

Translation of Japanese Statutes

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Contents

- I. Introduction
- II. Procedure of the Translation, Quality Review of the Translation and Publication
- III. Difficulties in Translation of Legal Terms Unique to Civil Law
- IV. Style
- V. Tools for Translation of Civil Law Terms into English

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I. Introduction

In Japan, the Government started the translation of Japanese statutes into English in 2003. The purpose of the translation is to provide readable and consistent translation of Japanese statutes. Until then, there were some translations of Japanese statutes. However, the quality of the translation was poor. Sometimes, users could not grasp the meaning of the translated English. Additionally, there was a lack of uniformity of the translated words among translated statutes. In the translation of statutes, a specific legal word with a legal definition should, hopefully, be translated into a specific English term in all translations. For example, “*kabushiki kaisha* (株式會社)” means an entity similar to a business corporation, but is now translated as “stock company”. Therefore, the word “*kabushiki kaisha*” must always be translated as a “stock company” whenever the word “*kabushiki kaisha*” appears in any statute. It must not be translated as a business corporation, corporation, joint stock company or public company elsewhere in the translation of statutes. Otherwise, users are confused if these words have different translations.

The reason why good translation of Japanese statutes does not exist is as follows. In order to translate Japanese statutes into English, translators must have enough knowledge in Japanese law and in common law. The knowledge should be broad enough, from private law to public law. We could find such qualified translators only from law professors or lawyers who studied in common law countries. Translation work is not appreciated in the academic world. In addition, it is time consuming; therefore, professors are reluctant to perform translations. Practicing lawyers who have studied law in common law countries are too busy and too expensive. Therefore, the translation of Japanese statutes with acceptable quality is not commercially possible. The only feasible way to produce English translation of Japanese statutes with high quality is by using Government money.

In order to achieve the consistency, the Government developed a translation dictionary with the help of Professor Koji Matsuura of Graduate School of Law

of Nagoya University and Professor Katsuhiko Toyama of Graduate School of Information Science, Nagoya University. They collected English translations of Japanese statutes previously made haphazardly by various ministries in Japan. Then, the professors and researchers analyzed the collection and compiled a Japanese-English legal dictionary (“Standard Translation Dictionary”). There was no time to elaborate the dictionary. The translation of Japanese statutes was an urgent business pressured by various organizations.

Then, by using that dictionary, each Ministry involved private translation companies and let them translate statutes which the respective ministry was responsible for its administration and believed to be important. The Standard Translation Dictionary was prepared mainly for the guidance to translators of private translation companies that translate statutes from an order of respective ministries. Therefore, it does not contain academic legal words that appear only in the legal text books or treatises.

It is not an easy job to assign one English word to one legal term in Japanese. In the case of “*kabushiki kaisha*” we could do that. However, in the case of “*saiken* (債權)” we could not do that. In the past, a famous professor assigned the word “obligation-right” for the translation of the term “*saiken*”. Unfortunately, I do not believe that anybody who knows English but not Japanese understands what an “obligation-right” means. There is no word in German or French that corresponds to the term “*saiken*”. We decided to assign the word (1) “claim,” (2) “(account) receivable,” (3) “credit,” and (4) right in personam to be selected in accordance with the context. For “*saikensya* (債權者),” we assigned (1) the obligee and (2) the creditor.

It also contains words that are not legal but appear frequently in Japanese statutes that are difficult to translate into English. An example is “*taisaku* (對策)” which is not a legal term. As corresponding English words, the Standard Translation Dictionary suggests “counter measures,” “control measures,” “measures,” “preventive measures,” “retroactive measures” and “policy measures”. Because the word “*taisaku*” does not have a clear fixed legal definition and have different meanings according

to the context, the Standard Legal Dictionary lists several possible translations to be selected by translators in accordance with the context.

The Standard Translation Dictionary contains many accounting terms because accounting terms appear frequently in statutes and sometimes difficult to translate. It is partly because there are no uniform accounting terms used globally. Often, terms under American GAAP are different from terms under IFRS. Because inconsistencies in the terminology in the translation of Japanese statutes are not desirable, we selected one translated term for one Japanese accounting term.

Usually, compiling a dictionary needs a lot of years. Because we did not have enough time at the beginning, the Standard Legal Dictionary had many errors and inappropriately translated English words. For example, the word “*kinkyu hinan* (緊急避難)” was translated as “avoidance for reason of present and clear danger”, which is incorrect. The word “*kinkyu hinan*” presents an idea mainly used under criminal law that means the defence of a person who caused harm to the body or property of others in order to avoid imminent danger to the person. The closest idea in English is “necessity” which means “A justification defence for a person who acts in an emergency that he or she did not create and who commits a harm that is less severe than the harm that would have occurred but for the person’s actions”.¹⁾ The famous phrase of “present and clear danger” is an idea under a U.S. Supreme Court case in connection with the freedoms of speech. It has nothing to do with the defence in criminal cases.

However, the Standard Translation Dictionary has been improved every year through the discussions at many meetings of Law Translation Expert Council in the Cabinet Office and, later, at the Japanese Law Translation Council (“JLT Council”) in the Ministry of Justice. The improvement work still continues. Now, it contains 3783 words. Though I am not yet fully satisfied with its contents, present versions of the Standard Translation Dictionary are far better than its first edition. As the Standard Translation Dictionary has improved, the quality of translation produced

1) Bryan A. Garner, editor in Chief, Black’s Law Dictionary 10th ed.(2014), 1193

by private companies has also improved. In the early years, JLT Council rejected many translations submitted by various ministries for the reason of poor quality. Rejections by JLT Council have now become rare.

Also, the Ministry of Justice prepared a Guide Book for Japanese Law Translation (“*horei honyaku-no tebiki*”) (“Guide Book”). The Guide Book sets forth the rules and styles of the translation and cautions to be exercised by translators. For example, The Guide Book makes it a rule to avoid using “he/she” and “his/her”.

When a ministry asks a private translation company to translate a statute, it requests the translation company to use the words in the Standard Translation Dictionary and abide by the Guide Book.

In the preface of the first version of the Standard Translation Dictionary, the following statement is included.

This dictionary and reference work was created with the purpose of making it possible for uniform, reliable English translations of Japanese laws to be made promptly and on an ongoing basis, and comprises the *Basic Approach to Translation* and the *Legal Terms Dictionary*.

In our globalizing world, it is crucially important for the laws of our country to be correctly and easily understood. In particular, recent reforms²⁾ have noted the need for an immediate effort by the government to prepare foreign language translations of Japanese laws from the perspective of facilitating international transactions (enhancing international competitiveness), encouraging investment in Japan, driving support for legislative development, furthering global understanding about Japan, and making life more convenient for the foreign residents who live here, among others.

It is in this context that, in 2005, the government established the Liaison Conference of the Relevant Ministries and Agencies for Developing a Foundation for Promoting the Translation of Japanese Laws and Regulations into Foreign Languages in the Cabinet, comprehensively and multilaterally investigating questions of infrastructural

2) Recommendations of the Justice System Reform Council - For a Justice System to Support Japan in the 21st Century - , June 12, 2001

development for facilitating the

translation of laws into foreign languages in the Study Council for Promoting the Translation of Japanese Laws and Regulations into Foreign Languages created beneath it, and establishing below that a working group made up of scholars and lawyers, and created the first edition of this dictionary with the cooperation of researchers from the University of Nagoya Graduate School of Information Science and other institutions, along with the cooperation of the relevant ministries.

On March 23, 2006, the Study Council submitted this dictionary to the Liaison Conference of the Relevant Ministries and Agencies, and it was established that the ministries and agencies of the Conference would comply with the dictionary when translating Japan's laws into English. Accordingly, from here on out, when governmental departments translate Japanese laws into

English, this dictionary and reference work will provide them with the basic rules to ensure uniformity and reliability in their translations, and I strongly anticipate that even private entities

will comply with the dictionary when translating our laws. Of course, even if the relevant ministry or agency has translated a law in accordance with this dictionary, it goes without saying

that this would not constitute an "official translation"; that is to say, only the laws themselves have legal effect, and the place of their translations is as a reference to aid in the understanding of the law.

This dictionary was created through tremendous efforts, and under strict time constraints, by the members of the working group. As chairman, I would like to once again express my gratitude for the dedicated contribution of each member. It was established that the necessary revisions to this dictionary based on subsequent translation outcomes in the relevant ministries and the opinions of experts and users would also be made by the aforementioned Liaison Conference; preparatory work on the revisions was conducted by the Law Translation Expert Council from 2006 to 2008, and has been conducted by the Japanese Law

Translation Council since 2009. Following the revisions of 2007, 2008, and 2009, the Liaison Conference of the Relevant Ministries and Agencies approved this revised version of the dictionary on March 26, 2010, and I look forward to seeing its contents continue to be enriched. (March 2010)

JLT Council consists of 17 members. Two are foreign lawyers who are licensed lawyers in common law countries, seven are law professors, and eight are Japanese practicing lawyers with experience at law schools or universities in common law countries. The JLT Council reviews the appropriateness of the English words assigned as the translation of a Japanese word. They also decide the new entries into the Dictionary and deletion of unnecessary words from the Dictionary.

Meetings of JLT Council are divided into three groups. Each group has four to five meetings in a year. Full member meetings are held twice a year.

There are two advisors whose mother language is English; they are not lawyers, but they are quite capable. One of them can read Japanese laws in Japanese and they are familiar with the legislation style book of various common law jurisdictions. In June 2016, two experts on evaluating the quality of translation will be added that are associate professors of law at universities.

II. Procedure of the Translation, Quality Review of the Translation and Publication

Each ministry is required to establish a translation plan for every fiscal year and submit it to Ministry of Justice. The plan shows the list of statutes within the jurisdiction of respective ministry which the ministry is going to translate in the next fiscal year. Then, the ministry asks private translation companies to translate the statutes, and each translated statute is submitted to the Ministry of Justice. At the Ministry of Justice, a member of the JLT Council or a newly added translation quality evaluation expert reviews the submitted translation to decide if the translation can be published on the web site on provisional basis. If the quality of the translation

warrants it, the translation is published at the website of the Japan Law Translation of the Ministry of Justice³⁾ with the indication “Provisional”. If the quality of translation is poor, the translation is returned to the original ministry. In such cases, the ministry that originated the translation would ask the private translation company who poorly translated the statute to improve the translation. However, in many cases, such a translation company does not have enough capability to produce a translation of good quality. Therefore, improvement of translation by the same translation company to an acceptable level cannot be expected. In that case, the poor translation is discarded.

If the submitted translation has an acceptable quality, the native advisors review and improve its English expression. After the review and improvement, one of the members of the JLT Council again reviews the translation from the perspective of law experts. The member chooses new words to be added to the Standard Translation Dictionary and recommends changes to the Dictionary that the member noticed during their review work. The suggestions of those additions and improvements to the Standard Translation Dictionary are discussed and approved at the JLT Council. In this way, the Standard Translation Dictionary is revised in each year.

We believe that the most important thing in the translation of Japanese Statutes is to convey an idea the most similar to the original Japanese statutory provisions to those who understand English but not Japanese. It is assumed that the majority of the audience using the translations based on this dictionary have a certain level of knowledge about Anglo-American law (for example, law practitioners and business persons), but have no knowledge of the Japanese language or Japanese law, and as such, the aim is to produce accurate and easy-to-understand translations that allows this audience to understand the general meaning of the original texts.

Though the copyright to the translation of statutes belong to the government of Japan, it is the policy of the Government not to insist on companies paying royalties. Therefore, a private company may publish a paper based statute book

3) <http://www.japaneselawtranslation.go.jp/>

in English using JLT translations without paying royalty.

III. Difficulties in Translation of Legal Terms Unique to Civil Law

(a) “*Horitsu-koi* (法律行爲)”

There are many legal terms originated in Germany or France and imported into Japan that have no corresponding ideas in common law. One example is “*horitsu-koi* (法律行爲)”. It is “*Rechtsgeschäft*” in German and “*act juridique*” in French. There are no corresponding words or even a word with similar meaning in English. It means an act of a person to which law gives a legal effect in accordance with its intention of the act. A typical example of “*horitsu-koi*” or “*Rechtsgeschäft*” is a contract. The Draft Common Framework of Reference (“DCFR”), Principles of European Law on Sales, Principles of European Law, Commercial Agency, Franchise and Distribution Contracts help when such Japanese legal terms that have no corresponding English words. These are the works compiled by European law professors for preparing the European Civil Code. Those professors wrote these books in English, but the discussion basically follows the civil law tradition. Therefore, so far as the legal terms in the area of private law are concerned, we can find out many good English words assigned to these legal terms unique to the civil law system. In DCFR, the term corresponding to “*Rechtsgeschäft*” is “juridical act”. As a result, in the Standard Translation Dictionary, we adopt the word “juridical act” for the translation of “*horitsu-koi*”. A user of JLT who happens to be familiar with the discussion in Europe may understand the meaning of “*horitsu-koi*”. Desirably, the Standard Translation Dictionary should have an explanation of the meaning of “*horitsu-koi*” targeted to the people in common law countries. But it does not have an explanation of the meaning of terms.

(b) “*Yuka-shoken* (有価証券)”

Another difficulty involves words created by dogmatic law professors. Japanese law professors have strange inclination to collect legal terms that have a common element and give a name to that group of words having the common element. An example is “*yuka-shoken* (有価証券)”. “*Yuka-shoken*” is a name given collectively to negotiable instruments, securities like stock certificates and bonds, and documents of title like bills of lading. The common element is that these instruments, certificates or documents represent a certain property right and holder of such property right must present the instrument, certificate or document in order to transfer the right represented by such instrument. In German it is called “*Wertpapier*”. The direct translation of “*Wertpapier*” into English is value paper. However, people in English speaking countries would probably have no idea what the term “value paper” means. I have consulted with law professors in the United States, in Australia, UK and Germany who know Japanese language well. Nobody could suggest an appropriate English word for “*yuka-shoken*”. The German-English Dictionary of Legal and Commercial Terms⁴⁾ suggests corresponding English words as security, document/certificate of value, instrument (evidencing an assets or property interest), negotiable instrument, instrument of value (representing right or asset). Nobody in the common law countries who only understand English would be able to image negotiable instrument, securities and documents of title as a whole by these translated English terms.

(c) “*tanpoken* (担保權)”

Another example is “*tanpoken* (担保權)”. *Tanpoken* means the right which a secured creditor has on the collateral. In English, mortgage is close to “*teitoken* (抵當權)”; pledge is close to “*shichiken* (質權)”; and lien is close to “*sakidori-tokken*

4) Romain, Byrd and Thielecke, Dictionary of Legal and Commercial Terms, German - English 4th ed., C.H. Beck (2002)

(先取特權)” or “ryuchi-ken (留置權)”. However, there are no words that correspond to “*tanpoken*” that is a collective word abstracted from the word from “*teitoken*,” “*shichiken*,” “*sakidori-tokken*” and “*ryuchi-ken*”. A higher abstraction level corresponds to greater difficulty finding English terms.

There are many other such examples. In order to solve the problem, we have to create a word that has a property of an English word. In that case, we must explain the meaning of such created quasi-English terms.

(d) “*zeni* (善意)” and “*akui* (惡意)”

Another example of the difficulty in translating Japanese legal terms is the translation of strange legal terms such as “*zeni* (善意) (*Gutter Glaube*)” and “*akui* (惡意) (*Böser Glaube*)”. The direct translation of “*zeni*” is good faith and the direct translation of “*akui*” is bad faith. However, in the first class of Civil Code at the Law Department of Tokyo University, a professor told us that the word “*zeni*” is a legal term that does not have any good or bad connotation. Simply it means “without knowledge”. Also, “*akui*” is also a legal term that does not have any connotation of good or bad. Simply, it means “with knowledge”. The professor did not explain why lawyers use the words differently than ordinary people. The words “*zeni*” and “*akui*” have clear implication of good or bad in ordinary world.

In the course of the translation of statutes, at first, we believed that “*zeni*” should be translated as “without knowledge” and “*akui*” as “with knowledge”. These English words are clearer and they have far less chance to be misunderstood. Soon we realized that the words “without knowledge” and “with knowledge” for “*zeni*” and “*akui*” did not work well. For example, the translation of Article 192 of the Civil Code of Japan states the following.

Article 192 A person who commences the possession of movables peacefully and openly by a transactional act, acquires rights to exercise with respect to such movables immediately if the person is without knowledge (*zein-de*) and faultless.

However, under this translation, a reader does not understand the context of

“without knowledge”. Probably, natural interpretation leads “without knowledge” to mean that the person commenced the possession of movables without knowledge on the commencement of the possession, which does not make sense. Whenever the words “without knowledge” are used, readers wonder about the object of the “knowledge”. In the case of Article 192, the right answer of the object of the knowledge is the fact that the transferor of the movable did not have a good title to transfer⁵⁾. We cannot supplement the object of the “knowledge” without a Supreme Court case or unanimous opinion of law professors because it goes beyond the function of translation and enters into the area of interpretation of law. We are trying to avoid the interpretation of statutes by way of translation as much as possible. In addition to that, in many cases, there are no Supreme Court cases on the subject or explanation from law professors.

Moreover, there are cases where “*zeni*” implies “bad”. Article 770, paragraph 1, item 2 is set forth as follows:

Article 770 (1) Only in the cases stated in the following items may either husband or wife file a suit for divorce:

- (i) … (omitted)
- (ii) if abandoned by a spouse *akui-de* (without knowledge, in bad faith):
- (iii) … (omitted)

In this case, if the word “*akui*” is translated as “without knowledge,” which does not make sense. Actually, the word “*akui*” in this provision is understood by law professors as meaning ethically bad intention⁶⁾.

Paragraphs (2) and (3) of Article 847-4 of the Companies Act set forth the following:

(2) When a Shareholder (meaning a Qualified Former Shareholder or a shareholder of an Ultimate, Wholly Owning Parent Company, etc.; the same shall apply hereinafter in this Section) files an Action to Enforce Liability, a court may order said Shareholder,

5) Supreme Court November 27, 1952, 5 - 13 Minshu 775

6) Zentaro Kitagawa, *Shinzoku-Sozoku (Minpo Koyo V)* 2nd ed., Yuhikaku (2001), 67; Takashi Uchida, *Minpo IV shinzoku-sozoku*, Tokyo Univ. Press (2002), 117

etc. to provide reasonable security in response to a petition by the defendant.

(3) When a defendant intends to file the petition set forth in the preceding paragraph, the defendant shall make a prima facie showing that the plaintiff filed the Action to Enforce Liability in "akui (without knowledge, in bad faith)"⁸.

It is understood that the word "akui" means the plaintiff filed the action improperly or for improper purposes⁷).

In this way, even the statutes do not consistently use the word "akui". For these reasons, it may be better to translate the word "akui" as "in bad faith" even though in many cases such translation is misleading.

"Aku" of "akui" means "bad" in Japanese. However, law professors teach students that in law, "akui" has nothing to do with "bad" or "good". It is very different from daily usage of the word "akui". I believe such strange usage only understood among lawyers must be avoided. In German, the situation is the same. About 120 years ago, Japanese scholars imported this strange German terminology. In French, the corresponding words "*mauvaise foi*" and "*bonne foi*" are used differently from the words "*Böser Glaube*" and "*Gutter Glaube*". French words "*mauvaise foi*" and "*bonne foi*" have connotation of good or bad⁸). Regrettably, there is no movement of "Plain Japanese" as corresponds to "Plain English".

(e) "*jigyosha*" (a person who run a line of business)

In Japanese, persons or companies who run a line of business is called as "*jigyosha*". *Jigyosha* is a postfix. For example, railway companies are called "*tetsudo-jigyosha*". A common carrier is "*unso-jigyosha*". "*Shitauke-jigyosha*" is a subcontractor. Small enterprises are "*Shokibo-jigyosha*". Legally, "*jigyosha*" means a collective set of persons or companies who run commercial, industrial and financial businesses. The word "*jigyo*" as a legal term means continuous repetition of an act of a similar nature. It is not limited to for a for-profit business. Also under Japanese law, "gyo"

7) Hideki Kanda. 248

8) *Lexique des Termes Juridique* 2014-2015, Dalloz, 132 and 635

has the similar meaning that it means repetitious act without an element of profit. Criminal offence with negligence in pursuing “*gyo*” or repeated acts, is punished in a heavier way than those with negligence in an isolated act. One who caused a traffic accident and injured others with negligence will be punished with heavier punishment because driving a car is usually a repetitious act and therefore it was caused by negligence in pursuing “*gyo*”.

For the translation of statutes, a same word or postfix should be translated in a same word to keep consistency. However, English language does not have a postfix similar to “*jigyosha*”. Therefore, it is impossible to translate the post fix “*jigyosha*”. There is a strong insistence among Japanese officials to translate “*jigyosha*” as “business operator”. However, it sounds strange to all native users of English. In English, an operator means someone who operates a machine, equipment or vehicle. Toyota Motor Corporation cannot be called as a car manufacturing business operator. In conclusion, we decided that the Japanese words with the postfix of “*-jigyosha*” should be translated differently according to the kind of business. For example, we translated “*testudo-jigyosha*” as a railway company, “*yusen-television-hoso-jigyosya*” as a Cable TV provider, “*denki-tsusin-jigyosya*” as a telecommunication carrier and “*shokibo-jigyosha*” as small enterprise.

(f) Translation of Japanese Legal Terms into Similar English Term with Significant Different meaning

We have translated the word “*teitoken* (抵当權)” into “mortgage” as mentioned before. Some said that “*teitoken*” is different from “mortgage”. Precisely speaking, no Japanese legal term has a corresponding English word with the same meaning. It is because the legal system is different (civil law v. common law) and cases are different. But, both *teitoken* and mortgage are given to a creditor who wish to obtain payment from the collateral and the collateral is real property. While under *teitoken*, ownership of the collateral does not change, while under mortgage the title to the collateral is transferred from the mortgagor to the mortgagee. Under

teitoken, a creditor must apply to the court for the enforcement of *teitoken*. If the debt secured by *teitoken* is not paid when due, the creditor eventually is paid through the compulsory public sale of the collateral by the court. The *teitoken* holder (the creditor) is paid from the proceeds in accordance with his rank of priority of *teitoken*. In the case of a mortgage, the enforcement is somewhat different from jurisdiction to jurisdiction. However, since the mortgagor transfers the title to the collateral to the mortgagee, the enforcement of the mortgage has basically forfeited the redemption right of the mortgagor. The mortgagor can no more redeem the collateral after the foreclosure.

Some professors insist that “mortgage” should be translated into hypothec. According to Black’s Law Dictionary⁹⁾, the word “hypothec” is explained as “(16c.) Civil Law. A mortgage given to a creditor to secure a debt; HYPOTECA, Cf. HYPOTÉQUE”. The Longman Dictionary of Law¹⁰⁾ does not have the entry of “hypothec”. I asked several American lawyers and Australian lawyers if they knew the word “hypothec” but most of them did not. Probably even if somebody knows the word, he may not know if the collateral is limited to real estate. The aim of our translation is to convey the meaning of the Japanese legal term to those who understand English but not Japanese in such a way that creates the closest image. Many of the targeted users of the translation have not heard of the word “hypothec” nor can tell if it is for real property.

(g) “Pertaining to”

According to English-Japanese Dictionaries, they assign a word “*… ni kanshite* (in connection with, or relating to)” for the words “pertaining to”. Therefore, the Japanese who studied English hard to get admission of good universities believe that the words “pertaining to” have the same meaning as “*… ni kanshite*”. Therefore,

9) Bryan A. Garner, editor in Chief, Black’s Law Dictionary 10th ed.(2014)

10) P.H. Richards and L.B. Curzon, The Longman Dictionary of Law 8th ed., Pearson Education Ltd., (2011)

whenever they find the words “... *ni kanshite*,” they replace them with “pertaining to”. However, the opposite is not always true. For example, many Japanese say “a lawsuit pertaining to the document”. For English speaking people, it sounds strange. According to the Oxford Dictionary of English, “pertain” means the following: “1. (pertain to) be appropriate, relate or applicable to *matters pertaining to the organization of government*. Chiefly in law belonging to something as a part, appendage, or accessory; *the shop premises and stock and all assets pertaining to the business*”. Therefore, “a document pertaining to the lawsuit”. makes sense, but not the opposite.

When I told this story to a Korean Professor of Translation at the KLRI CLT International Conference held on April 22, 2016, she said that she had same problem in Korea with respect to the phrase “pertaining to”.

(h) “*Kaigi* (會議)” and “Meeting”

Ordinarily, the term “*Kaigi*” means an assembly of people to discuss and decide something. Another example is an assembly of government agencies, such as Security Council of Japan, whose original Japanese name is “*anzen hosho kaigi*”. JLT Council itself is the translation of “*horei gaikokugoyaku suisin kaigi*”. If the word “*kaigi*” means an organ, the word “*kaigi*” should be translated as “council”. However, sometimes it is confusing. Every stock company has a board of directors. The name board of directors means an organ of a company. In Japanese, it is “*torishimariyaku-kai* (取締役會)”. Since in Japanese, it has “*kai*”, some believe it means a meeting of directors. They tend to write “Directors must attend the board of directors”, which is wrong. Directors attend the meeting of the board of directors.

(i) Romanized Japanese words

In the past, romanized Japanese expressions were frequently used as translation of some Japanese legal terms. For example, in the past, the following romanized

Japanese words were used as translations: “*jyokoku* appeal” (final appeal), “*koso* appeal” (appeal to the second instance court), “*choeki* imprisonment” (imprisonment with required labour), “*shinkin* bank” (credit union).

The purpose of translation is to convey the meaning of Japanese words to those who do not understand Japanese. However, those who do not understand Japanese cannot understand romanized Japanese. Therefore, we decided not to use romanized Japanese.

- (j) Deviation from the rule that a Japanese legal term should have one translated English word that should be used uniformly for the translation of all statutes.

In order to keep uniformity, we decided that a Japanese legal term that has a clear definition should be translated into an English term, which should be used uniformly in any translation. However, soon after the beginning of reviewing of the Standard Translation Dictionary, we gave up the strict adherence to the rule. In the case of the translation of “*kabushiki kaisyā*” or stock company, we have no problem because the legal entity named as “*kabushiki kaisyā*” always has legal personality, limited liability of investors called shareholders and designed for large number of shareholders. The nature does not change from statute to statute or according to the context.

However, if the original Japanese legal term is ambiguous, we have to assign different words in accordance with the difference of meanings. Translation of “*saiken* (債權)” as explained before is a good example. Another example is “*akewatasi* (明け渡し)” which is translated as (1) vacation (voluntary surrender of real property) and (2) eviction (involuntary surrender of real estate). To the extent possible, we add explanations on the differences. In case of “*itaku* (委託)”, three choices are listed: (1) entrustment, (2) consignment and (3) delegation [delegation of power under Trust Act and Trust Business Act]. “*itaku-sha* (委託者)” is translated as (1) requesting party, (2) delegating party, (3) entrustor [assignment of work], (4)

settlor [in trust] and (5) consignor [in case of consignment or carriage of goods]

(k) postfix “*to* (等)”

“*To* (等)” means “and so on”. In the Japanese statutes, “*to*” is used quite frequently, especially in definitions.

Article 1 of the Financial Instruments Act is set forth as follows:

Article 1 The purpose of this Act is to ensure fairness in, inter alia, the issuance of Securities and transactions of Financial Instruments, etc. and to facilitate the smooth distribution of Securities, as well as to achieve fair price formation for Financial Instruments, etc. through the full utilization of the functions of the capital markets, by, inter alia, streamlining systems for the disclosure of corporate affairs, specifying the necessary particulars relevant to persons conducting Financial Instruments Business, and ensuring the appropriate operation of Financial Instruments Exchanges, thereby contributing to the sound development of the national economy and the protection of investors.

In original Japanese version, there are 6 “*to*” terms used. Even though a legal term in Japanese should always be translated to an English term in order to keep uniformity, too many “ etc.” is clumsy. In above translation, four translations of “etc.” are intentionally neglected because such omission does not mislead users and makes the expressions more natural.

IV. Style

(a) American English v. UK English

We decided to use American English in principle. It is because most of the members of JLT Council have experience studying in the United States. Therefore, we use “said” instead of “the said”.

(b) gender

We decided not to use “he/she” “his/her” in accordance with the rules of majority of legislation styles adopted in common law jurisdictions.

(c) insertion

Many Japanese have strong tendency to use a long insertion between an auxiliary verb and a verb. An example is as follows:

In case referred to in the preceding paragraph, a Book-entry Institution, etc. must, when it gives notice pursuant to the provisions of Article 168, paragraph (4), item (ii) or item (v) (including cases where applied mutatis mutandis pursuant to paragraph (6) of the same Article) or paragraph (7), item (iii) (including the cases where applied mutatis mutandis pursuant to paragraph (8) of the same Article) of the same Article, simultaneously provide notice on the matters listed in each item under Article 44, paragraph (2). (Article 46, paragraph (2) of the Order for Enforcement of the Act on Book-Entry of Company Bonds, Shares, etc.)

The above insertion makes the sentence very hard to understand. Many Japanese believe that a longer inserted phrase appears more similar to a legal document.

We do not rule out any insertion. For example, “An auditor, at any time, may ask the president or directors for a report on business processes or may investigate the status of the business processes and finances of the Association”. is permissible. Because the insertion is short and “at any time” which modifies “may ask” should preferably be placed near to the modified words.

(d) Latin words

We try to avoid Latin words so that the translation can be understood widely. There are some exceptions. “Mutatis mutandis” for “*junyo* (準用)” is an example. An alternative is “with all necessary changes”. But, this is not so commonly used by common law lawyers. “Superficies” for “*chijyoken* (地上權)” is another example.

We could not find better expression.

V. Tools for Translation of Civil Law Terms into English

(a) Dictionary

- (1) Bryan A. Garner, editor in Chief, *Black's Law Dictionary* 10th ed. (2014):
The most popular Legal Dictionary in the United States.
- (2) Bryan A. Garner, *A Dictionary of Modern Legal Usage*, 2nd ed.: The editor in Chief of *Black's Law Dictionary* wrote this. It is useful to know further than the simple meaning of legal terms.
- (3) P.H. Richards and L.B. Curzon, *The Longman Dictionary of Law*, 8th ed., Pearson Education Ltd., (2011)
- (4) Romain, Byrd and Thielecke, *Dictionary of Legal and Commercial Terms, German - English* 4th ed., C.H. Beck (2002)
- (5) P.H. Collin, Sigrid Janssen, Anke Kornmüller and Rupert Livesey, *Dictionary of Law, English-German/ German-English*, 2nd ed., Peter Collin Pub., (1998)
- (6) Karin Linhart, *Wörterbuch Recht, English-Deutsch/ Deutsch-English*, C.H. Beck
- (7) Henry Saint Dahl and Tamara Boudreau, *Dahl's Dictionary, French-English/ English-French* 3rd ed., Dalloz (2007)
- (8) Michael Doucet and Klaus E.W. Fleck, *Wörterbuch Recht und Wirtschaft, Deutsch-Französisch*, 7th ed., C.H. Beck (2012)
- (9) Michael Doucet and Klaus E.W. Fleck, *Dictionnaire juridique et économique*, 6e edition, français-allemand, C.H. Beck (2009)
- (10) Bernd Götz, *Japanese-Deutsches Rechtswörterbuch*, Seibundo (2007)
- (11) *Lexique de Terms Juridique*, translated into Japanese by Koichi Nakamura, Osamu Niikura and Gennari Imazeki, Sanseido (1996)
- (12) Zentaro Kitagawa ed., *Glossary, Doing Business in Japan*, Lexis-Nexis
- (13) Jujiro Ito, *A Japanese-English Dictionary of Legal Terms with Supplement*,

Daigaku-shobo (1953)

(b) Comparative law books in English and law books on Japanese law in English

- (1) Matias Reimann and Reinhard Zimmermann ed., the Oxford Handbook of Comparative Law, Oxford Univ. Press, (2006)
- (2) Konrad Zweigert and Hein Kötz, Introduction to Comparative Law, 3rd ed., Oxford Univ. Press, (1998)
- (3) Mathias Siems and David Cabrelli ed., Comparative Company Law - A Case-Based Approach, Hart Pub., (2013)
- (4) Kevin Jon Heller and Markus D. Dubber ed., the Handbook of Comparative Criminal Law, Stanford Law Books, (2011)
- (5) Curtis Milhaupt, J. Mark Ramseyer and Mark D. West, The Japanese Legal System, Foundation Press (2006)
- (6) Hiroshi Oda, Japanese Law, Oxford Univ. Press, (2011)
- (7) Shigemitsu Dando translated by B.J. George, Jr., Japanese Criminal Procedure, Fred B. Rothman & Co., (1965)
- (8) Shigemitsu Dando translated by B.J. George, Jr., The Criminal Law of Japan, The General Part, Williams. Hein & Co., Inc., (2005)

There are many comparative law treatises and articles in English in the area of private law, especially on contracts. However, in public law area, there are not so many. In particular, it is difficult to find a comparative law book in English in the area of administrative law.

(c) Materials for American bar examination in PDF format

I converted many books of Gilbert Law Summaries series into the PDF format and use search function of the PDF format to confirm the usage and collocation of the legal terms with verbs, adjectives and prepositions. Any kind of summaries of laws for preparation of American bar exam can be used.

REFERENCES

- Akiko Nakagawa, Interim Report of the Council for Promotion of the Translation of Japanese Statutes (“*Horei Gaikokugoyaku Jisshi Suisin Kento-kaigi no Chukan Hokokoku-ni Tsuite*”), 1302 *Jurist* 118, 2005.
- Claude Bockquet, *La traduction juridique: Fondment et méthode*, De boeck, 2008.
- Deborah Cao, *Translating Law*, Multilingual Matters Ltd., 2007.
- Koji Matsuura, Increasing Transparency of Japanese Law and the Translation of Japanese Statutes and Cases (“*Nihon Horei-Hanrei-no Honyaku to Nihonho-ni Tomeika*”) *Mondai Jyokyo*,”), 1284 *Jurist* 6, 2005.
- Noboru Kashiwagi, Current Discussions on the Translation of Japanese Statutes (“*Horei-no Gaikokugo-yaku-wo Meguru Giron to Kongo-no*”).
- Noboru Kashiwagi, Joy of the Translation of Japanese Statutes, (“*Horei-no Gaikokugoyaku-wa Tanoshii*”), 65-10 *Jiyu-to Seigi* 80, 2014.
- Simone Glanert, *De la traductibilité du droit*, Dalloz, 2011
- Tai Otani, The Start of Database System of Japanese Law Translation (“*Nihon Horei Gaikokugo Yaku Data Base-no Shido*”), 906 *NBL* 82, 2009
- Terutoshi Yamashita, Present and Future of the Promotion of the Translation of Japanese Statutes (“*Horei Gaikokugo Yaku-no Genjo-to Kongo*”), 1805 *Kinyu Homujijyo* 41, 2007
- Xavier North ed., *Traduction du droit et droit de la traduction*, Dalloz, 2011.

<Abstract>

Translation of Japanese Statutes into English by the government of Japan started in 2003 from scratch. At the Ministry of Justice, Japanese Law Translation Council (“JLT Council”) was formed. JLT Council continuously improves translation of Japanese statutes and the Standard Translation Dictionary created for use by translators in the translation of statutes.

Translation of Japanese statutes that belongs to the civil law tradition into English for the common law system involves many unique difficulties originated from the difference of the two legal systems, from the difference of the way of thinking of law professors of two legal systems and from the difference of the structure of Japanese language and English. Translation of Japanese statutes and their improvement is never ending work.

Key Words : uniformity, Standard Translation Dictionary, Japanese Law Translation, Guide Book, advisors (to JLT Council),

일본법령의 번역

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일본정부의 법령번역은 2003년에 처음으로 실시되었다. 일본법률번역위원회(Japanese Law Translation Council (이하, “JLT 위원회”))는 법무부 산하에 설립되어 지속적으로 일본법령의 번역품질 향상시키고 있으며, 번역가들이 법령번역에 사용하는 번역기준사전을 발간, 개선하고 있다.

대륙법계 전통에 속하는 일본법령을 영미법계 영어로 번역하는 것은 두 법률체계의 차이, 두 법률체계의 법학자들의 사고방식의 차이, 그리고

일본어와 영어의 문장구조의 다름에서 기인하는 다수 독특한 차이점들을 수반한다. 일본법령의 번역과 그 발전은 끝이 없는 작업이다.

주제어 : 일관성, 번역기준사전, 일본 법 번역 위원회, 가이드 북, 일본법률번역위원회 자문

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