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### Economic valuation of civil law

Perhaps because they have a relationship to money which is marked by profound cultural references, companies operating in civil law systems seem to have lagged behind the Anglo-American law countries as regards the economic valuation of the law. Stated otherwise, whereas in the English-speaking world there has long been talk of a "market" or even of an "industry" for legal services, these terms often encounter a strong resistance in civil law countries. This reticence can be explained by the justified refusal of a mercantile vision of the law.

The difficulty that ensues is that jurists find it difficult to speak the language of economic and political decision-makers who are, in turn, accustomed to making their decisions on the basis of numeric data. For lack of numbers, for instance to state that civil law is less costly or more certain remains a non-established affirmation, for lack of numbers. Consequently, jurists at times have difficulties in making themselves understood. The "Doing Business" reports of the World Bank at least know to highlight the strength of numbers in the debate over the choice of the applicable law.

On the strength of that finding, the partners of the *Fondation pour le droit continental* have launched several initiatives so as to contribute to the discussion of the economic valuation of the law. A global index of legal certainty is currently under preparation, so as to offer a comparative analysis of legal systems that is intended to assist companies to measure the level of confidence that may be had in a given country's law. In addition, other studies aim at measuring the impact of legal services within GDP. This is not to suggest the substitution of a commercial mind-set to the service of the Rule of Law, but to highlight the activities of civil law jurists, to supplement their substantive argument on the merits by demonstrating that they perform equally from the economic standpoint.

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### 2d Euro-American Legal Conference



On November 29 and 30, 2010, the legal professions together with the Civil Law Professions International Initiative Organization [French acronym is "ACDI"] (ACDI), held the second Euro-American legal conference dedicated to the various approaches to the formation, operations and challenges faced by the small sized-companies. The objective of the meeting was to enable, on the basis of case studies, an understanding of how European and American jurists approach concrete problems. The conference was held at the offices of the World Bank, in Washington, D.C.

The first round table, led by Mr. Louis-Bernard BUCHMAN, Attorney (Field Fischer Waterhouse LLP), examined together with Mr. Helmut FESSLER, Notary in Krefeld (Germany) and Mr. Gérard LEVAL, Attorney (Arent Fox LLP), the formation of a company and the status of minority shareholders. The second round table, dedicated to the protection of industrial property and of personal data, brought together Mr. Astrid DESAGNEAUX, Bailiff of the Court in Paris, Mr. Joshua KAUFMAN, Attorney, (Venable LLP) and Mr. Christopher MESNOOH, Attorney (Field Fischer Waterhouse LLP). Mario MICCOLI, Notary in Livorno (Italy), Mr. Gérard LEVAL, Mr. DESAGNEAUX and Mr. Stéphane ZECEVIC, Notary in Paris, then discussed the legal aspects of real property investment. Lastly, moderated by Mr. Marc ANDRE, Bankruptcy Trustee in Alès (France), the Honorable Judge Elisabeth STONG (New York, USA) and Ms. Isabelle DIDIER, Court-appointed Administrator in Paris, compared how their respective legal systems treat the problems faced by companies.

On November 30, 2010, the planned Global Index of Legal Certainty was the subject of a presentation by the head of the Economic Efficiency of the Law - 2ED Program of the *Fondation pour le droit continental*, Professor Arnaud RAYNOUARD. Other participants included Ms. Anne-Julie KERHUEL, representative of the *Fondation* in Washington, and Mrs. Maude VALLEE, on behalf of the *Agence Française de Développement* (AFD), partner of Program. After having presented the reasons underlying the research project on legal certainty, the participants described the methodology and the viewpoint of Index of Legal Certainty. The objective is in effect to enable assessing the level of confidence that an economic operator may expect from a given legal system.

The last part of the conference was dedicated to the presentation by Mr. Marc FRILET, Attorney, Secretary General of the French **Institute of International Legal Experts** - IFEJI, and by Mr. Roger FISZELSON, General Delegate of the European/ International Commission of the French Union of International Contractors, National Federation of Public Works, on the institutional and legal framework of public- private partnerships, especially those involving large infrastructure works having an international scope. On the basis of specific examples, the participants subsequently discussed the criteria for evaluating the success of such projects and the lessons learned from prior projects: participants included Messrs. Jeffrey DELMON and Mark MOSELEY of the World Bank, Mr. Philippe DEWAST, Attorney in Paris, and IFEJI expert, and Mr. Arent VAN WASSENAER, Secretary of the IBA Section on Energy, Environment, Natural Resources and Infrastructure Law.

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### **Chinese Delegation's Visit to the Fondation: A Promising Partnership**



At the end of the week-long seminar on the codification of the Law on the Environment organized by the Fondation and held on its premises from December 6 to 10, 2010, Mr. Yang Chaofei, Head of the Chinese delegation and Chief Engineer of Nuclear Safety at the Ministry of Environmental Protection, reported that he was especially pleased with the diversity and the quality of the seminar.

"The study of the general principles of the codified Environmental Law in France was developed along lines that are especially pertinent for the reform of our own code. I have in mind specifically the following themes: "the polluter pays", the precautionary principle, and sustainable development".

In addition, the delegation examined and assessed the implementation in the French Environmental Code of administrative and judicial mechanisms that provide simultaneously for the involvement and the protection of the citizen (right of access to information, right of recourse to the courts, protection as regards life and participation in major decisions). The role of cartography ensures the evaluation of natural and industrial risks, as well as the importance of penal sanctions; specialization both at the level of the courts and that of the administration were also topics generating particular interest.

"One of the first tasks considered in the Environmental Law in China involved the law on the pollution of the atmosphere. In that regards, we are keen on integrating the elements of the penal law such as they have been integrated in France", emphasized Mr. YANG Chaofei, in summarizing at the end of the discussion the various axes of studies already under consideration. Among the provisions considered, he cited the draft of a law on environmental liability, the forging of closer links between the administrative and judicial institutions, and the establishment of specialized judges, or even of specialized courts. As to the further development of the tripartite partnership between China, the Embassy of France and the Fondation, Mr. Yang stressed the need for reinforcing the exchanges in terms of councils and documentation. Specifically, the objective of promoting the translation of the texts that are especially relevant to the Chinese Ministry, and to intensify the exchanges and the meetings of experts, without forgetting the hosting of Chinese law students.

"These various actions merit being supported by study meetings, and regular meetings such as this seminar organized by the Fondation de droit continental. This is because in its role of providing support and expertise, the stakes of this partnership in the evolution of our Environmental Law code is a long term policy issue."

## 1st International Conference on Performance and the Corporate Legal Culture

Many research works underline that corporate culture (or organisational culture) can prove to be a key asset for companies and consequently contribute to a better performance. By way of contrast, the question of law and lawyers' influence on corporate culture and performance has been rarely analysed until now, except a study done by the LegalEdhec Research Centre in partnership with the AFJE (the AFJE is the number one French professional association of in-house lawyers, regarding the number of members and its notoriety). The Conference organised on January 6 and 7 by LegalEdhec Research Centre aims at enlightening some key issues, and the international dimension is at the core of these issues.

- If law can influence the performance and the corporate culture, what is the real impact of regulations? How do public authorities use this lever, especially in the current context of globalisation and european integration?
- What is the impact of legal profession on corporate culture? Are some differences, regarding the country of origin for the company or the country where the company operates, observable?
- The study on corporate legal culture carried out by the LegalEdhec Research Centre in partnership with the AFJE underlines that the basic knowledge of security and risk are the main concerns of general counsels and of the legal corporate culture. Henceforth, what characterizes the management of legal risks? How to ensure this management when the company is a MNC and operates in different national markets? In particular, how to manage the legal risks which are proeminent in emerging countries?
- Some companies devote a lot of means to the setting up and the development of a compliance system. Can such a system constitute a lever of performance? How is it possible to avoid the traps of a bureaucratic system, knowing that regulatory and ethical compliance is based on different philosophies, regarding some countries?

This conference aims at enhancing reflection on those topics thanks to the participation of academics and high-level practitioners, as well as confronting experiences and opinions. Conference Proceedings will be published.

You will find the preliminary program here: [http://docs.edhec-risk.com/rsc/092410/Programme\\_legalculture.pdf](http://docs.edhec-risk.com/rsc/092410/Programme_legalculture.pdf).

If you would like to register please click here: <http://www.regonline.co.uk/Register/Checkin.aspx?EventID=895033>

The Conference Web pages: <http://www.edhec.com/legalculture>

Launched in 2007, the LegalEdhec Research Centre aims at contributing to a better recognition of the role of law and lawyers in companies' strategies. Its activities result in publications in the best national, but also international, law and management reviews. LegalEdhec benefits from major professional organizations' support, such as the AFJE (French Association of general counsels and in-house lawyers) and the ACE (Number one French professional association of business attorneys), and from companies with which LegalEdhec Research Centre develop research projects.

For more information about LegalEdhec Research Centre's activities and achievements, please click here: <http://legal.edhec.com>

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### The Teaching of French Law in Poland



**The conferral of a doctoral degree *honoris causa* by the University of Tours on October 7, 2010 on Mr. Malgorzata Szafnicka, co-director of the French School of Law in Lodz and the ranking of the Master Tours - Lodz in 4th place by a rating agency in 2010 provide an opportunity to focus on this Franco-Polish university cooperation.**

Since 2003, Lodz, the third largest city in Poland, located 120 km from Warsaw, has hosted a School of French Law, wherein the generalist training in French and European Law was rounded out in 2008 by the "Master 2 Professionnel Juriste Européen" [Professional Master's 2 - European Jurist]. Under the joint direction of Malgorzata Pyziak-Szafnicka, Dean of the School of Law and Administration of Lodz, and of Patrick Baleynaud, who in Tours is in charge of legal instruction in central and eastern Europe, the School today offers two cumulative curricula which are taught in French. They are directed at the body of 4th and 5th year law students at the Polish University, as well as to legal professionals. The graduates thus obtain two diplomas from the respective partner universities and, in addition, have various options to extend their studies for the Master 2.

## **The “Master 2 Professionnel”**

In 2008, the university expanded its offering with the establishment of a “Master 2 Juriste Européen”, training for professionals in the field and which is directed in Tours by Professor A. Berramdane. The novelty of this approach is two-fold: to train jurists and high-level executives specialized in the Law of the European Union who are likely to be recruited to work at the European level and, for students having already completed a cycle of studies in Polish law, to pursue courses on French law. In addition to the *Master* from Tours, a Master’s Degree [Diplôme Magisterium] in French law – specialty “Juriste Européen” is awarded by the University of Lodz.

### **A diversified and balanced partnership**

Supported since its establishment by the Ministry of Foreign Affairs, this program benefits from, in addition to the important contributions of the partner universities, assistance based on decentralized cooperation. As to the teaching of the *Master* itself, it is provided for more than half by Polish instructors in the French language.

### **Results and outlook**

The initially very rigorous criteria for admission to the School explain the high rate of success and the significant number of *cum laude* degrees. From the standpoint of exchanges, this partnership has energized transfers of instructors and Erasmus students which would be non-existent in the absence of this school. Several instructors from Lodz have thus taught at the University of Tours whereas their French counterparts have participated in several colloquia in Lodz.

On the subject of the degrees, meaningful improvements are to be noted from the example of the validation under reserve of the university conditions for the first year of training, in Master 1, of the duration of the training reduced to one year, instead of two, to make the Polish curriculum correspond to the French one, and of the integration of the French-language legal channel in the curriculum of the University of Lodz.

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On January 17, 2011, the *Tribunal de Commerce* of Paris will inaugurate an international chamber, an event all the more in the nature of an official endorsement because this chamber, which already exists, remains unknown to the general public. The President of the *Tribunal de Commerce* of Paris, Christian de Baecque, explains the stakes of this rehabilitation.

**What has driven the need for official recognition of the international chamber of the *Tribunal de Commerce* of Paris?**

Some months ago, I learned of a draft law issued by legislators in Germany allowing documents to be examined by a court without their translation being mandatory. I found the idea to be excellent and after some research, I realized that the French Code allows this practice.

Many people share this idea, with the objective of promoting Paris as a judicial location. There is, in effect, a currently ongoing struggle between the Anglo-American law and civil law. And it is up to us, at the *Tribunal de Commerce*, to ponder specific actions.

**Is the international chamber of the *Tribunal de Commerce* of Paris therefore participating in this promotional effort?**

Yes, absolutely. The stakes underlying a general recognition of this chamber is to avoid the outflow of judicial business to foreign courts. All of the chambers of the *Tribunal de Commerce* in the resolution of disputes are specialized. We thus also had a chamber specialized in international law. It operated when the parties were neither French nor European. But obviously there were few litigated disputes that actually justified the existence of this chamber. The innovation at the level of the *Tribunal* is to make public the existence of this chamber, and this publicity should put the *Tribunal de Commerce* of Paris in a strong position to handle international disputes and thus enhance the position of the civil law.

**Could you tell us about the composition of this international chamber?**

The 3rd Chamber of the *Tribunal*, which is the international chamber, will be composed of nine judges having the requisite knowledge of foreign languages, whether English, German or Spanish, so as to be able to accept exhibits that have not been translated into French (to the extent, obviously, that all the parties would be in agreement ). This does not exclude the use of foreign languages in any other chamber. The international chamber wishes to serve as a model, it is not intended to be exclusive.

**Three languages have been selected, English, German and Spanish. Why not use only English, as is the case in Germany?**

In most cases, the judges of the *Tribunal de commerce* have had the occasion throughout their careers to draft contracts in a foreign language. They have mastered the fine points of the language. Here it is not solely a question a question of translation; the words have an economic meaning and not only a literary one. Also, if that judge has the language skills to grasp the subtleties of a document, it seems logical to provide wider latitude to this mode of operating. Of course, the judgment and the consequences that the judge derives there from will be drafted in French.

With the 3rd Chamber, the use of such or another language will depend on of the language skills of the judges. It so happens that next year I will have a judge who speaks Spanish and two German-speaking judges, from whence the decision to hear cases in these two languages.

**You are quite willing to state that the object of the process is marketing.**

We are in fact going to put in place a mechanism that already exists in a new packaging, and this is being done so as to promote a practice that is unknown to the judges themselves. The latter, just as is the case with the lawyers, often lose a lot of time in translation. Certain cases bypass the *Tribunal de Commerce* because of this linguistic obstacle, and I am not referring here to foreign businessmen who, for lack of information as to this mechanism, do not come to attend the hearings. The re-implementation of this international chamber must show that the language is not a barrier for pursuing international dispute resolution in France.

### **Germany, The Precursor in Hearing Cases in a Foreign Language**

**In Germany, the Rhine-North-Westphalia and Hamburg Länder, in 2009, took the initiative of putting international chambers in place in the Courts of First Instance of Hamburg and Koln for international commercial cases. Mr. Brauch, Attorney offers some clarification on the current situation and on the differences in relation to the French mechanism.**

The establishment of these first international chambers was followed in 2010 by a request to the *Bundesrat* (the representative council of the *Länder* in the Federal Republic) to amend the Federal Code on the Organization of the courts so as to introduce this model in the other *Länder* of the Federal Republic.

In these "pilot" chambers, the proceeding may thus be held entirely (memoranda of the parties, probative evidence, and oral argument at the hearing and the decisions of the Court) in English upon the request of both parties.

English is the only language selected for these chambers because, considered to be the language of international trade, it also serves to pacify the struggles with the courts, with those in England for example, so that the case can be conducted in English in accordance with civil law. English is also in many cases the language of neutrality, as in the case of Franco-German transactions.

This mechanism of the international chamber seems go further than that its French counterpart, in the sense that the entire proceeding, from the arguments to the judgment and inclusive of the pleadings, is pursued in the English language. Only the executory portion is translated for the bailiff into German. For these specialized chambers, the Court of Appeals is also considering establishing special chambers dedicated to proceedings held in English.

As soon as the Federal code of procedure is amended, the establishment of these international chambers will extend to other *Länder* in cities such as Frankfurt, Munich, Stuttgart and Düsseldorf. I absolutely approve of these mechanisms which are especially effective in handling international contracts for financial services or of merger/acquisition, an area in which I am especially involved. In such transactions, all of the documents are often drafted in English, even if the two parties are neither English nor American, but German and French or other. It may be, in fact, that these companies are affiliated with American or English groups, and that the representatives of the parent companies are insisting on having the case litigated in an English language proceeding. Until now, it was necessary in such a case to have recourse to international arbitration or to a foreign English-language court. The establishment of such international chambers thus allows for a proceeding to be held before a German State Court. This is a real opening onto the international horizon.