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On prevailing corporate legal compliance: comparative empirical study on need for lawyers in corporations in China and Japan

*Kota FUKUI**

Introduction

Currently, the population of lawyers in China is rapidly increasing. It has been estimated that approximately 50,000 people pass the national judicial examination every year in China¹⁾. These new lawyers are concentrated in urban areas, where there are big law firms and global corporations that hire a lot of lawyers. As a result, the number of in-house lawyers is increasing considerably. From the viewpoint of comparative empirical research on the legal profession, it is critical to know how and for what legal works lawyers are utilized in global corporations in China. Herein, we, the research group of Osaka University, planned and conducted a survey in China and were financially supported by the Japan Law Foundation²⁾. As part of this, we conducted the Questionnaire Survey on Lawyers' Needs in Corporations in China ("the Survey in China") between 2012 and 2013³⁾.

Initially, in collaboration with Shanghai Jiao Tong University's School of Law, we conducted the first survey in Shanghai from early August to September in

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- 1) The number of examinees for the national judicial examination in 2015 was estimated to be over 480,000 (<http://edu.sina.com.cn/zgks/2015-09-17/1523483792.shtml> [last access on November 18, 2015]). The average success rate for the judicial examination is almost 10%, and the number of successful applicants is almost 50,000 (<http://www.51test.net/show/6104250.html> [last access on November 18, 2015]).
- 2) Japan Law Foundation, Research No. 89, "Globalizing Society and the New Fields of Legal Profession", Kota FUKUI and five other research members, from fiscal year 2011 to 2012. This research group was led by Professor Kota FUKUI at the Graduate School of Law and Politics, Osaka University; the first researcher was Ms. Minae NISHIMOTO, who is a specially appointed assistant professor at Osaka University. The fellow members were Mr. Feng LEE, who is a doctoral candidate at the Graduate School of Law and Politics, Osaka University, and Mr. Yong Ling WANG, who is a practicing lawyer and graduate from the Graduate School of Law and Politics, Osaka University.
- 3) The results of this survey were published in Kota FUKUI (2014) and (2015). The pages in the footnotes are in Kota FUKUI (2015).

2012. The samples were selected from 2,000 listed companies in Shanghai, and the questionnaires were circulated by post. The questionnaire asked about the current situation of utilization of lawyers and their expected roles, skills, competency, and quality in corporations in China. However, due to the impact of the untimely Senkaku Islands' border issue and the inadequate survey method used⁴⁾, only nine answers were collected. After this, we changed the survey method and created a survey page on the website, where the questions of the first survey are located, helped by some international students from China at Osaka University. The respondents were collected through the students' private connections, and we asked the candidates to answer the questions on the web. The second survey was conducted for almost two months from late November 2012 to the end of January 2013. We obtained 97 valid responses in the first and second surveys. The answers were mostly from Shenyang, Shenzhen, and Shanghai, where the Chinese students who helped us have their private connections⁵⁾.

This paper introduces the results of the Survey in China first and presents its comparative analysis with the results of the Questionnaire Survey on the Need for Lawyers in Japanese Corporations, which was also conducted by the research group of Osaka University ("the Survey in Japan"). The discussion in this paper contributes to making it clear that the corporate culture to utilize in-house lawyer is prevailing more rapidly in China than in Japan. In the first section, the results and analysis of the Survey in China is introduced.

I Current tendency of utilization of lawyers in corporations in China

1. Utilization of lawyers in corporations in China

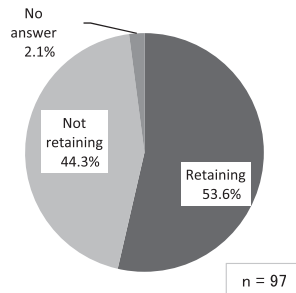
In the Survey in China, to grasp the utilization of lawyers in the target corporations, we first asked whether they retain their own external consultant lawyer by way of retainer fee (*komon bengoshi*) and/or hire qualified in-house lawyers (*kigyōnai bengoshi*).

According to the answers, 53.6% of the respondents retain their own external

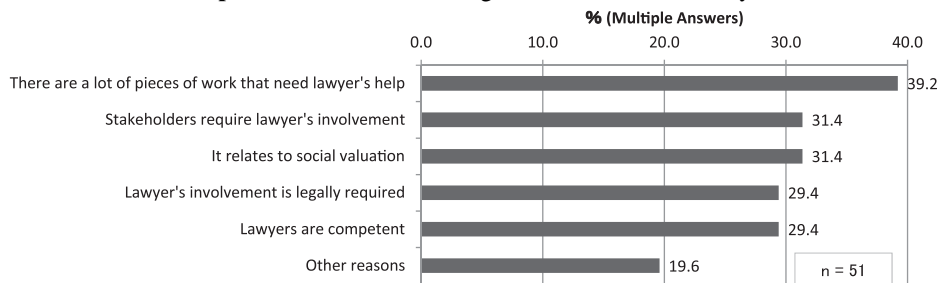
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- 4) In China, questionnaire surveys on public issues without official authorization are prohibited, and the mailing method is inadequate. Some colleagues of Shanghai Jiao Tong University supported us to get authorization for this research project, but we were not able to get official approval.
 - 5) The method of the second survey, whose answerers were collected through the students' private connection, is still inadequate from the viewpoint of objective surveys. However, if the official authorization for conducting a questionnaire survey could not be obtained, it was the only possible way.

consultant lawyer(s) and 44.3% do not (Graph 1). When we asked the reason they retain an external consultant lawyer, the most frequent answer was “there are a lot of pieces of work that need lawyer’s help” (39.2%). The second equal was “stakeholders require lawyer’s involvement” and “it relates to social valuation” (each 31.4%) (Graph 2). On the other hand, with regard to the reason for not retaining an external consultant lawyer, the most frequent answer was “there is no

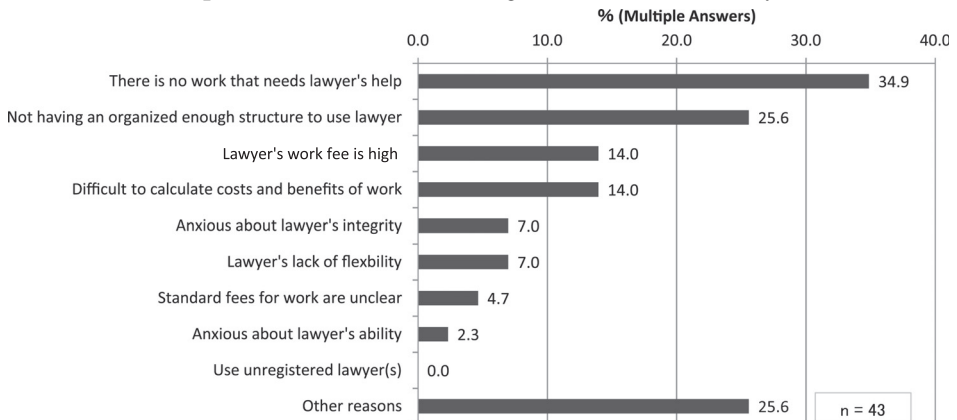
Graph 1: External consultant lawyer



Graph 2: Reason for retaining external consultant lawyer



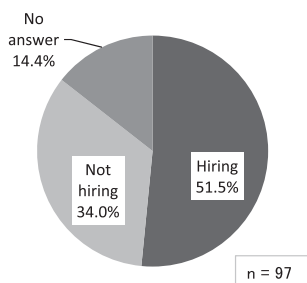
Graph 3: Reason for not retaining external consultant lawyer



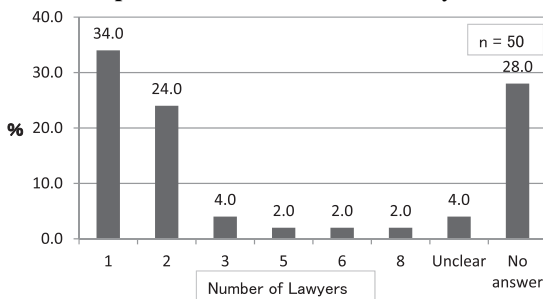
work that needs lawyer’s help” (34.9%), the second was “not having an organized enough structure to use lawyer” (25.6%), and the third equal was “lawyer’s work fee is high” and “difficult to calculate costs and benefits of work” (each 14.0%) (Graph 3).

We also asked about the employment of in-house lawyer(s). 51.5% of the respondents answered they hire in-house lawyer(s), and 34.0% answered they do not, but 14.4% did not answer (Graph 4). With regard to the number of in-house lawyers, the most popular was one lawyer (34.0%), and the second was two lawyers (24.0%) (Graph 5). Regarding why they hire in-house lawyers, the most frequent answer was “lawyer’s involvement is legally required” (47.9%), the

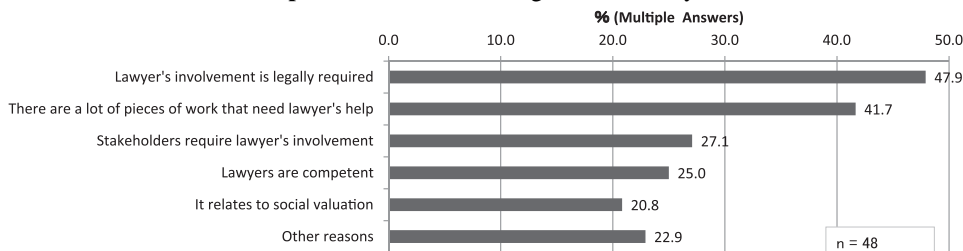
Graph 4: Hiring in-house lawyers



Graph 5: Number of In-house Lawyers

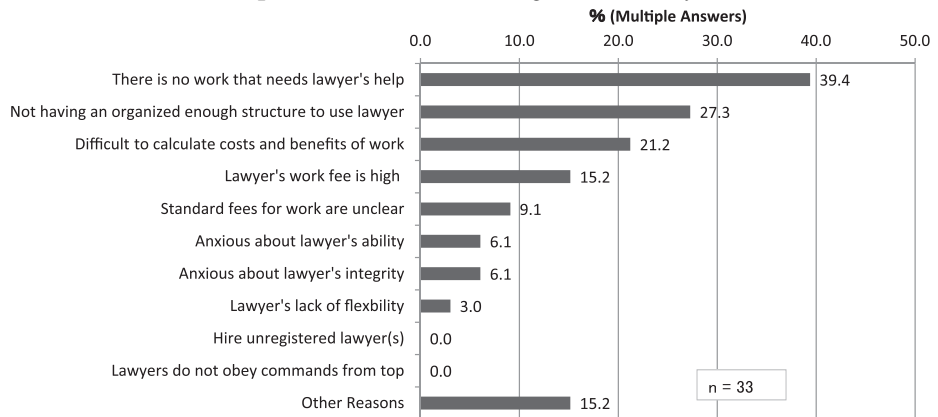


Graph 6: Reasons for hiring in-house lawyers



second was “there are a lot of pieces of work that need a lawyer’s help” (41.7%), and the third was “stakeholders require a lawyer’s involvement” (27.1%) (Graph 6). On the other hand, with regard to the reason they do not hire in-house lawyer(s), the most frequent answer was “there is no work that needs a lawyer’s help” (39.4%), the second was “not having an organized enough structure to use a lawyer” (27.3%), and the third was “difficult to calculate costs and benefits of work” (21.2%) (Graph 7).

Graph 7: Reason for not hiring in-house lawyers



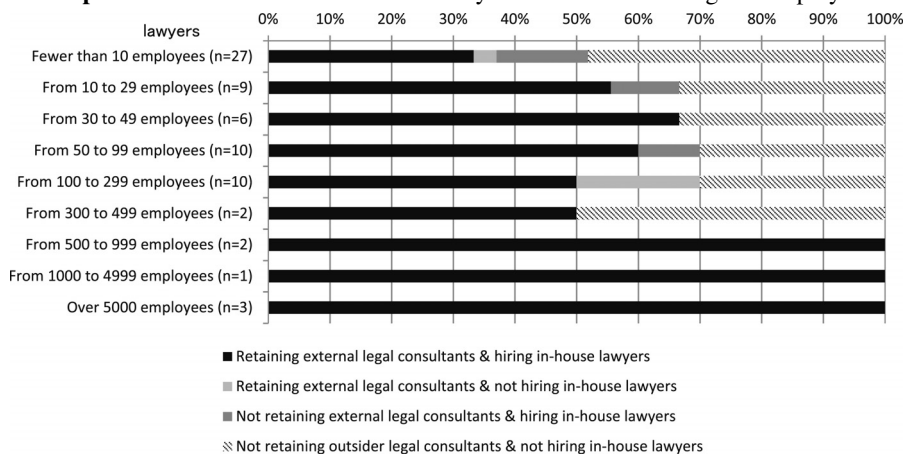
Besides, it is worth noting that in the survey, 91.1% of the corporations that hire in-house lawyers also retain their external consultant lawyers by retainer fee. On the other hand, 78.4% of the corporations that do not retain external consultant lawyers also do not hire in-house lawyers (Table 1). Also, 100% of the corporations with over 500 employees and/or capital amount of over 100 million yuan answered that they retain external consultant lawyers and hire in-house lawyers (Graphs 8 and 9). This is because of the legal requirement for corporations over a certain size to engage lawyers.

We mentioned earlier that the respondent corporations that are over a certain size

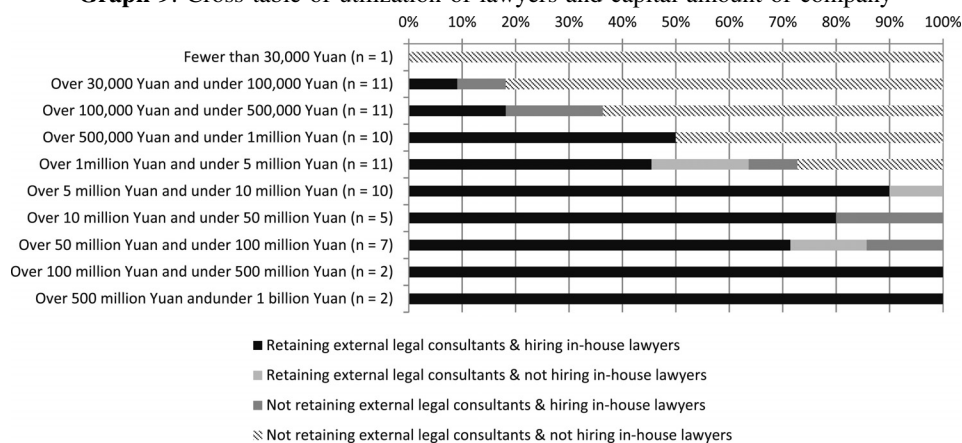
Table 1: Cross table of retaining external consultant lawyers and hiring in-house lawyers

			In-house lawyers	
			Hiring	Not hiring
Retaining external consultant lawyers	Retaining	Number	41	4
		%	91.1%	8.9%
	Not retaining	Number	8	29
		%	21.6%	78.4%

Graph 8: Cross table of utilization of lawyers and number of regular employees



Graph 9: Cross table of utilization of lawyers and capital amount of company



in China highly utilize both external consultant lawyers and in-house lawyers, while most small and medium size enterprises do not utilize lawyers enough and even do not know how to utilize lawyers. We found bipolarization between the large corporations and small and medium size enterprises regarding the utilization of lawyers.

2. Need for in-house lawyers under “ideal conditions”

Furthermore, we asked corporations in China about the need for in-house lawyers under “ideal conditions”; that is, corporations are able to hire in-house lawyers on suitable occasions for reasonable fees. By asking the corporations about their need for in-house lawyers under “ideal conditions”, we hoped to clarify

the substantial need for in-house lawyers in daily business activities when all other factors are equal. We asked the respondent corporations to rate their level of willingness to utilize lawyers in relation to 30 typical pieces of legal work in a corporation: 1. “not willing to utilize”, 2. “not very willing to utilize”, 3. “neutral”, 4. “rather willing to utilize”, and 5. “willing to utilize”.

In “ideal conditions”, the respondent corporations said that they were most likely to utilize lawyers for the following types of legal work, in order of highest to lowest willingness. The top five categories were: “contract examination”, “negotiation for dispute settlement” (the rate of “willing to utilize” was 63.9% for each), “collection of monetary debt”, “damage suit” (each 58.8%), and “contract negotiation” (57.7%). The next categories from sixth to tenth were: “defensive allegation” (56.7%), “response to M&A action” (52.6%), “drafting of contract for international trade” (50.5%), “drafting of contract for domestic trade”, and “special technical suit” (each 49.5%) (Table 2).

Overall, we can see higher willingness to utilize lawyers for contract related work, dispute negotiation, collecting debt, and damage suit, which seem to be all daily legal pieces of work of in-house lawyers in a corporation. It is worth noting that one of the top management matters “response to M&A action” is ranked seventh. Consequently, we assume that there is a greater need to utilize lawyers for daily legal compliance works and lawsuits relating to pieces of work in respondent corporations. There is also a great need for legal support for top management matters.

The average rate of willingness to utilize lawyers among 30 typical pieces of legal work is 39.8%, and we can understand that the respondent corporations as a whole like to utilize lawyers for daily corporate activities. On the other hand, the average rate of no answer is still 33.7%, which means that the answerer does not understand how to utilize lawyers in daily corporate activities. Therefore, it is believed that there is a great need to utilize lawyers in large corporations in China, while small and medium size enterprises do not recognize how to utilize lawyers in daily corporate activities. From this, we can see the effect of bipolarization on utilizing lawyers between large corporations and small and medium-sized enterprises in China⁶⁾.

6) The data and analysis of utilization of lawyers in corporations in China in this section is introduced in Kota FUKUI (2015) pp. 140-149.

Table 2: Needs for lawyer under “ideal conditions” (n = 97)

	Willing to use (%)	No answer (%)
Contract examination	63.9	26.8
Negotiation for dispute settlement	63.9	28.9
Collection of monetary debt	58.8	26.8
Damage suit	58.8	27.8
Contract negotiation	57.7	22.7
Defensive allegation	56.7	27.8
Response to M&A action	52.6	32.0
Drafting of contract for international trade	50.5	34.0
Drafting of contract for domestic trade	49.5	28.9
Special technical suit	49.5	36.1
Enforcement of obligation	48.5	27.8
Corporate compliance	45.4	27.8
Foreign legal search	45.4	30.9
Intellectual property management	44.3	52.6
Litigation for purpose of competitive strategy	44.3	33.0
Labor–management negotiation	39.2	32.0
Tax administration	36.1	34.0
Employment adjustment including dismissal	33.0	38.1
Human resource management	32.0	35.1
Management of corporate brand	29.9	34.0
Prevention of shareholders representative suit	27.8	37.1
Protection of personal data and management of information security	26.8	33.0
General advice for business strategy	24.7	38.1
Asset management	23.7	37.1
Preparation for general meeting of shareholders	22.7	35.1
Financial fund management	19.6	38.1
Corporate pension management	19.6	39.2
Environmental risk management	16.5	39.2
Negotiation with authorities	16.5	39.2
Settlement of sexual harrasment case	9.3	38.1

II Expected type, competency, skill, and quality of corporate in-house lawyers

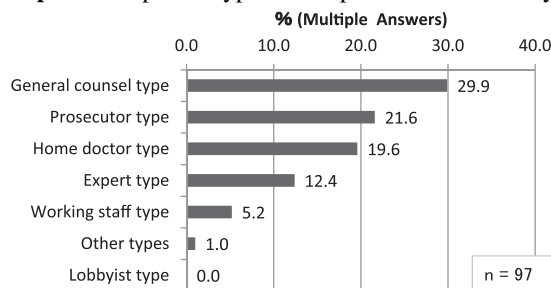
1. Expected type of corporate in-house lawyers

Irrespective of whether they hire in-house lawyer(s) at the time of the survey, we asked respondent corporations which type of lawyer would be desired if they hire in-house lawyer(s) among the “home doctor type” (a lawyer who deals with a wide range of legal matters in a corporation, such as drafting contracts and dealing with labor issues), the “expert type” (a lawyer who is an expert in a special field, for example financial legal matters), the “lobbyist type” (a lawyer who has power

to influence administrators and/or law makers), the “prosecutor type” (a lawyer who specializes in dealing with lawsuits in a corporation), the “general counsel type” (a lawyer who has a wide range of power and authority over legal matters in a corporation and whose position is ranked almost the same as that of executive directors), and the “working staff type” (a lawyer who has limited competence in corporate matters and whose position is almost the same as that of staff workers). With regard to this question, multiple answers were allowed.

According to their answers, the most desired type of in-house lawyers was the “general counsel type” (29.9%), the second was the “prosecutor type” (21.6%), and the third was the “home doctor type” (19.6%). The “lobbyist type” was the last (0%) (Graph 10). It is found that among the respondent corporations, in-house lawyers are expected to deal with daily corporate matters closely related to the executive body as a high position employee like the general counsel.

Graph 10: Expected types of corporate in-house lawyer



2. Expected competency, skill, and quality of corporate in-house lawyer

Thereafter, the research group asked about the expected competency, skill, and quality of corporate in-house lawyers, regarding 17 typically expected items. Multiple answers were also allowed in this question. The results were in order of highest to lowest percentage: “sense of commitment” (62.9%), “negotiation skill”, “ability of risk judgment” (each 61.9%), “loyalty to the corporation” (56.7%), and “Integrity” (50.5%) (Graph 11). This corresponds to the desired corporate legal work for in-house lawyers results shown above and shows that “negotiation skill” and “ability of risk judgment” are highly expected in a corporation. “Sense of commitment”, “loyalty to the corporation”, and “integrity” are essential qualities of an employee.

It is supposed that in China, like in other developed countries, in-house lawyers are expected to not only be independent professionals but also act as an

Graph 11: Expected competency, skill, and quality of corporate in-house lawyers



employee⁷⁾.

III Comparing Character of in-house lawyers between China and Japan

We conducted another Questionnaire Survey on the Need for Lawyers in Japanese Corporations (the Survey in Japan) in February 2007, which contains almost the same questions about the current situation of utilization of lawyers and their expected roles, competency, skills and quality, even though some questions were different due to the conditions surrounding lawyers in Japan. This survey was performed using data from 2000 corporations in Japan, selected with the Teikoku Databank⁸⁾, one of the most reliable corporate database service providers in Japan. Out of a total of 2000 samples, 1000 samples were selected randomly from the corporations with less than 100 employees, and another 1000 samples were selected randomly from the corporations with over 100 employees. The questionnaire sheets were sent by post, and 320 questionnaires were collected (collection rate was 16.0%). The items of the questionnaire were, except for the profile items of answerers, about the current situation of utilizing external

7) The data and analysis of the expected type, competency, skill and quality of corporate in-house lawyers in China is introduced in Kota FUKUI (2015), pp. 149-151.

8) Teikoku databank: <http://www.tdb.co.jp/index.html> (Last access on November 21, 2015).

consultant lawyers and in-house lawyers in a corporation, the need for in-house lawyers under “ideal conditions”, and the expected type, competency, skill, and quality of corporate in-house lawyers⁹⁾.

According to the Survey in Japan, only 2.2% of the respondent corporations hire in-house lawyer(s), while half of the respondent corporations retain external consultant lawyer(s) (50.5%). Apparently, the corporate utilization of in-house lawyers is not popular in Japan. Furthermore, the top reason for not utilizing lawyers with regard to both external consultant lawyers and in-house lawyers was “there is no work that needs a lawyer’s help” (external consultant lawyers: 45.9%, in-house lawyers: 46.2%). It is supposed that not only the corporate utilization of lawyers is not popular in Japan but also corporations in Japan do not clearly know how to utilize lawyers in daily business activities.

On the other hand, among the respondent corporations in China, 53.6% of them answered that they retain their own external consultant lawyer(s), and 51.5% of them answered that they hire in-house lawyer(s). In particular, regarding the utilization of in-house lawyers, there is a great difference between China and Japan. In the survey in China, the top three reasons for retaining external consultant lawyers are respectively: “there are a lot of pieces of work that need a lawyer’s help” (39.2%), “stakeholders require a lawyer’s involvement” and “it relates to social valuation” (each 31.4%). Regarding the utilization of in-house lawyers, the top three reasons are “lawyer’s involvement is legally required” (47.9%), “there are a lot of pieces of work that need a lawyer’s help” (41.7%), “stakeholders require a lawyer’s involvement” (27.1%). According to this result, corporate utilization of lawyers seems more popular in China than in Japan. Therefore, it is recognized that, at least regarding large corporations, the corporate utilization of lawyers is more popular in China than in Japan not only because corporations over a certain size in China are legally obliged to utilize lawyers but also because they know clearly how to use lawyers in daily business activities.

Comparing the results of answers about the need for in-house lawyers under “ideal conditions” between the Survey in China and the Survey in Japan, the top five items in the former were “contract examination”, “negotiation for dispute

9) The result of the Survey in Japan is introduced in Kota FUKUI, Yusuke FUKUI and Stacey L. STEELE (2010), and Kota FUKUI and Yusuke FUKUI (2010). With regard to the legal need in corporations in Japan, see also Takeshi KOJIMA, Ken’ichi YONEDA, and the Committee for the Investigation of the Corporate Legal Department of the Association of Corporate Legal Departments, ed. (2010).

settlement” (the rate of “willing to utilize”: each 63.9%), “collection of monetary debt”, “damage suit” (each 58.8%), “contract negotiation” (57.7%), while the top five items in the latter were “defensive allegation” (69.3%), “damage suit” (61.4%), “negotiation for dispute settlement” (59.2%), “special technical suit” (58.7%), and “litigation for the purpose of competitive strategy” (47.8%). According to this result, it is thought that, among respondent corporations in Japan, the image of the lawyer who deals with court related work is so strong that most corporate executives are not willing to consider utilizing qualified lawyers (*bengoshi*) in daily corporate activities.

Furthermore, regarding the expected type of corporate in-house lawyer, among the respondent corporations in China, the top was the “general counsel type” (29.9%), the second was the “prosecutor type” (21.6%), and the third was the “home doctor type” (19.6%), where in Japan’s case, the overwhelming top was “home doctor type” (70.9%), the second was “prosecutor type” (26.9%), and the third was “expert type” (19.1%). From this result, it is understood that the respondent corporations in China prefer to utilize a lawyer for daily corporate matters as “general counsel” close to the top management, while in the case of Japan, the respondents regard a lawyer as an advisor for general legal matters when needed, like a “home doctor”.

On the other hand, regarding expected competency, skill, and quality of corporate in-house lawyers, the top response among the Chinese corporations was “sense of commitment” (62.9%), the second equal was “negotiation skill” and “ability of risk judgment” (each 61.9%), the fourth was “loyalty to the corporation” (56.7%), and the fifth was “integrity” (50.5%), while in the case of Japan, the top was “negotiation skill” (60.9%), the second was “ability to collect information” (56.9%), the third was “sense of commitment” (56.3%), the fourth was “ability of risk judgment” (55.9%), and the fifth was “integrity” (51.6%). Even though the rank order is different, four items out of five overlap between the cases in China and in Japan. As a result, we cannot find a considerable difference between China and Japan.

Through this comparison between the Survey in China and that of Japan, we found that corporate legal compliance, in the sense that daily law-related management matters are dealt with by qualified lawyers, has developed more in respondent corporations in China than those in Japan. Among respondent corporations in China, we can deduce that they like to utilize lawyers regarding management matters relating to the executive managers. As we know, Japan modernized much earlier than China in the second half of the 19th century, and is

regarded as a mature developed country, but it is supposed that, in corporations in commercialized cities in China, like Shenyang, Shenzhen, and Shanghai, the legal compliance culture has been prevailing more widely than in Japanese corporations. We guess that in the process of economic development after World War II, Japanese corporations have established a management model without the support of any lawyers, in which corporations are led by governmental authorities and main banks, while Chinese corporations, as is typical in rapidly developing countries, try to introduce a modernized management model, in which corporations utilize lawyers for daily management matters¹⁰⁾ directly from the Western world, and the legal compliance culture has been rapidly prevailing in Chinese corporations. In any event, the reason such a cultural inversion happens should be determined by our further study¹¹⁾.

Conclusion

In this paper, we introduced the results of answers and analysis of the Survey in China and compared them with the results of the Survey in Japan. In this short comparative analysis, we confirmed that, among respondent corporations in China, the legal compliance culture, in the sense that daily law-related management matters are dealt with by qualified lawyers, has been prevailing more widely than in respondent corporations in Japan.

However, this analysis contains some critical deficits. The number of samples of the Survey in China was only 97, which was quite a low number for statistical analysis, and the method to select samples was not random. Its reliability is not satisfactory. Besides, even though the legal compliance culture, in the sense that daily law-related management matters are dealt with by qualified lawyers, is prevailing more widely among the respondent corporations in China than those in Japan, it should be discussed still more whether this means that the corporations in the large commercialized cities in China, like Shenyang, Shenzhen, and Shanghai, are more modernized than those in Japan. Utilizing lawyers might be only an expression of rebellion against the administrative authority in China.

This comparative analysis between the Survey in China and that in Japan is only a milestone of this long-run comprehensive research project. The theses in this paper remain working assumptions. We will continue to back them up by

10) The example of the US is introduced in Robert P. BARTLETT and John C. LEE (2012).

11) The data and analysis of this section is introduced in Kota FUKUI (2015), pp. 151-154.

more comprehensive empirical research.

Acknowledgements

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Note

This paper is a rewrite of Kota FUKUI (2014) and Kota FUKUI (2015). I appreciate Hōritsu Bunka Sha and the Japan Law Foundation for permitting me to rewrite and locate it to the Osaka University Law Review.

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