

Managing economic and social change toward a sustainable future

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Contents

Keynote—What
New World Order
is emerging?

[Page 4](#)

US energy—
Searching for
opportunity amid
uncertainty

[Page 6](#)

A new era for
US patents

[Page 8](#)

Shareholder
activism meets
social activism

[Page 13](#)

Managing economic and social change toward a sustainable future

In Tokyo, White & Case gathers leading thinkers on international business and trade policy from around the globe to explore what evolving economic and social change mean for Pacific nations—and to propose effective responses

Imposing an “America First” trade philosophy on a globalized economy—a campaign promise US President Trump is in the process of delivering—is affecting trade and investment relationships worldwide. Inevitably, there is a knock-on impact on other areas of Washington’s relationships with allies and rivals alike, from security concerns to energy, climate change, demographics, technological advances, geopolitical considerations and others.

The specific policy proposals flowing from this initiative are revamping existing alliances and institutions in ways that call into question the existing world order, and are forcing many countries—close US allies as well as competitors—to reconsider how they work with the US.

America First is rearranging international politics as well. With China rising, rapidly changing developments on the Korean Peninsula, and Japan focused on economic rejuvenation, how will defense relationships be realigned? Is America losing influence in the Asia-Pacific region, or just recalibrating its terms of engagement?

These and other issues were explored recently at a White & Case seminar series in Tokyo. The series, “Managing economic and social change toward a sustainable future?” featured lectures and discussions on energy policy, patents and trademarks, shareholder activism and global responses to America’s recent disruptions in longstanding trade relationships.



Toshio Dokei
Partner, Tokyo



Micah Sadoyama
Partner, Tokyo



David Albagli
Local Partner, Tokyo



Nels Hansen
Local Partner, Tokyo

Keynote—What New World Order is emerging?

In Tokyo, White & Case gathers leading thinkers on international business and trade policy from around the globe to explore what evolving US policy means for other nations—and to propose effective responses

In a day marked by observations of vexing international concerns, the two keynote speakers—Robert Feldman, a professor at Tokyo University of Science and a senior advisor to Morgan Stanley MUFG Securities, and Yukio Okamoto, a diplomatic commentator—contributed an upbeat note by proposing some potential solutions.

Feldman began by describing a new vision for what the US-Japan relationship should look like and how it should contribute to the world.

Money that is presently being allocated to healthcare and pensions for the elderly would be better spent on educating younger generations, Feldman said. Energy consumption is growing exponentially, and concerns abound over where future resources are going to be found. Crumbling infrastructure and a rapidly urbanizing world require investment. At the same time, there is a need to protect living standards, best achieved through capital intensity and increasing the efficiency of capital.

In both the US and Japan, the diffusion of technology is important to the overall well-being of an economy, but regulation is serving to limit the movement of capital and labor between sectors, according to Feldman. Legal and corporate reforms, along with changes in corporate governance, can help to solve that problem, just as they did in the 1970s in the US airline sector. Technology is also vulnerable to the protectionism that is sweeping the world, and Feldman emphasizes that halting technology transfers means that the “flow of ideas stops,



The beneficiaries of a “confused American diplomacy” are Chinese leader Xi Jinping and Russia’s Vladimir Putin.

and when ideas stop flowing, new combinations stop being made and productivity slows.”

As a potential cure, Feldman put forward two possible solutions. The first would be a trade alliance that he called The North Pacific Partnership, which would permit the US and Japan to set a new standard for global trade agreements that other nations could apply to join. The second is for a technology hyper-alliance that would bring together scientists, engineers and entrepreneurs from both countries, an alliance that would serve to accelerate the adoption of new technology.

Introduced by Aiko Doden, the moderator of the session and a special affairs commentator for national broadcaster NHK, keynote speaker Okamoto identified the key issues that are of prime concern to the Japanese government. Starting with security regarding North Korea, Okamoto said North Korean leader Kim Jong-un won “a big victory” in his summit

with President Donald Trump in Singapore, reinforcing Okamoto’s belief that Kim never intended to give up his nuclear weapons. The North Korean leader would also have been encouraged by Trump’s suggestion that US troops be withdrawn from the Korean Peninsula, a matter of deep concern for Japan, as the US is the only security guarantee in Northeast Asia.

The beneficiaries of a “confused American diplomacy” are Chinese leader Xi Jinping and Russia’s Vladimir Putin, both of whom have expansionist ambitions, Okamoto said. Just as worrying was Trump’s call at the UN Security Council for other nations to follow his lead and put their own narrow national interests first, which can only serve to harm universal values such as freedom, democracy, free trade, humanitarian thinking, protection of the environment and the rule of law.

Japanese Prime Minister Shinzo Abe has been very proactive in his diplomacy, although his biggest task may well be handling Trump—particularly if the US president makes demands in the areas of trade or defense spending.

Okamoto closed his presentation by pointing to the adverse impacts of technology on modern society, such as the fragmentation of personal relationships, and social media being used to link like-minded people and reinforce their shared views.

Asked by Doden about the possibility of the US-China trade war worsening, Feldman compared the situation to game theory, in which players can cooperate or decide not to, with failure to cooperate having a negative payoff. Early US exchanges



with North Korea on its nuclear capabilities indicated there would be military consequences in the event of a failure to cooperate. When it comes to US-China trade, the two sides are locked in a tit-for-tat cycle of tariffs and countermeasures with no sense of a potential positive payoff for different behavior.

Japan has previously been able to convince US administrations that the US-Japan security treaty benefits both nations equally and that trade discussions must be kept separate from security discussions, although Okamoto points out that Trump may not be willing to play by the same rules. There is therefore a need to remain “vigilant” in upcoming trade discussions, he added.

Feldman reiterated the need to find common ground in trade talks, and for Japan to underline the mutually beneficial outcomes that can be achieved, although Okamoto pointed to the president’s track record of bilateral demands—possibly, in Japan’s case, with

the threat of altering the security arrangement for failure to capitulate. And Japan is in no position to entirely shoulder its own security needs, Okamoto added, at a time when Asia appears to be increasingly diverging into a group of countries being drawn into China’s orbit and the other states of “maritime Asia.”

Feldman said there is a need to get back to “truth and humility” in trade talks. He said if the US and Japan could reach agreement on issues that are of concern to both governments, a very positive moral example would be set that others could follow in similar discussions. Feldman also warned that there is a risk of recession, as the US president’s protectionist policies are reducing demand as well as investment.

Conclusion

In every facet of the international economy, diplomatic relations, security and countless other

connections have bound much of the global community for decades. Now the status quo is being challenged.

Often, any positive achieved winds up being a negative elsewhere. And nowhere is that more evident than in the state of international trade and the closely connected issue of security. Panelists expressed alarm about the direction that the US administration is taking on global trade and the use of confrontational tactics toward traditional allies in the give-and-take of trade negotiations.

Panelists laid out the pros and cons of the emerging New World Order and were able to single out a number of positives. A number of speakers proposed solutions that would be relatively straightforward to implement and would be quick to make a positive impact, bringing the international community back onto a more even keel.

US energy—Searching for opportunity amid uncertainty

The oil & gas (O&G) sector is no stranger to volatility, but it is even more at risk of instability at a time of unpredictable political situations, changing economic structures and broader global vulnerabilities

White & Case partner Micah Sadoyama (Tokyo), moderator of the seminar on US energy, opened by asking whether lower oil & gas prices are “the new normal” or whether prices of US\$100 a barrel or more might be on the horizon.

Hideo Ushijima, joint general manager of the Structured Finance Department of Sumitomo Mitsui Banking Corp., played down those fears by suggesting that while hundred-dollar oil might occur as a result of a short-term shock, that price would be unsustainable over the longer term. Of far more importance are “large-scale shifts” that are taking place within the energy industry, Ushijima said.

The first shift, according to Ushijima, is the growth of technology in the renewable energy sector, including battery storage, along with growing electrification globally. Another is China’s increasing move to clean energy and the impact of the growth of the nation’s service sector, which consumes less energy than the country’s traditional manufacturing sector. The final shift is the rise in resilience of the US shale O&G sector, which is having a significant impact on the global demand and supply situation, Ushijima said.

The importance of oil will gradually decrease in the coming decades, Ushijima said, as renewables gain ground, although demand will still be visible in emerging economies such as India and other nations in Asia.

Hendrik Gordenker, chairman of JERA Co., Inc., said that he sees little likelihood of instability on the demand side, although political issues, a trade war, sanctions or an economic downturn are inevitably going to affect the supply side. And given the state of the world, he said, it would be reasonable to expect volatility in the coming months.

Turning to the upstream industry in the US, White & Case O&G partner Jay Cuclis (Houston) said the shale “revolution” in the United States has cut domestic prices and turned the US into an exporter of liquefied natural gas (LNG), while a knock-on effect has been a spike in petrochemical projects. As a consequence of the robustness of the sector, Cuclis pointed out, private equity funds are now investing in upstream O&G projects in the US, changing market dynamics significantly. In addition, the new opportunities in US upstream projects have attracted significant interest from overseas investors. That trend is likely to continue for the foreseeable future, Cuclis said, as the sector in the US already has advanced infrastructure in place, including pipeline connectivity, and a skilled and experienced workforce. He added that the US also benefits from private ownership of the minerals beneath a landowner’s property, a unique feature of the US O&G industry, because the interests of the landowners and the oil & gas developers are often aligned.

While there are suggestions that China might also be on the verge of large-scale exploitation of its shale



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oil reserves, Cuclis points out that those reserves are in parts of the country that have very little water, a prerequisite for recovering shale energy reserves.

Gordenker said the accessibility of the US energy sector makes it appealing as an investment destination, while the emergence of shale energy has created “an entirely new benchmark” on pricing and is helping to create a genuinely global market.

Gordenker underlined that developed economies may look to replace traditional energy facilities that are reaching the end of their operational lives with renewables, which are “a very attractive package” to policymakers as well as a new generation of residents of megacities who do not want to live in heavily polluted metropolises. That change will take time, he admitted, and gas will retain a leading role until that happens.

Renewables are driven by tax incentives and renewable portfolio standards in a number of US states. Ushijima pointed out that while renewable energy sources



still remain below the 10 percent threshold in the US market, growth of renewable energy is driven by tax incentives and renewable portfolio standards in a number of US states. A growing social awareness of environment-friendly energy has bolstered environmental, social and corporate governance investment, said Ushijima, who pointed out that in Europe, environmental, social and governance (ESG) investment accounts for 60 percent of total energy investment.

Infrastructure issues are resulting from the domestic boom in production, with Cuclis asserting that there is significant pressure on pipeline capacity, which has resulted in a number of new projects due to come on-stream in the next couple of years. New pipelines do face environmental challenges as well as the previously unanticipated problem of the rising cost of steel as a result of new tariffs on imports into the US.

In terms of the downstream US energy sector, Cuclis said he is “relatively bullish” about a second wave of LNG export projects, with four or five projects due for a final investment decision before the end of the year, although Gordenker

sounded a note of caution, given that demand is increasing by incremental steps rather than in waves, and suggested that there is a need to “get away from this boom-bust cycle.”

Addressing the question of export markets for US LNG, Cuclis identified Mexico, South Korea and China as the largest consumers of US gas, although trade agreements—particularly with China—are under a cloud as a result of the present US administration’s trade policies and tariffs. While the US energy industry appears to be a beneficiary of President Donald Trump’s policies, including the rollback of some environmental regulations and the streamlining of permitting processes, there are a number of downsides to the present government, Cuclis said, such as the “more unpredictable nature of policymaking in Washington.”

On the other hand, Cuclis added, Europe appears to offer some interesting opportunities, as governments there are interested in hedging against their present reliance on Russian energy supplies.

Gordenker agreed that the unpredictability of the US government on a number of issues

has led to polarization between the federal government and the states, on coal-fired power plants, for example, which has exacerbated uncertainty among investors and the industry.

Asked to summarize the state of the industry, Cuclis said the US energy industry is enjoying “a very dynamic time” and that few would have envisaged the US becoming an exporter of LNG a decade ago. There are many opportunities in the industry and entry points for investors—but predicting where the sector will be in another ten years’ time is close to impossible, Cuclis added.

Conclusion

Speakers proposed emerging solutions that would be relatively straightforward to implement and would be quick to make a positive impact, such as economies shifting to renewables, infrastructure enhancements and the rise of LNG.

At the same time, panelists expressed concern over the volatility of US trade policy, capacity challenges and unstable oil prices. Only time will tell which of the shifting forces will dominate the future of energy.

A new era for US patents

How has President Trump's "America First" philosophy affected US patent policy? White & Case partners discussed what an evolving US patent policy will mean for other nations, and to propose effective responses

The specific policy proposals flowing from the President's initiative are overhauling existing alliances and institutions in ways that call into question the existing world order, and are forcing many countries—close US allies as well as competitors—to reconsider how they work with the US.

The President's "America First" trade philosophy is undoubtedly affecting trade and investment relationships worldwide. Inevitably, global changes to trade and investment relationships have impacted other relationships as well. Washington's relationships with allies and rivals alike have evolved.

From security to energy, climate change to technology—geopolitical considerations are different now than they were before. With China rising, rapidly changing developments on the Korean Peninsula, and Japan focused on economic rejuvenation, how will defense relationships be realigned? Is America losing influence in the Asia-Pacific region, or just recalibrating its terms of engagement?

These issues were explored recently at a White & Case seminar series in Tokyo. The series, "Managing economic and social change toward a sustainable future?" featured lectures and discussions on energy policy, patents and trademarks, shareholder activism and global responses to America's recent disruptions in longstanding trade relationships.

USPTO UNDER DIRECTOR IANCU

No sector of the US business world is immune from change, as the changes at the US Patent and

Trademark Office (USPTO) since the appointment of Andrei Iancu as director in February 2018 have demonstrated.

Moderating the discussion in the second seminar of the series, White & Case local partner David Albagli (Tokyo) opened with an outline of Iancu's education and successful career, initially in engineering before he switched to the law, where he advocated as a patent litigator in federal court, the International Trade Commission, and at the Patent Trial and Appeal Board (PTAB). Citing one of Iancu's earliest public comments after becoming Director—that "we are at an inflection point with respect to the patent system" and "we [the USPTO] will not continue down the same path"—Albagli said the new director clearly signaled that the Office would aggressively support changes to make the patent system stronger and more predictable. Albagli's comments have been backed up by policy changes initiated and, now in one instance implemented, by the USPTO. Albagli noted that

Director Iancu seemed focused on three major issues—clarifying the scope of patent-eligible subject matter; aligning the PTAB's claim construction standard with the standard used by US federal courts and the International Trade Commission (ITC); and simplifying the PTAB claim amendment process in post-grant proceedings.

The White & Case team has been closely monitoring USPTO developments, and has written about them here, here, and here.

1. Clarifying the scope of patent-eligible subject matter

The first policy area of considerable importance is the question of what is patentable subject matter under Section 101. The Office issued three memorandums to the examination corps after recent decisions by the Court of Appeals for the Federal Circuit, finding patent claims to meet the standard for patentable subject matter, in an effort to ensure that these positive examples are recognized and implemented. The memorandums involved software-related inventions (*Finjan Inc. v. Blue Coat Systems, Inc.* and *Core Wireless Licensing v. LG Electronics, Inc.*), standards for analyzing a certain legal question in the analysis (*Berkheimer v. HP Inc.*), and pharmaceutical methods of treatment (*Vanda Pharmaceuticals Inc. v. West-Ward Pharmaceuticals*).

White & Case partner Anita Varma (Boston/London) described the effect of the memos as "a breath of fresh air, at least for those of us in the life sciences industry." Previous rulings have called into question diagnostic patents as well as method of treatment claims, which are a staple within the life sciences sector, she said.



With China rising, rapidly changing developments on the Korean Peninsula, and Japan focused on economic rejuvenation, how will defense relationships be realigned?



And, as a consequence, there is a change among examiners in how they approach a request for patent protection for “really groundbreaking inventions.”

Coming from a litigation standpoint, White & Case partner Shamita Etienne-Cummings (Washington, DC) noted that, ironically, the opposite might apply in the courtroom. As a litigator focused primarily on the consumer

electronics sector, Etienne-Cummings said the Berkheimer ruling “introduced ambiguity and some more uncertainty in litigation.” It has become impossible to settle cases early, meaning that there is a need to carry out discovery and leave the decision in the hands of a jury—many of whom find it difficult to know which courtroom expert to believe.

White & Case partner David Tennant (Washington, DC) addressed the issue from a prosecution angle, pointing out that there has been a sharp increase in examiners issuing rejections of claims “in a very inconsistent manner.” In addition, practitioners are having to do a lot more work with the examination court to instruct them on previous court rulings, while the changes also



Under the current process, the board does not rule on the motion until its final written decision at the end of the case.

mean that the way in which applications for high-tech patents are drafted has become more complex. And while Iancu's aim may have been to introduce consistency to the examination process, that effort, so far, has come with "limited success," Tennant said.

Albagli concurred, saying that the issue is something that all patent attorneys are "grappling with, whether it's prosecution or litigation," but added that it is important to bring increased clarity and predictability to the question of patent eligibility as we increasingly move into the age of the Internet of Things, artificial intelligence and other advanced technologies.

2. Narrowing the claim construction standard in post-grant proceedings

Albagli next introduced proposed rulemaking by the USPTO that would change the standard by which claims of unexpired patents are construed in post-grant proceedings at the PTAB. (Note: since the White & Case event in Tokyo, the claim construction rule became final, applicable to PTAB matters filed on or after November 13, 2018.)

At the Tokyo seminar, Albagli noted that administrative patent judges construing patent claims had been using a "broadest reasonable interpretation" (BRI) standard. The BRI standard differs from the claim construction standard used by US federal courts and the International Trade Commission (ITC) and favored by Director Iancu—the standard applied in *Phillips v. AWH Corp.*,



415 F.3d 1303 (Fed. Cir. 2005) and its progeny. Under the BRI, parties challenging an unexpired patent in PTAB proceedings would argue that a challenged claim must be broader than how a court would interpret the claim, thus increasing the possibility that the claim, read more broadly, would encompass prior art and be canceled as unpatentable.

The proposal was applauded in most quarters, but not universally, Albagli said, with a member of the US Congress stating that moving away from the BRI system would "completely blow up what we are trying to do in Congress" and, potentially, lead to a return of "patent trolls."

Tennant said there has been a "misimpression" that PTAB post-grant processes serve as an easy way to invalidate a patent. As evidence, Tennant showed that while approximately 63 percent of petitions filed are instituted, ultimately the invalidation rate is still low. In practice, moreover, Tennant said that any change to the claim

construction standard is unlikely to have a significant impact on the approaches taken by lawyers, the win rate or the number of filings.

Etienne-Cummings pointed out that early filing of an IPR petition can provide a strategic advantage by narrowing the scope of the patent.

The debate has caught the attention of the patent sector in Japan, with the Japan Patent Attorneys' Association submitting a comment in favor of converting from BRI to the district court claim construction system, while the Japan Industrial Patent Association insists that BRI is a fairer way to adjudicate patent rights.

Varma concurred with Tennant that the new claim construction standard would not have much impact, as even under BRI the standard is the broadest reasonable interpretation rather than the broadest possible interpretation. Tennant said that the main difference is in the arguments during prosecution history of the original patent application while the



evidentiary burden in PTAB is much lower, although as a practitioner he is “not too concerned about this change.”

(As noted, since the discussion in Tokyo took place, the USPTO made final the rule, and the new claim construction standard is in effect for PTAB matters filed on or after November 13, 2018. The White & Case team will continue to monitor any developments that spring from the claim construction change.)

3. Simplifying the PTAB claim amendment process in post-grant proceedings

The final topic of discussion concerned the USPTO’s publication of a Request for Comments on a proposed pilot program intended to make easier amending patent claims before the PTAB during post-grant proceedings. Albagli noted that a recurring criticism has been the perceived difficulty of amending challenged claims in post-grant proceedings. In response

to that criticism, the PTAB launched a study to investigate the motion to amend process.

Under the current process, the patent owner has three months to submit a response following the PTAB decision to institute review. At that time, the patent owner may submit a motion to amend claims in response to grounds of unpatentability under review. However, under the current process, the board does not rule on the motion until its final written decision at the end of the case. Iancu has publicly identified the process for amending claims in a PTAB trial as an issue for reform.

According to the USPTO statistics, 3,200 PTAB trials have been completed and motions to amend were filed in 305 cases, approximately 20 percent of the total. The PTAB only granted seven of those motions and a further 11 in part, so the success rate of getting claims amended at the PTAB has been very low, Albagli said. So what happens in the case of a PTAB

proceeding and a parallel litigation?

According to Etienne-Cummings, an amendment is treated as a new claim that is being asserted and the process begins over again, although the most serious issue is over the scale of damages if a patent is due to expire soon.

Tennant suggested that the initiative is “more for optics,” as it is unlikely that the mechanism to amend a claim will be used very often because parallel proceedings are under way in litigation.

And while in the US a patent owner has a lesser degree of flexibility in amending a claim, the situation in Europe perhaps allows too much freedom to patent owners, who are free to submit entirely different claim sets, Varma said. In her experience, it has meant that she has had to carry out completely new requests for the invalidation of a patent.

Summing up the changes in the US, Tennant said he concurred with Iancu’s efforts to bring about consistency in the examination of patent applications as well as in the claim construction standards between the PTAB and the courts—a position that his fellow panelists agreed with.

Conclusion

Panelists taking part in the White & Case seminar series laid out the pros and cons of changes in US patent law.

They explored specifically the by-policy changes recently initiated and in one instance implemented by the United States Patent and Trademark Office (USPTO): clarifying the scope of patent-eligible subject matter; narrowing the claim construction standard in post-grant proceedings; and simplifying the PTAB claim.

Panelists agreed that all three changes have positive aspects and the potential to improve the process, but also agreed that the efficacy of all three remained in doubt. “Cautious optimism” best describes the current mood among close observers of US patent policy.

Shareholder activism meets social activism

Are you ESG activist-ready?

The introduction and evolution of both a Corporate Governance Code and a Stewardship Code in Japan have had a significant impact on public companies listed in, and asset managers operating in, Japan. Analysts taking part in the third seminar examined ways in which to manage economic and social change in order to achieve a sustainable future, concurring that there has been “a change in the momentum” in shareholder activism in Japan.

Sumitomo Mitsui Trust Bank has introduced a number of changes in recent years, Senior Stewardship Officer Seiji Kawazoe confirmed: most importantly the 2015 introduction of the bank’s Management Business Investment Strategy (MBIS) for evaluating companies’ non-financial information. One of the largest asset managers in Asia, the company now works toward full engagement with its investors in order to maximize returns, but also promotes innovation and improvements in the companies in which it invests.

Actively involved in the UN’s Principles for Responsible Investment (PRI) as well as environmental, social and governance (ESG) investment factors, the bank is “becoming quite an active shareholder,” Kawazoe said.

Shirou Terashita, president and CEO of IR Japan Holdings Ltd., addressed the issue of ESG investment. He pointed out that Japan lags behind other economies when it comes to exercising proxy power in shareholder votes. Environmental strategies are an

important consideration for investors, although social issues, such as human rights and conflicts, play a less significant role in Japanese firms’ thinking, he indicated.

Terashita added that Japanese firms need to focus their efforts on governance, as Japan is well behind other countries on this issue, and international investors are beginning to question whether Japan is doing enough to tackle the problem. Institutional investors need to focus on governance to bring about change, he said.

Japan’s Financial Services Agency is planning revisions to the Stewardship Code, although the agency has expressed an intention to permit retention of a certain amount of cross-shareholdings. Questions have been raised, however, as to whether doing so is possible, or even desirable.

Eriko Sakurai, chair and CEO of Dow Corning Toray Co., Ltd., brought her extensive experience on boards of directors at the US-based company as well as the Japan-based, sharing the observations of differences between them.

As an example, Sakurai described a meeting of the board of Dow Corning at which great emphasis was placed on just how the external

stakeholders perceived the company, and on the need to fully coordinate throughout the organization and to deliver on a consistent strategy. Describing a board meeting of a Japanese company, she observed a “tension” between executive officers of the company and outside directors. White & Case partner Jun Usami (Tokyo) says the Firm has been closely watching developments in the area of shareholder activism in recent years, including examining ways in which companies can defend themselves against external activists and situations, such as hostile acquisitions. The period between 2004 and 2007 saw a number of such hostile takeovers, which led to debate over response tactics.

The introduction of Japan’s Governance Code and the Stewardship Code more recently have “changed the momentum in Japan” in this area, Usami said.

In the upcoming round of revisions, Usami pointed out, the contentious issue of cross-shareholdings will be taken up, including provisions to ensure that companies provide a reason for the need to conduct cross-shareholdings. Usami added that the debate on this issue has gone on for 40 years and that any changes will be “fundamental.”



Japanese firms need to focus their efforts on governance, as Japan is well behind other countries on this issue.



in the US, Terashita said there have been several cases in which buy-side or sell-side analysts or members of think tanks have started activist funds, and the same is likely to emerge in Japan. Activist funds will benefit from Japan having the most stringent shareholders' rights in the world, he added. Usami pointed out that quite a large number of Japanese companies are still unable to release English-language documents on their operations, which has hampered the dialogue between companies and potential investors from abroad. Sakurai added that in her experience, outside directors at US firms tend not to get bogged down in discussing the "nitty-gritty" of day-to-day operations of a company, but try to address issues involving the organization's bigger picture, while at Japanese companies directors tend to delve into operations in a more detailed manner, often required by the decision-making processes. On the matter of diversity and inclusion, Sakurai said that the US has led the way in terms of introducing people from diverse backgrounds into the management and decision-making of companies, which had led to companies performing better. While Japan does lag behind in this area, she added, things are beginning to change.

Conclusion

The introduction of a Corporate Governance Code and a Stewardship Code in Japan have had a clear and significant impact on public Japanese companies.

Panelists examined ways in which to manage economic and social change in order to achieve a sustainable future, concurring that there has been "a change in the momentum" in shareholder activism in Japan. A number of speakers proposed solutions. The trick will be convincing those who wield power that such actions would indeed be the correct approach to take.





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