by case law.
(11) Takashi Araki, *Gappei, Eigyo Joto, Kaisha Bunkatsu to Rodo Kankei* (Merger, Transfer of Undertakings, and Division of Corporation in the Context of Labor Relations), 1182 Jurisuto 16 (2000).
(12) Rodo Sho Kokuji, No. 127, Dec. 27, 2000.
(13) According to Article 16 of the Trade Union Law, an individual employment contract shall not violate the provisions of a collective bargaining agreement.
(14) Koji Harada, *Kaisha Bunkatsu Hosei no Sosetsu ni Tsuite (Chu)* (Establishment of Legal Schemes for Division of Corporation (2)), 1565 Shoji Homu 10 (2000).
(15) Nihon Keizai Shinbun, Jan. 5, 2001, at 1.

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IIRA 12th World Congress Report

Rapporteur's Report
Track 5: Asia in the 21st Century: Challenges and Opportunities in Work and Labor
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Abstract

The globalization and industrialization of the Asian economy has brought a mix of

convergence and continuing diversity throughout the region, in terms of industrial relations and human resource management (IR/HRM) systems and practices. However, with the 1997 Asian financial crisis causing recession and high unemployment in many Asian countries, a lesson that should be learned from the crisis is that countries should not ignore the linkage between industrial relations, skills formation and investment; without this link, sustainable growth cannot be achieved. Whilst economic development in Asia has brought political and industrial democracy to many Asian countries, unions remain very weak in Asia, and thus labor-management councils and tripartite arrangements have been suggested as viable alternatives for employees, employers and public administrators to share information, and to resolve workplace and social problems together.

I. Two Decades of Major Developments in Asia

What are the challenges and opportunities in work and labor for the Asian countries in the 21st century? In order to answer this question one must review the important developments throughout the region over the past two decades, along with the problems that accompanied them:

Rapid Industrialization

With many Asian countries having successfully transformed their economies, from being dominated by agriculture, to industrializing economies, and now to a state of mature and industrialized economies within just a few decades, their successes have been internationally recognized as “Asian miracles.” As these Asian economies became industrialized, the core of their workforces began to shift away from the less developed agricultural sector, to the more modernized industrial sector, and then towards the more sophisticated services sector. Within the industrial sector, as an example, workers have gradually shifted away from the low-skilled labor-intensive industries, to the skill- and knowledge-intensive industries, and as these workers move from the less developed, to the more developed sectors, they find the IR/HRM systems and practices within these sectors much more advanced and complicated. Many of these new IR/HRM techniques are borrowed from Western industrialized countries or from Japan, thus the question arises as to whether the Asian IR/HRM systems and practices would converge with those of the West, or would they diverge from the Western methods because of the distinctive features of the Asian social and cultural background?

Globalization and Liberalization of the Asian Economy

Over the past two decades, many of the Asian economies have become globalized and liberalized. Certain consequences of such development are the inflow of foreign direct investment (FDI) from Western industrialized countries, and the potential for Western multinational enterprises (MNEs) to attempt to transplant their IR/HRM practices to their

subsidiaries in the Asian countries. The globalization and industrialization of the Asian economies has also created FDI flows between the Asian countries raising the question of whether MNEs from countries such as Japan, South Korea and Taiwan would attempt to transplant their IR/HRM practices to other Asian countries, thus the possibility exists not only of a convergence of IR/HRM systems between the East and the West, but also of a further convergence of IR/HRM within the Asia region.

The 1997 Asian Financial Crisis

The 1997 Asian financial crisis brought economic recession and high unemployment to many of the Asian economies. Amongst those economies most heavily affected were South Korea, Malaysia, the Philippines and Thailand, and although many of them are now recovering satisfactorily, some scholars argue that fundamental structural problems need to be attended to before these Asian countries can begin to achieve sustainable growth. The impact of the Asian financial crisis on the IR/HRM systems in these affected countries, and the changes that IR/HRM systems must go through in order to avoid a recurrence of financial crises, and to achieve sustainable growth in the future, are issues which are raised and discussed by the papers in Track 5 of this World Congress.

II. Industrialization, Globalization and the Convergence of IR/HRM Systems within Asia

It has been pointed out by a number of scholars and experts that the industrialization and globalization of the Asian economies would bring about the convergence of IR/HRM systems throughout the region. The convergence hypothesis was first presented by Kerr et al. (1960) in “Industrialism and Industrial Man” where they argue that as more and more countries become industrialized and begin trading with each other, so their national IR systems tend to move towards uniformity or convergence. This is because industrialized countries tend to borrow advanced technology from each other, causing a convergence in technology between these countries, and since certain technologies require certain types of industrial structures and work arrangements, this causes a convergence of IR/HRM practices in the workplace and within industry as a whole, eventually spreading to national level.

Although Kerr et al. fully recognize that this is only a broad trend and that IR/HRM systems in different countries will never become identical, they argue that nonetheless, some broad convergence will occur. Others, however, argue that IR/HRM systems and practices are heavily influenced by institutional factors and therefore, that IR/HRM systems in different countries will become increasingly divergent, not convergent, as more and more countries become industrialized and begin trading with each other (Dore, 1973; Taira, 1992).

Bamber and Lansbury (1998) compared the changing employment relations in seven OECD countries in the postwar period, concluding that although all these countries faced similar problems and responded to the questions in similar ways, "*there was little to suggest that they are inducing convergence in employment relations systems ... rather this suggests the continuation of a process of converging divergences*" (Bamber and Lansbury, 1998). In actuality, even IR/HRM systems and practices within a single country can differ. This is because, aside from technological and institutional factors, business strategy is also an important factor contributing to the difference in IR/HRM systems and practices between firms within the same industry. For example, in the U.S. mini steel mills industry, different employers use different business strategies; as a result, these firms, even within the same industry and competing within the same market environment, have different IR/HRM systems (Arthur, 1992).

Historically, the scope of the convergence/divergence debate has concentrated on the industrialized countries, and with the exception of Japan, the debates tend to focus entirely on the Western industrialized countries. For example, Katz and Darbishire (1999) focus their investigation on Australia, Britain, Germany, Italy, Japan, Sweden and the U.S., finding that employment systems in all seven countries were moving towards low-wage, Japanese-oriented, human resource management, and team-based strategies, and also that trade union influence was declining. However, with the exception of Japan, there has been no mention of the Asian countries in any of these debates. This is mainly because in Asia, industrialization is only a recent phenomenon, but the rapid globalization, liberalization and industrialization of the Asian economies have now begun to attract the attention of scholars with regard to whether IR/HRM systems and practices in Asia are in fact converging, as in the Western world. Thus even though the organizers of the 12th IIRA World Congress have not assigned this topic to Track 5, authors who have submitted papers to this Track have all touched on this issue to some extent.

There are a number of issues that may have caused a convergence of IR/HRM systems and practices in Asia in recent years, such as the rapid industrialization, globalization, and the inter- and intra-regional flow of FDI. In **Bamber, Leggett and Ross**, a comparison was made of the changes in IR/HRM practices in seven Asia-Pacific countries. They found some signs – although not of a particularly significant nature – of convergence in the IR/HRM systems in these seven Asian countries. For example, in the group of mature economies, i.e., Japan, Australia and New Zealand, the IR/HRM systems had become more flexible in recent years, converging somewhat with those of the mature economies, such as Canada and the U.S. For the second group of economies, including Taiwan and South Korea, the rapid modernization and industrialization of their economies had made their IR/HRM systems less

"Asian" and more "Western." In other words, the IR/HRM systems in South Korea and Taiwan were moving away from the traditional "non-adversarial," government sponsored unions, and close employer-employee relationship – instead, they were moving towards less governmental intervention in employment relations, greater union autonomy, more layoffs and less job security. These trends are a move closer to the Canadian and U.S. systems. Thus, in recent years, unions in South Korea, for example, have become much more independent and militant.

Independent unions are also emerging in Taiwan. For example, following the March 2000 presidential election – in which the opposition party defeated the Kuomintang ruling party for the first time in the last 50 years of Taiwan's political history – the Chinese Federation of Labour broke ranks with the ruling party and split into two independent federations, whilst the management association also broke its close ties with the ruling party to become independent.

Democratization has made Taiwan's government more responsive to public needs, with the implementation of several social welfare and safety net programs similar to those found in Western industrialized nations. The governments of both Taiwan and South Korea have also adopted certain labor market policies that are popular with Western industrialized nations. In 1999, for example, the Taiwanese government implemented several training voucher programs and employment subsidy programs for unemployed workers, and in 1997, and 1998, the government permitted trade unions and management to negotiate minimum wage rate adjustments, a task historically handled by the government. Modern HRM practices such as competency models in recruiting, performance evaluation and performance-related pay systems have also become popular, and not only in the high-tech industries, since they are gradually spreading out to firms in the traditional industries, and even in the government sector.

The rapid industrialization and globalization of the economies in the third group of countries, Indonesia, Thailand, Malaysia, the Philippines and mainland China, have brought their IR/HRM systems and practices closer to those in the industrialized countries. For example, in mainland China the liberalization of the coastal areas has transformed their economies from socialistic societies, towards "socialist market" economies. In consequence, increasing numbers of employees in mainland China are now leaving the state-owned enterprises and moving into the privately owned enterprises, as labor markets that did not exist in the past are now emerging, with large numbers of migrants from the inland areas flowing into the coastal cities and economic special zones to look for higher paying jobs.

Warner also found that the Western types of labor contracts, performance-related rewards systems and contributory social insurance programs are now being introduced into personnel policies in mainland China. Other papers in Track 5 have found that globalization and industrialization of the economies of India and former socialist countries have seen their IR/HRM systems converging towards those of the industrialized countries; for example, **Ramesh** found that the globalization of the Indian economy has led employers to adopt IR/HRM systems and practices that are closer to those of Japan.

Following Cambodia's conversion from a socialist to a market economy, with the assistance of experts from the ILO and AAFLI (Asian-American Free Labor Institute), the government has upgraded its labor law to better protect workers and employers (**Rong**). The new law guarantees minimum wages for all workers, ensuring that they have the right to receive wages to which they are entitled, and other fair labor standards that are common in industrialized countries have also been introduced into this new law. Due to a shortage of managerial talents, employers in Cambodia hire a large number of foreign managers, who will no doubt tend to transfer many IR/HRM practices from their own countries to the workplaces in Cambodia. **Rong** pointed out that Western styles of industrial relations practices, such as bonuses for good performance, high productivity, or good attendance had been experienced by half of the Cambodian workers surveyed.

Hoque found that the opening of the Bangladesh economy made its government aware of the need to make its workforce competitive in the international market, which included the adoption of IR/HRM policies commonly found in industrialized countries, whilst **Vinh** found that Vietnam had also been trying hard to globalize its economy in recent years. Having normalized relations with the U.S. in 1994, with the EU in 1995, and having joined the ILO in 1994, and ASEAN in 1995, the liberalization of Vietnam's economy has attracted large amounts of FDI inflow. For example, in 1990, there were only 105 FDI projects in Vietnam, but by 1998, this had risen to more than 2,000, equivalent to US$32 billion. In order to make its labor market and workforce competitive, in 1994, the Vietnamese government upgraded its labor laws with many important components, such as collective bargaining, labor contracts, employment standards and dispute settlement practices that are common in industrialized countries. Furthermore, strikes are now permitted in Vietnam.

Ever since the 1970s, there has been rising interest in the industrialized countries on employer-employee cooperation, industrial democracy, and employee participation in management decision-making processes with the purpose of these programs being to promote industrial harmony and to enhance labor productivity. Most of these programs give workers or union leaders seats on the board of directors of enterprises or strengthening works councils.

In two very similar cases, Sweden enacted the Board Representation Act in 1972, and the Co-determination Act in 1976, whilst in Germany, the Works Constitution Act was enacted in 1972, followed by the Co-determination Act in 1976. In England and in Australia the governments also tried to enact legislation aimed at improving democracy in the workplace. In subsequent decades, similar programs have been introduced into Asia. In South Korea, a 1980 law improved the operation of labor management councils, and in Taiwan the 1984 Fair Labor Standards Law required employers to establish union-management conferences in the workplace (**Lee**). Employee participation programs were also promoted in public enterprises as a means for workers to voice their concerns and to reduce their resistance to privatization (**Chiu and Han**).

Besides Western IR/HRM systems and practices, similar systems and practices from Japan have also been transferred to Asian countries via MNEs. **Oh** compared the human resource policies of the largest steel companies in Japan and South Korea and found that one of the most important tools in on-the-job training (OJT) was the teaching of junior employees by senior employees. The willingness, or otherwise, of senior employees to teach junior employees was referred to as know-how openness, or know-how secrecy, respectively. **Oh** found that know-how secrecy was practiced in Japan up until the 1960s, and in South Korea up until the 1980s. The set of factors influencing employees to change from know-how secrecy to know-how openness was similar in Japan and South Korea; skills upgrading and rationalization of personnel. **Oh** found that South Korean firms adopted their know-how openness policy 20 years later than the Japanese firms mainly because South Korea's industrialization program began much later than in Japan, but also because of the indirect effect of Japanization of South Korea's IR/HRM systems in the postwar period. Nevertheless, South Korea is not the only country whose IR/HRM systems and practices have been influenced by Japan; industrial relations systems of other Asian countries have also been influenced by the presence of Japanese MNEs. **Yamakawa** goes to great lengths to explain how Japanese firms abroad are able to practice Japanese IR/HRM practices without the interference of the labor law in the local areas.

However not all the papers in Track 5 point to the convergence of IR/HRM systems and practices in the Asia region. **Chen, Lawler and Bae** found that the subsidiaries of Taiwanese firms in mainland China did not use identical IR/HRM practices to those used in their parent companies in Taiwan; instead, the parent companies used more advanced IR/HRM practices than their subsidiaries in mainland China as a result of the different local environments and the availability of different types of labor in mainland China. **Park and Yu** found that the motives for investment by MNEs were an important factor in influencing the pattern of labor management relationship of their subsidiaries; when an MNE adopts a market orientation

strategy, this will have a positive effect on the labor management relationship within its subsidiary, whereas, exactly the opposite effect would result from the adoption of a cost orientation strategy.

An MNE's entry mode is another factor affecting the labor management relationship of its subsidiary. Under a mergers and acquisitions mode, there is greater opportunity for the MNE's subsidiary to establish good labor management relationships, whilst a wholly foreign-owned investment project would experience greater difficulties in the labor management relationship. This is because in mergers and acquisitions there is less need for the parent company to transplant its IR/HRM practices into its subsidiary, and thus the IR/HRM systems in the subsidiary tend to fit better with local conditions. For green site investment projects, the tendency for the parent company to transplant its IR/HRM practices to its subsidiary is much greater, thus its IR/HRM system and practices may not fit well with local conditions (**Park and Yu**).

Ramesh argues that in the globalization of India's economy, as a result of its cultural, ethnic and religious diversity, the simultaneous introduction of Japanese and Western IR/HRM techniques into the country made its IR system head for diversity rather than uniformity.

One might find the convergence/divergence evidence presented by the papers in Track 5 somewhat confusing. However, if, as **Warner** suggests, we divide the simple convergence/divergence model into four categories rather than two, i.e., "soft" and "hard" convergence and divergence models, we may begin to understand the debate more easily; this is because Asian countries range widely in stages of economic development, in culture and in religion. For example, in economic terms, in 1997, per capita income for Japan was US$37,850, Singapore was US$32,940, India US$390, and Vietnam US$320 (World Development Report, 1998/99:190). Thus the **Warner** classification gives us some middle options in considering the direction of convergence or divergence of the changes in IR/HRM systems in different countries. After modifying the simple convergence/divergence model, **Warner** suggests that the Asian industrial relations model will not move towards a model of uniformity or "hard convergence."

Although the widespread trends of deregulation, privatization and globalization will influence the IR/HRM systems in the East and the West in the same way, nonetheless the "details" will be very different. These are the local institutional responses to the broad trends of external environments and they are important. The IR/HRM systems and practices in Asia are very likely to move towards a "soft" convergence partly because some of the Asian

countries such as Hong Kong, Singapore, and Malaysia are former British colonies and their IR/HRM systems are heavily influenced by the British model.

South Korea, the Philippines and Taiwan, on the other hand, are heavily influenced by the U.S. model, since large numbers of students from these countries continue to be educated in the U.S. There will also be a tendency for the Asian IR/HRM systems to converge with the Western model because of the influence of labor laws and labor standards implemented by international organizations such as the ILO, WTO, and even the IMF. For example, in 1997, the IMF insisted that South Korea must adopt a more efficient and flexible utilization of human resource measurements before it would approve South Korea's financial crisis bailout program (**Park and Yu; Park and Siengthai**).

International organizations also influence the Asian IR/HRM systems via assistance that they give to many Asian countries during amendments to their existing labor laws, or through the enactment of new labor laws, and the increasing presence of Western MNEs in Asia is also an important contributory factor for East/West and Asia region convergence of IR/HRM systems. However, convergence of IR/HRM systems does not necessarily mean that patterns of IR/HRM systems in the less developed countries, or latecomers, will move towards the Western models. As Vogel points out, Western industrial relations systems can also move towards Asian models; for example, in the 1980s, there was a worldwide move towards Japanese styles of management, with many management groups from the Western industrialized countries trying hard to understand, and to implement, Japan's lean production management techniques.

“Hard divergence” is, therefore, unlikely to occur in Asia because of the influence of the international organizations and the increasing presents of MNEs. **Warner** also argues that “soft divergence” in Asia is more likely because of some of the distinct features of the industrial relations systems throughout the region. The Chinese model emphasizes personal relationship (*guanxi*) whilst the Japanese model values lifetime-employment and seniority based wages. In examining the responses to the forces of globalization of the Singaporean industrial relations systems, **Tan** draws a further interesting conclusion, pointing out that Singapore globalized and industrialized its economy attracting MNEs and foreign capital to the State City. Today, no country can afford to ignore capitalism or market economy philosophy, not even socialist countries such as mainland China and Vietnam. However, within such a framework, Singapore chooses its own national industrial relations system in accordance to its unique situation. Thus, whilst in other countries economic development may bring with it political and industrial democracy, this is not the case in Singapore. Singapore is highly industrialized and globalized, yet it maintains an authoritarian industrial relations

system. Whilst "democracy" means political power and autonomy to Westerners, to Singaporeans it means a vibrant economy, which goes hand in hand with full employment, even if this involves labor subordination. In other words, Westerners and Singaporeans have different value systems and a different interpretation of the meaning of "democracy." Thus, even under the same capitalist framework, Singapore and Western industrialized countries can have different industrial relations systems (**Tan**).

In short, according to both **Warner** and **Tan**, globalization and industrialization merely shape the external environment of IR/HRM systems, which are increasingly interdependent, and characterized by capital and labor mobility and membership of international organizations such as the WTO and ILO. Any country wishing to successfully develop its economy must work within this capitalist framework. However, within this framework there is sufficient leeway for every nation to respond to these external environments in their own way, thereby resulting in a mix of convergence and continuing diversity in different areas of social and economic life (Tan). The policy implications of this observation are that each country must look for the IR/HRM systems and practices which best suit their own situation. Direct transplantation of practices that are successful in other countries or areas will not necessarily work for the local economy.

III. The Impact of the Asian Financial Crisis on IR/HRM Systems

In an examination of the impact of the Asian financial crisis, it is important to begin by analyzing the major causes of the crisis.

First of all, the management and administration in many of the Asian countries lacked transparency and accountability. A report by the World Bank suggested that such failings in Thailand's public and private sectors was a major cause for the nation's political, economic and social crises, arguing that a system based on the principles of good governance and greater social responsibility would have averted the crisis, and succeeded in creating more sustainable and equitable development (**Campbell; Erickson and Kuruvilla**).

Secondly, during the process of economic development in Asia, insufficient attention was paid to IR/HRM policies by public administrators. It is widely accepted that unions are weak in Asia and that sometimes they are subject to government control. Thus, in Asian countries, workers lack any mechanism to express their concerns or opinions, or to be represented in the decision-making process at national, as well as enterprise level. In times of crises, some administrators, in both the public and the private sectors, would even seek to further reduce "the voice of the workers" since management desires flexibility in dealing with retrenchment of workers and wage reductions (**Park and Siengthai; Nakamura; Chiu and Levin; Ofreneo;**

Gatchalian,; Verma and Betcherman). However, as Vermaand others point out, the lack of mechanisms for labor involvement and expression was an important contributory factor in the Asian financial crisis.

Thirdly, there was inadequate investment in the skills of the available workforce. **Verma and Betcherman** argue that effective skills formation provides the link between foreign investment and sustainable growth; this is because when effective skills formation is missing, investment flows create only short-term employment, which quickly disappears as market conditions change. Thus it is no coincidence that Singapore and Taiwan, which have both invested so much in people, are the two economies least affected by the Asian financial crisis (**Verma and Betcherman**).

One can summarize the impact of the Asian financial crisis on the industrial relations systems within Asia as follows:

1. It caused unusually high and prolonged periods of unemployment amongst the affected countries; for example unemployment in South Korea was 2.6% in 1997, but soared to 6.8% in 1998; in Thailand it rose from 0.9% in 1997, to 3.4% in 1998, and 5.2% in 1999. These are, however, only the declared unemployment rates. As **Erickson and Kuruvilla** point out, they would be much higher if they were subject to the same definition and standards as in the Western countries.
2. It worsened the working conditions and job security of the employed, since it has been reported that wages and benefits of the employed in many of the affected countries have been reduced, whilst working hours have been extended without additional overtime pay.
3. The prolonged periods of high unemployment in the Asian countries has further undermined the traditionally weak influence and bargaining power of Asian trade unions, and as a result, employees are not represented in management decisions on layoffs, retrenchment or reduction of wages and benefits.

In order to resolve these social and economic problems, some of the Asian governments have attempted to introduce assistance programs, such as unemployment insurance, job creation and social safety nets. In South Korea, Malaysia and Thailand, the governments have repatriated foreign workers back to their home countries in order to preserve jobs for native workers. However, repatriating foreign workers naturally worsens the unemployment and economic situation in the labor-sending countries; when unemployment rates are rising at home, citizens are less able to import goods and services from abroad, and once repatriated, foreign workers can no longer remit money home to their families, thus the country's ability to purchase goods and services abroad is further reduced. In both instances, the exports of other Asian countries are subsequently affected, leading to recession in some countries. Also, the repatriation of foreign workers does not necessarily guarantee preservation of jobs for native

workers; many native workers may not want the jobs formerly held by foreign workers since most of these jobs involve hard laborious tasks, which are often dirty and dangerous. At the beginning of the financial crisis, Thailand repatriated large number of foreign workers, but soon encountered labor shortages for exactly this reason, with the government later re-considering the policy and re-admitting a number of foreign workers (Lee, 1998; **Battistella**). Clearly, repatriating foreign workers may benefit no one, thus the attitude of trade unions towards foreign workers must change, so that they also protect foreign workers' interests.

Some of the Asian governments installed unemployment insurance programs and social safety nets for the unemployed and less fortunate citizens. There is, however, no guarantee that a government will install these programs by its own initiative; and on many occasions, it has taken pressure from labor unions, or strong opposition parties to achieve their introduction. **Park and Siengthai** note that in South Korea, where unions are relatively strong, the government injected trillions of won into unemployment programs to help the unemployed. Conversely, in Thailand where unions are weak, no unemployment insurance or social safety net programs have been introduced to assist its unemployed workers. Of course this difference in policies is not solely due to the presence of strong unions in South Korea; the different stage of development in the two countries is also a contributory factor (**Park and Siengthai**). Strong pressure placed on the government by opposition parties in Taiwan, i.e., the Democratic Progressive Party and the New Party, was also responsible for the installation of unemployment insurance and social safety net programs there.

Frustrated by government inaction in resolving social problems, there are often calls from scholars for the installation of new labor and social policies. **Nakamura** suggests that Asian governments should install economic development policies that: (i) promote education and training as an indispensable means for economic growth; (ii) provide trade unions with a greater and more active role in the economic development process; (iii) provide safety nets for those who are negatively affected by economic change; and (iv) are employment friendly. However, since such policies are generally perceived by management as very "welfare" oriented, they are often opposed on the ground of being too costly, and hence there is little chance of such policies being implemented by the government.

Labor Management Councils, Social Accords and Tripartite Arrangements

In searching for the design of an industrial relations system where different parties can voice their concerns, sharing relevant information and resolving social problems together, several countries in Asia have tried labor management councils, social accords, and tripartite agreements. Most of these activities are found in the Philippines (**Gatchalian; Ofreneo**),

Cambodia, South Korea, Singapore and Malaysia (**Campbell**), and the benefits of these arrangements are:

1. They provide more and better information for administrators in the public and private sectors to make better quality decisions.
2. Since transparency and accountability are important in good and effective governance, tripartite and other similar arrangements can help to achieve this goal by collecting and distributing relevant information.
3. They provide a forum for employees, management, public administrators and other relevant parties, to voice their concerns and debate the validity of various types of public or business policies, such as plant closures and mass layoffs. These types of "voice" mechanisms can reduce the costs of non-compliance, quitting, resistance to change, reduction in work effort, loss of motivation and lack of commitment of members of different parties (**Campbell**).

In terms of the effectiveness of these types of programs in resolving social and economic problems arising from the Asian financial crisis, all writers in Track 5 agree that it is extremely difficult to measure the benefits of the programs because their outcomes are determined by so many different factors. However, they unanimously agree that such programs improve communication between employers, employees and union leaders, whilst alerting the attention of the community to certain social issues, enhancing mutual understanding and harmonious relations in the workplace, enlisting workforce cooperation, and also increasing information available to all parties, thereby reducing strikes and other forms of social unrest.

Not all of the programs are positive, however. A few of these programs have demonstrated negative results because in some cases, employers misuse the labor management councils, using them to secure managerial control over workplace decisions or to preserve employers' prerogatives (**Gatchalian**).

IV. Challenges and Opportunities in Asian Work and Labor in the 21st Century

Effective Alternatives for Employee Representation

Rapid economic development has brought political democracy to many Asian countries, examples being South Korea, Taiwan, Hong Kong and the Philippines, and more recently, Indonesia and Malaysia. Whilst the outlook of political leaders throughout Asia has changed rapidly over the past few years, the newly gained democracy within these countries is not limited to the political arena, but also to the workplace. In a democratic country, not only do citizens want to form and join political parties in order to participate in the political processes, workers also want to participate in management decision-making processes. Therefore, we need to establish forms of employee representation that are effective in advocating and

advancing workers' interests, and within which unions can effectively represent workers in Asia.

Weak unions are one of the major characteristics of Asian industrial relations systems. Up until the late-1980s, trade unions in most Asian countries were in fact excluded from participation in the political and decision-making processes at the enterprise level, with some scholars even arguing that "repressive" labor policies were necessary for the successful implementation of export-led development strategy, often citing South Korea, Taiwan, Singapore and Malaysia as examples (Deyo, 1989; Kuruvilla, 1995). But today, many of these Asian countries are in a different political climate; trade unions are free to organize workers and to bargain collectively with employers, and Asian governments are increasingly recognizing the right of freedom of association. However, even in these more favorable political conditions, other economic conditions are not favorable for the development of strong unions in Asia for the following reasons: (i) many Asian nations are dominated by small and medium-sized enterprises (SMEs), and employees in SMEs have traditionally proved hard to unionize; (ii) many Asian countries are moving away from light and heavy industries towards high-tech and service industries where workers are more individualistic in nature and again, difficult to organize; (iii) workers in Asia are very reluctant to take on an adversarial position with management; and (iv) the recent introduction of human resource management techniques into Asian countries has also made it difficult for unions to organize workers in these countries.

Thus workers in Asia must look for other forms of employee representation. **Campbell, Gatchalian and Ofreneohave** correctly observed that tripartite, labor-management councils could become alternative forums for employees to participate in management decision-making processes and to engage in social dialogue. In fact, during the Asian financial crisis, South Korea, the Philippines, Singapore, Malaysia, Thailand and Cambodia, all tried such arrangements by enlisting the help of employees, employers and high-ranking political figures to resolve the social problems arising from the crisis. However, the same group of writers point out that none of these programs has been a total success; they are each beset with their own specific problems and weaknesses. Thus, it is important for scholars, public policy makers and practitioners in Asia to find ways to improve the effectiveness of the current tripartite and labor management councils or to find other alternatives for employee representation.

Linking Skill Formation to Investment to Achieve Sustainable Growth

It is well established that high quality labor attracts foreign investment, and thus facilitates economic growth. However, in order to maintain competitiveness in the

international market, a country must continuously upgrade its industrial structure and the quality of its workforce. Without constantly improving the quality of the workforce a country cannot continue to attract domestic and foreign investment, and as the rate of investment slows down, so does the rate of economic growth. Thus, it is important for a country to have an industrial relations system where educational investment receives appropriate returns. The recent development of skilled-based wage systems and performance-based wage systems in some Asian countries is a move in this direction. In short, Asian countries must create an industrial relations system within which skills formation is encouraged, and new capital is attracted, which in turn leads to the creation of further skills, a linkage between education, skills formation, investment and sustainable economic growth, referred to as the virtuous cycle (**Verma and Betcherman**).

Improving Personal Skills to Avoid Displacement by New Technology

As Asian countries compete successfully in the global market, they must constantly introduce new technologies and upgrade their industrial structure, and most of the countries in East Asia are in fact doing this. The rapidly changing economic structure within Asia is a major cause of the rising displacement of employees, and workers must now constantly upgrade their skills in order to ensure that they are not displaced by new technology. Government bodies must also help to create the appropriate infrastructure and environments so that incentives are provided for employers to provide OJT and other training programs for their employees. The governments in Asia also need to provide a favorable environment and incentives to motivate employees to engage in self-learning and virtual learning.

Innovative HRM Techniques for the New Economic Era

Traditional industrial relations systems and human resource management techniques in Asia have focused on cultivating long-term loyalty and organizational attachment from employees by providing them with job security and various seniority-based wages. These techniques are useful for employers in labor-intensive industries and in factory settings, but not for employers in a globalized economy and in high-tech industries, because employers in these new environments face fierce international competition and rapid technological change, with the resultant need for enhanced management flexibility. Employers in these industries are in constant need of highly trained, highly motivated employees who are able to revise production processes or design new products, and scholars and experts in industrial relations and human resource management must undertake further research aimed at introducing new and innovative HRM techniques within which such workers can be recruited and retained. Thus, the recent introduction of competency models, 360-degree feedback systems, skill- and performance-based pay systems, performance evaluation, assessment centers, and other practices into South Korea, Singapore, Hong Kong, Taiwan and Malaysia are steps in the

right direction (**Kim and Yu; Chiu and Han**).

A Change of Attitude towards Foreign and Expatriate Workers

As Asia becomes more globalized, international migration of labor is becoming common, and in order to resolve their domestic problems, countries with labor shortages are increasingly relying on the importation of foreign workers. However, these foreign workers often work under inferior working conditions and low pay, and are not treated equitably or respectfully. This is because there is a common misconception amongst native workers and unionists that foreign workers take away employment opportunities from them and help to depress the wages and benefits of native workers. However, recent studies (Lee, 1992; **Battistella**) have failed to establish such a connection. Foreign workers often undertake work that native workers are unwilling to accept. Thus, as **Battistella** points out, they do not compete with each other for jobs, but in fact, supplement each other. In recognition of this fact, native workers and unionists should be able to change their attitude towards foreign workers and begin to treat them with equity and respect.

Workers in the labor importing countries should also change their perception of the foreign labor market. Working abroad is a trend for the future, since the world has been continuously globalized and labor markets in different countries are being continually integrated and internationalized. Everyone must prepare for the possibility of being assigned, or being recruited, to work abroad for either short, or long periods of time; if not, then they must face the possibility of unemployment. The recent recession in Taiwan and the migration of many labor-intensive firms abroad, has indeed displaced many factory supervisors and line managers. Many of these would be those who, in the past, had been unwilling to work in mainland China but would now be happy to accept these assignments. Thus the internationalization of the labor market can help workers in different countries to become fully utilized. Internationalization improves the employability of all workers, reduces structural unemployment, and also raises the income level of all workers. But in order to avoid discrimination in foreign countries, all sections of the community, from central government, to shop floor workers, should avoid discriminating against foreign workers in their own backyard.

Preparing for Drastic and Rapid Changes in Workplace Arrangement

In the 21st century, Asia will enter the Information Age, an era which will present all enterprises with new types of working arrangements, particularly as the spread of the Internet brings us into the era of the virtual labor market. But how does it work, and how do we prepare for such a virtual labor market? What types of competencies will be needed for these types of jobs, and what will be the characteristic features of the new reward systems,

learning and career planning? In short, what will the new type of employment relationship look like? All of these questions seem well beyond our current imagination, but in fact, all employees and employers must begin to prepare themselves for the arrival of this era, because it is not that far away (Crandall and Wallace, 1998).

References:

Arthur, J.B. (1992), "The Link Between Business Strategy and Industrial Relations Systems in American Steel Minimills," *Industrial and Labor Relations Review*, Vol. 45, No. 3, p.p. 488-506.

Bamber, G.J. and Lansbury, R.D. (1988), *International and Comparative Employment Relations: A Study of Industrial Market Economies*, SAGE.
Bamber, G.J. and Lansbury, R.D. (1998) *International and Comparative Employment Relations*, Allen and Unwin.

Bamber, G.J., Leggett, C.J. and Ross, P.K. (2000), "Changing Employment Relations in Seven Asia-Pacific Countries" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

Battistella, G. (2000), "Migration and Labor Relations in Post-Crisis Asia" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

Campbell, D. (2000), "Recovery from the Crisis: The Prospects for Social Dialogue in East Asia" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

Chen, S.-J., Lawler, J. and Bae, J. (2000), "Variations in Employment Relations between Indigenous Taiwanese Firms and Their Subsidiaries in Mainland China" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

Chiu, S.W.K. and Levin, D. (2000), "Hong Kong in the 21st Century: Challenges and Opportunities for Labour" inProceedings of the 12th IIRA World Congress, Vol. 5, Tokyo.

Chiu, S.-F. and Han, T.-S. (2000), "Employee Participation, Organizational commitment and Human Resource Management Policies in Taiwan's Privatizing Companies " in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

Cooke, W.N. (1997), "The Influence of Industrial Relations Factors on U.S. Foreign Direct Investment Abroad," *Industrial and Labor Relations Review*, Vol. 51, No. 1, p.p. 3-18.

Crandall, F. and Wallace, M. (1998), *Work and Rewards in the Virtual Workplace: A New Deal for Organization and Employees*, AMACOM.

Deyo, F.C. (1989), *Beneath the Miracle: Labor Subordination in the New Asian Industrialism*, University of California Press.

Dore, R. (1973), *British Factory, Japanese Factory: The Origins of National Diversity in Industrial Relations*, Allen & Unwin.

Erickson, C.L. and Kuruvilla, S. (2000), "Industrial Relations and the Asian Economic Crisis: An Analysis of the Short Term Impacts and Long Term Implications for Industrial Relations Systems" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

Gatchalian, J.C. (2000), "Employee Representation and Workplace Participation (Focus on Philippine Labor Management Councils)" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

Hoque, K.B. (2000), "The Impact of Globalization on Employment and Industrial Relations: The 21st Century Scenario of Bangladesh" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

Igbaria, M. and Tan, M. (eds.), (1998), *The Virtual Workplace*, Idea Group Publishing.
Kamoche, K. (2000), "A Critical Analysis of the Rationale Underpinning of Human Resource Strategies in Turbulent Times: Thailand and Vietnam" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

Katz, H.C. and Darbishire, O. (1999), *Converging Divergences: Worldwide Changes in Employment Systems*, Cornell University Press.

Kim, D.-O. and Yu, G.-C. (2000), "Emerging Patterns of Human Resource Management in South Korea: Evidence from Large South Korean Firms" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

Kopp, R. (1994), "International Human Resource Policies and Practices in Japanese, Asian, European and United States Multinationals," *Human Resource Management*, Vol. 33, No. 4, p.p. 581-599.

Lee, S. (1992), "Unskilled Foreign Workers in Taiwan, Causes and Consequences," *Asia Club Papers*, Vol. 2, No. 1, p.p. 107-122, Tokyo.

Lee, S. (1998), " The Impact of the Asian Financial Crisis on Foreign Workers in Taiwan," *Asian and Pacific Migration Journal*, Vol. 7, No. 2-3, p.p. 145-169.

Nakamura, T. (2000), "Social and Labour Agendas in the First Half of 21st Century in Asia" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.
Ofreneo, R.E. (2000), "Globalization and the Asian Economic Crisis: An Assessment of the Social Accord Initiatives in the Philippines" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.
Oh, H.A. (2000), "Comparative Research on Employment Practices in Japan and Korea – With a Focus on Convention from Know-how Secrecy to Know-how Openness in the Steel Industry" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.
Park, W.-S. and Yu, G.-C. (2000), "Factors Influencing Labor-Management Relations in Foreign Subsidiaries" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.
Park, Y.-B. and Siengthai, S. (2000), "Financial Crisis, Labor Market Flexibility and Social Safety Net in Korea and Thailand" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.
Ramesh, K. (2000), "The India Industrial Relations System and Its Viability in the Context of Globalization" in *Proceedings of the 12th IIRA World Congress, Vol. 5,* Tokyo.
Reden, K. and Sadowski, D. (2000), "Personnel Policies in Sino-Foreign Joint Ventures and Foreign Subsidiaries in the People's Republic of China" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.
Rong, C. (2000), "Cambodia's Industrial Relations: In Search of a Strategic Framework" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.
Tan, E.-S. (2000), "Globalization and National Industrial Relations Systems: Implications from the Singapore Case" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.
Verma, A. and Betcherman, G. (2000), "Effective Skill Formation: The Missing Link between Capital Investment and Increasing Prosperity" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.
Vinh, D.Q. (2000), "Employment Relations – National Characteristics and Their Changes" in *Proceedings of the 12th IIRA World Congress, Vol. 5*, Tokyo.

JIL News and Information

Globalization and Japan — the Labor Angle: Seminars in Two U.K. Cities in Response to Increased Investment in the Japanese Market

With rapidly increasing investment in Japan by foreign companies since the latter half of 1998, such firms have noted that there is a lack of information on "soft" aspects such as labor relations compared to "hard" aspects such as location and infrastructure. To meet this demand, the Japan Institute of Labour (JIL) launched a new "Project to Facilitate Better Understanding of the Japanese Labor Market among Foreign Companies" in April 2000. Information will be available in foreign languages and will be accessible through a range of media including printed material and the Internet. As part of this service, JIL held seminars aimed at British firms interested in investing in the Japanese market in London on November 13, 2000 and in Leeds, a leading city in northern England, on November 17, 2000. These were the first seminars that JIL has held abroad for foreign companies.

The seminars, conducted in cooperation with the Confederation of British Industry (CBI), a major employers' association in the U.K., were entitled "Globalization and Japan – the Labor Angle." The seminar in London attracted some 100 participants from such sectors as

finance and insurance, while some 100 people also took part in the seminar in Leeds, mainly business people in the manufacturing, insurance and transportation industries.

The seminars began with a keynote speech entitled, “The Current Investment Climate in Japan and the Need to Disseminate Information about Labor Conditions” by Kunihiko Saito, President, JIL. Mr. Saito's presentation was followed by three speeches: “The Investment Environment in Japan from a Labor Point of View” (Katsura Oikawa, Director, International Affairs Department, JIL); “What Employers Operating Business in Japan Need to Know about Personnel and Labour Management Systems, Issues and Concerns” (Sadamitsu Kamiichi, Senior Vocational Guidance Supervisor, Employment Service Division, Ministry of Labour); and “The Reality of the Japan Office” (Tom Myerscough, Managing Director, Japan Regional Ventures, Ltd.). The presentations were followed by a lively debate during the question-and-answer session.

In accordance with a request from CBI that they would like to have practical information, the speakers from Japan focused particularly on the special features of the labor market in Japan as an important aspect of the investment environment and on personnel management systems and practice, covering the whole process from recruitment and hiring to retirement.

On the other hand, Dr. Myerscough based his speech on his 18-year career in the Japanese office of a British company. He commented on differences in work practices, stating that, “In Japan, there are no positions equivalent to that of secretary who is indispensable to the work of a manager in a British firm.” While pointing to such differences in work practices in the two countries, Dr. Myerscough also expressed the view that “While there are some aspects that foreigners find difficult to understand, the Japanese labor relations system is very well organized. It is often said that Japanese firms do not make information available but in my view, it is British firms that are more inclined to secrecy.”

Debate during the question-and-answer session showed that the participants had a strong interest in Japan and were to some extent informed about the country. Some very pertinent questions were raised, including: “How much does the pension system cost in Japan?”; “We were told that the seniority wage system is changing, but compared to other countries, seniority is still very important in Japan. Is there any prospect for real change?”; “We were told that there is increasing diversity in patterns of work in Japan, but there doesn't seem to be any equivalent of freelance work in Europe.”; and “Will not the merger of the Ministry of Labour and the Ministry of Health and Welfare mean changes in, for example, administrative procedures?”

There was also debate over the differences between Japan and Europe, including the U.K., concerning characteristics desirable in managers, stemming from a comment that while people of few words seem to be respected as managers in Japan, European firms tend to prefer aggressive people who clearly state their opinions.

There was also a question from a woman who wished to work in Japan as to whether female managers from abroad would be accepted by Japanese staff in the offices of British firms in Japan.

There were several more questions about management personnel, prompted by the cost consciousness of one participant who commented that it would cost three or four times more to post a U.K. manager to Japan than to hire a Japanese manager.

Diverging slightly from labor issues, there were also various questions and comments which indicated the high level of interest in investment in Japan. These included: “I'd like to start a franchised business in Japan. What strategies are effective for expanding a franchise business?”, and “I believe that the increase in foreign investment in Japan has been mainly in the form of mergers and acquisitions. Do you believe this latter tendency will continue in the future?”

JIL is planning to hold similar seminars in the U.S. and other countries which have a high level of investment in Japan in terms of scale and number of cases. These seminars will provide information about labor and employment practices in Japan. Statistics show that investment in Japan by foreign companies in fiscal 1999 totalled ¥2,399.3 billion, four times as much as the ¥678.2 billion recorded in fiscal 1997 (based on figures reported to the Ministry of Finance), and that this tendency is continuing in fiscal 2000.

Statistical Aspects

Recent Labor Economy Indices

	December 2000	November 2000	Change from previous year
Labor force	6,738 (10 thousand)	6,811 (10 thousand)	23 (10 thousand)
Employed	6,440	6,502	13
Employees	5,409	5,429	72
Unemployed	298	309	10
Unemployment rate	4.4%	4.5%	0.1
Active opening rate	0.66	0.65	0.01
Total hours worked	156.6 (hours)	157.5 (hours)	0.9
Total wages of regular employees	(¥ thousand) 266.3	(¥ thousand) 265.6	0.6

Note: * Denotes annual percent change.
Source: Management and Coordination Agency, *Rōdōryoku Chōsa* (Labour Force Survey); Ministry of Labour, *Shokugyō Antei Gyōmu Tōkei* (Report on Employment Service), *Maitsuki Kinrō Tōkei* (Monthly Labour Survey).

The Number of Employees and the Number of Establishments in the Service Industries

Sub-industry Groupings	Number of Employees in 1999		Percentage Growth over the Past 10 Years (%)	Number of Firms in 1999		Percentage Growth over the Past 10 Years (%)
Professional services	1,775,189	(15.2%)	144.3	314,531	(21.0%)	123.9
Miscellaneous business services	1,719,962	(14.7%)	164.3	67,251	(4.5%)	142.2
Laundry, hair salon and bath services	1,311,439	(11.2%)	118.7	408,036	(27.2%)	102.8
Amusement and recreation services except motion picture and video production	1,031,995	(8.8%)	149.4	68,867	(4.6%)	117.3
Hotels, boarding houses and other lodging places	974,153	(8.3%)	118.2	79,592	(5.3%)	86.4
Information services and research	769,772	(6.6%)	142.3	25,696	(1.7%)	144.6
Social insurance and social welfare	716,886	(6.1%)	203.7	36,845	(2.5%)	149.2
Cooperative associations	374,709	(3.2%)	80.6	28,434	(1.9%)	94.3
Miscellaneous domestic and personal services	367,415	(3.1%)	135.5	59,443	(4.0%)	119.1
Automobile repair services	360,074	(3.1%)	121.2	67,789	(4.5%)	111.3
Medical services except hospitals	319,336	(2.7%)	225.2	68,480	(4.6%)	129.1
Goods rental and leasing	299,418	(2.6%)	133.6	31,612	(2.1%)	112.6
Religious organizations	271,005	(2.3%)	108.7	94,747	(6.3%)	102.3
Repair services for machinery, upholstery, furniture, etc	265,660	(2.3%)	152.6	29,419	(2.0%)	111.9
Political, economic, and cultural organizations	231,826	(2.0%)	121.7	37,593	(2.5%)	111.6
Academic research institutes	182,522	(1.6%)	133.3	2,723	(0.2%)	145.0
Waste treatment services	180,008	(1.5%)	160.7	12,119	(0.8%)	145.3
Advertising	153,492	(1.3%)	107.2	10,779	(0.7%)	96.5
Educational services except schools	129,239	(1.1%)	124.9	7,866	(0.5%)	136.6
Automobile parking	87,759	(0.7%)	126.3	36,831	(2.5%)	103.1
Broadcasting	71,618	(0.6%)	119.6	1,696	(0.1%)	100.7
Motion picture, video production and distribution	57,254	(0.5%)	144.0	3,571	(0.2%)	151.3
Hygiene and sanitation services	36,818	(0.3%)	262.9	1,157	(0.1%)	188.1
Service establishments not classified	29,141	(0.2%)	195.0	3,850	(0.3%)	156.1

Notes:
(1) "Professional services" refers chiefly to "certified public accountants and tax accountants" and "individually-run educational institutions."
(2) "Miscellaneous business services" refers chiefly to "building maintenance services" and "security-related services," together with "service establishments not otherwise classified."
(3) "Amusement and recreation services, except motion picture and video production" refers chiefly to "sports facilities" including golf courses and "amusement and recreation facilities" including "pachinko parlors."
(4) "Social insurance and social welfare" refers chiefly to "nurseries," "welfare services" for the intellectually and physically disabled.
(5) "Cooperative associations" refers chiefly to "cooperative associations in agriculture, forestry and fisheries."
(6) "Miscellaneous domestic and personal services" refers chiefly to "photographic studios" and "other services provided for ceremonial occasions."
(7) "Medical services, except hospitals" refers chiefly to "healing services" and other quasi-medical practices such as acupuncture and moxibustion.
(8) Hygiene and sanitation services" refers chiefly to "health counselling services."
(9) Service establishments not classified" refers principally to "facilities for meeting."