



The 6th Asian Roundtable on Corporate Governance

Implementation and Enforcement in Corporate Governance

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Theme IV
Ensuring Judicial Infrastructure

Seoul, Korea
2-3 November 2004

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Theory and practice of specialised courts*

1. Introduction

The theme of this Roundtable is very well chosen. A developed set of corporate governance rules can only be successful with an effective enforcement framework. This notion is also present in the OECD White Paper on Corporate Governance in Asia. The second priority in the White Paper is that *‘[A]ll jurisdictions should strive for effective implementation and enforcement of corporate-governance laws and regulations’*.¹

Enforcement of corporate governance rules is a weak spot in a lot of developed market economies. It is therefore no surprise that this is also the current situation in transition and developing economies. During this Roundtable some of the most important enforcement mechanisms are addressed. These mechanisms cannot succeed without a developed judicial infrastructure. This is also emphasized in the first OECD Principle. A key factor in each judicial infrastructure is a court system with competent, capable and impartial judges. The White Paper mentions the following concerning courts:

*“Court systems should further strengthen their expertise and capacity to adjudicate corporate-governance disputes efficiently and impartially, including through establishment of specialised commercial courts and promotion of alternative dispute resolution.”*² (...) *“Areas for active experimentation should include specialised company law courts and investigatory and prosecutorial teams.”*³

In this presentation I will focus on the role of specialised courts as a means of establishing a well functioning corporate governance system. The first part of

this presentation addresses the theory of specialised courts and will lead at the end of my presentation to an answer to the question: Are specialised courts a good idea? The second part of this presentation is dedicated to the functioning of some specialised business courts in practice. This will lead to practical recommendations concerning the establishment of specialised courts for business matters.

As a preliminary remark I mention that almost all literature and practical experience with specialised business courts is in civil litigation. In general, civil litigation in business matters plays a larger role in Europe and the United States than in Asia. My primary focus is on civil litigation. Some arguments, however, can be applied likewise to specialised criminal litigation.

Theory of specialised courts

2. What is a specialised court?

Most jurisdictions in the world have specialised courts. A specialised court can either be set up as an independently functioning court or as an administratively created specialised division of an already existing general court.⁴ The way a specialised court is organised is not essential as long as there are safeguards for its proper and independent functioning. For example, a lot of European countries have assigned adjudication of commercial cases or bankruptcy cases to a specialised division of an existing general court.

A specialised court can be described as a court, or an independent division within a general court, with limited and usually exclusive jurisdiction in one or more specific fields of the law. Judges who serve in a specialised court are experts in the fields of law that fall within the court's jurisdiction.⁵

Fields of law that are frequently assigned to specialised courts are juvenile cases and tax cases. But specialised courts for cases on bankruptcy law, labour

law, patent law, commercial law and anti-corruption law are also not uncommon. There is a good deal of literature on the advantages and disadvantages of specialised courts.⁶ I will give an overview of these advantages and disadvantages.

3. Advantages of specialised courts

There are some strong arguments in favour of establishing specialised courts.

1. Specialised courts can resolve questions of law more efficiently and effectively. The judges in a specialised court are experts in their field with experience in handling matters in that field.
2. Specialised courts give decisions with better quality leading to more predictability.
3. Specialised courts can devote more time to individual matters, without having to give priority to other cases, such as criminal cases.
4. Specialised courts tend to adopt an informal approach to procedural matters. They are therefore better equipped to adjust the procedure to individual aspects of a case.
5. Specialised courts have a significantly higher percentage of settlements. The reason is probably because specialist judges can give better directions with more authority.
6. An argument that was especially raised in the U.S. is that general courts and other litigants can also benefit from transferring highly complex litigation to specialised courts, because the dockets of general courts are not drained by complex business cases.

These arguments are traditional arguments. They were already brought forward when competition was almost completely national. In today's world with a

global economy and opportunities to invest in whichever country or economy, there has evolved a very important argument in favour of establishing a specialised court for commercial and business matters.

7. A business court can play an important role in the economic development of regions or countries. It can be used as a tool to attract companies, businesses, investors and investments to a given jurisdiction or to prevent them from leaving. A prerequisite is that the specialised court gives added value to companies and investors. The argument of competitive advantages from specialised courts is of special importance for courts that specialise in business law and fields of law that are related to business, such as patent law, bankruptcy law or labour law.

Global competition between economies has recently been used as an argument in favour of business courts in the United States and in the Netherlands.⁷ This illustrates that the argument of competition is used in developed economies. The argument is in my opinion even more appealing for transition and developing economies.

4. Empirical data

There is substantial research that supports the assertion that enforcement is a key to effective corporate governance in transition and developing countries.⁸ It has even been suggested that enforcement is perhaps '*the*, central functional difference between developed market economies and developing countries'.⁹ There is also research that indicates that shareholder and creditor rights are being undermined by weak judicial systems in some Asian countries.¹⁰ The court system is an important feature of any judicial system. For private enforcement to succeed it is necessary to establish a set of civil procedures that

allow for efficient, expedient and just litigation.¹¹ Investors have remarked that many of the deficiencies in the legal environment are caused by the weaknesses of a judiciary which in many countries is underfunded, lacks commercial experience and is prone to being influenced by powerful local interests.¹² This weak enforcement environment is to the detriment of economic growth because foreign investors avoid jurisdictions with a weak enforcement environment or demand bigger returns for their investments.¹³ Economists have also pointed to the effect of weak enforcement on the quality of investments. Investments in a weak enforcement environment tend to be direct investments. Better enforcement will attract a larger short-term portfolio of equity and bond flows.¹⁴

5. Disadvantages of specialised courts

Strong objections are raised against specialised courts.

1. The American Judge Rifkind expressed the view that in time the body of law that is addressed by a specialised court, secluded from the rest, ‘develops a jargon of its own, thought-patterns that are unique, internal policies which it subserves and which are different from and sometimes at odds with the policies pursued by the general law’. Specialisation ‘intensifies the seclusiveness of that branch of the law and that further immunizes it against the refreshment of new ideas, suggestions, adjustments and compromises which constitute the very tissue of any living system in law’. In a principal statement he puts forward that ‘[t]he very essence of the judicial function’ is not close familiarity, but ‘a detachment from, a dispassionateness about the activity under scrutiny’.¹⁵
2. An objection that is somewhat connected to the objection of judge Rifkind is that forcing specialist advocates to argue before generalist

judges ensures that the law will remain intelligible, at least to the average lawyer. Basic assumptions will not be taken for granted, and questions will be seen in a context broader than that of the specialist narrow concerns.¹⁶ It is also argued that legal thought may benefit if legal issues are considered by different courts. A specialised court is often the only one of its kind.

3. Another serious concern that has been put forward in American legal literature – and that is probably connected to the electoral system of state judges in the United States - is that a specialised court is under greater pressure to be influenced by special interest groups than general courts are. This is because there are usually more general courts and it is not worthwhile for special interest groups to lobby if there are only a few cases in every single general court.¹⁷
4. An argument that was recently raised with success to oppose the institution of business courts in Pennsylvania and California is that a specialised court gives a higher quality judicial resource to certain categories of cases at the expense of other cases. No litigants should have ‘better’ justice than others.¹⁸

Practice of specialised business courts

6. Introduction

I will now turn to the practice of specialised business courts. I will give a brief description of some existing business courts in the world. I will conclude with practical recommendations for the establishment of business courts.

7. Chancery Court of Delaware

Probably the most famous business court in the world is the Chancery Court of Delaware. The Chancery Court is not a specialised court by appointment but by coincidence. Its specialisation is the actual result of the incorporation of a large number of U.S. companies in Delaware.¹⁹ Although the Chancery Court also hears cases in other fields of the law including cases on trusts, real property, civil rights and commercial and contractual matters in general, it is especially renowned as a highly specialised court for corporate issues. Also, some of the judges of the Supreme Court of Delaware are experts in corporate law matters.

Legal scholars regularly debate the origin of Delaware's success as an incorporation state. More than half of the 500 biggest U.S. companies are incorporated in Delaware. About 40 percent of all listed companies at the New York Stock Exchange are Delaware corporations. One of the explanations for this success is the important role of the Chancery Court in shaping corporate law rules flexibly, effectively and efficiently.²⁰

It is noteworthy that the objection of Judge Rifkind that specialisation intensifies the seclusiveness of a given field of law and immunizes it against the refreshment of new ideas is neutralized by the fact that the Chancery Court also hears cases in other fields of law. In addition to that, the Chancery Court hears cases on three different locations with different judges. The objection that a specialised court leads to one-sidedness may be largely neutralized by the fact that a handful of different specialised judges hear cases. It looks like the organization of the Chancery Court has some inherent characteristics that neutralize some of the objections against specialised courts.

8. Other business courts in the United States of America

There has been a recent movement in other states within the United States to establish business courts. This movement was the result of concerns that have

been expressed in American business and legal communities regarding the efficiency, predictability, experience and knowledge of courts with respect to complex corporate and commercial disputes.²¹ At this moment there are more than ten states in the U.S. that have introduced a business court. I will highlight two of them.

New York

As of January 1, 1993, the State of New York established four specialised commercial departments to hear complex commercial and business cases. Experienced judges were assigned to these commercial departments.²² The result was a 35 percent productivity increase in complex business cases in the first year. Also the settlement rate of cases increased. In 1995 the New York Supreme Court – which despite its name is a court of first instance – set up a Commercial Division, which now adjudicates business cases in seven counties in the State of New York. The Commercial Division is a successful example of a business court. The American Bar Association called the New York Commercial Division ‘a model of a specialized court devoted to the resolution of business disputes’.²³ It has been said that the business court is popular because it has demonstrated that it can provide efficient, cost-effective and timely processing of commercial cases, and has improved the quality and predictability of judicial decisions.²⁴

Maryland

Maryland created a Business and Technology Court in 2002. The court focuses on business disputes in general and on issues important to companies in the technology industry. Why was the subject matter of the business court extended to technology law issues? The reason is as obvious as it is pragmatic. Information technology is Maryland’s largest field of economic activity. It has one of the largest concentrations of bioscience and aerospace companies and the

highest percentage of technological workers in the U.S.²⁵ Maryland made a pragmatic and sensible choice by assigning fields of law to the specialised court that would have the largest impact on its economic position.

9. The Business Court of the Netherlands

I will turn to some experiences in the Netherlands.²⁶ In 1971 the Business Court of the Netherlands was established. This specialised court is a division of the Court of Appeal in Amsterdam. An exceptional feature of the Business Court is that it hears cases with three judges and two outside members. The outside members have experience as auditors, as members of the boards of large companies or as trade union officials.

The Business Court does not adjudicate all corporate matters. For example, directors' liability cases are left to the civil or commercial divisions of general courts. As a generalization one could say that the court has jurisdiction over conflicts within companies. The court can, for example, on request by shareholders or trade unions, order an inquiry into the conduct and policies of the company if there are well-founded reasons to doubt the correctness of the policy. The investigators – for example attorneys, legal scholars or auditors – will produce a report. This report not only serves transparency, but can also lead to a second procedure in which the court may order specific measures to redress established incorrect policies. The court can declare that the company was mismanaged and who is to blame for that mismanagement. The measures include dismissal of directors, temporary appointment of other directors, temporary deviation from the articles of association and nullification of resolutions.

In addition to that, the court can take provisional measures at any stage of the inquiry procedure. It can order almost any order it considers appropriate in the interest of the company. The president of the Business Court stated that this

authority comes close to the equitable jurisdiction of the courts in common law countries.²⁷ The court also adjudicates minority squeeze-out procedures, financial statement procedures and matters of codetermination law. The Business Court has been very successful. The procedure is informal, efficient and effective. The court adheres to strict timetables. If necessary a case will be heard and decided upon within a few days. The court adjudicated almost all tender and takeover conflicts in big listed companies. Conflicts in smaller companies have also been solved successfully.

The main reason for establishing the Business Court in 1971 was that the Dutch financial statement procedure and the inquiry procedure demanded expert adjudication and an expert insight in the needs of companies and into the relationships within the business community.²⁸ It is worth mentioning that the Dutch Minister of Justice in September 2004 produced a memorandum on the modernisation of Dutch company law.²⁹ He expressly stated that the presence of the Business Court as a specialised court could enhance the attractiveness of the Netherlands as a place of business.

10. The specialised Intellectual Property Court in Thailand

Although initially not set up as a business court, the establishment of the Thai Central Intellectual Property and International Trade Court at the end of 1997 is worth mentioning. The International Intellectual Property Alliance stated that with the establishment of this court the Thai government had taken steps to address the structural problems of inefficiency, security breaches, inter-agency rivalry and general lack of co-ordination that have plagued Thai enforcement efforts in the past.³⁰ The specialised court is seen as the single most important factor to create a legal environment friendly to international trade and investment and to establish a recovery of the Thai economy as a whole.³¹

The court hears civil and criminal cases on the enforcement of intellectual property rights throughout the country. It has also exclusive jurisdiction on matters of international trade. This includes matters of international sale, carriage, payment, insurance and anti-dumping. The court has also exclusive jurisdiction in the enforcement of arbitral awards in these matters. The procedural rules are aimed at facilitating an efficient forum.³² One of the reasons to group intellectual property rights and international trade together was – among other good reasons – that a large enough workload had to be created to warrant a separate court system.³³

11. Concluding remarks and recommendations

What lessons can be drawn from the theory and practice of specialised courts? I will first address the question: Are specialised business courts a good idea?

1. Specialised business courts can improve the enforcement of corporate governance rules. Better enforcement attracts investment and companies. This contributes to economic growth. A specialised business court is, however, not a panacea for every enforcement problem. It is one of the measures that can contribute to better enforcement, but it has to be complemented by other enforcement mechanisms.³⁴
2. The question whether the advantages of a business court outweigh the disadvantages cannot be answered in general. This question has to be answered for each individual situation. The argument that specialised business courts can contribute to economic growth, however, carries much weight for transition and developing economies. This argument can be decisive for these economies because they have much to gain from a specialised court. Practical experience, however, illustrates that developed

countries too establish business courts or justify business courts with the argument of economic development.

3. A business court can only be successful if certain necessary conditions are satisfied. These conditions vary from well-trained judges and a well-balanced procedure that guarantees impartial adjudication, to a working system of notifying parties of court dates and a working transport infrastructure to get parties to courtrooms.³⁵ These necessary conditions are available or can be made available in most Asian countries.
4. It is easier to control and develop the quality of the handful of specialised court judges than of the many judges of general courts. It is worth considering adding one or more expert laypersons to the bench as is done in the Netherlands Business Court and the Thai specialised court.
5. The disadvantages of specialised courts have to be taken seriously. They are in my opinion, however, not conclusive for each field of law and within each jurisdiction or economy. The ethical argument that no litigants should have ‘better’ justice than others is too absolute. It neglects that there may be valid reasons justifying some litigants getting better justice than others as long as the minimum standards are good enough. This is especially the case if a clear line can be drawn between business cases and other civil cases. Every potential litigant in an economy, especially in a transition or developing economy, may benefit – as a citizen – from the economic development that may be derived from the establishment of a business court.
6. The argument that special interest groups can influence the specialised court has to be taken very seriously. However, the establishment of a specialised business court can also be used to shield the court from the influence of special interest groups or local interests by a severe selection of judges and by offering attractive terms of service and a proper salary.³⁶ The economic advantages of a business court will most certainly outweigh the additional costs of attractive terms of service.

7. With the reservations I made before, especially my concluding remark under 2, the establishment of business courts seems like a good idea for transition and developing economies in the Asian region. Practice shows that business courts can also be useful in developed economies.

I will address the second question: What practical lessons can be drawn from the use of specialised business courts?

8. The objection that specialisation leads to immunization of the law against its refreshment of new ideas may be neutralized – as the Delaware example indicates – by extending the subject matter of the court to other fields of law. It is noteworthy in this respect that also the Intellectual Property Court of Thailand has a broad jurisdiction. Other solutions might be the incidental participation of specialised judges in hearings of general courts or constituting different benches within one specialised court.
9. The business courts I addressed have flexible procedural rules and an efficient way of dealing with cases. This seems to be an important condition for a successful specialised court.³⁷
10. The Business and Technology Court of Maryland illustrates that it is worthwhile considering extending the jurisdiction of the specialised court to fields of law that have an impact on the economic development in a given jurisdiction. The Thai example shows that it is also important to create a sufficient workload to warrant a separate court system.
11. Often a specialised court is the only one of its kind. The obvious location of the court is the economic capital of a country or region. In large jurisdictions this can cause practical obstacles, especially for domestic cases. It deserves consideration to establish a few specialised courts in large jurisdictions or to authorize general courts at the discretion of both parties to adjudicate business matters instead of the specialised court. Another possibility might be

to limit the subject matter of the specialised court to cases with international aspects (for example because one of the parties is foreign). Thailand chose this last solution.

12. The Business Court of the Netherlands does not prohibit parties keeping their oral pleadings in the English language or documents being produced in English without translation (upon approval of both parties). It is worth considering allowing procedures in the English language or minimizing the compulsory translation of documents. This presupposes that the judges (and the parties and/or their attorneys) have a good command of the English language.

13. Some thought has to be spent on the possibilities of appeal. For practical reasons it is possible to exclude the possibility of appeal. Decisions of the Dutch Business Court are not eligible for appeal; there is, however, the possibility to go to the court of cassation. One could also allow for rectification by the specialised court in order to redress evident mistakes. If there is a competent general court of appeal it may be worth considering the possibility of appeal. This also neutralizes the immunization of the law against its refreshment of new ideas.³⁸ For example, general courts of appeal are competent to hear complaints against the decisions of American business courts.

14. I cannot answer the question whether it is a good idea to authorize the specialised court to hear criminal cases. This would also depend to what extent violations in the field of business law create a criminal offence and to what extent the enforcement of – for example – corporate governance rules is in the hands of private parties. An informal approach to procedural matters – one of the advantages of specialised courts – is out of the question in criminal cases.

15. Arbitration will remain an important way of getting justice. It is worth considering – as did the Thai government – extending the jurisdiction of the

business court to the enforcement of arbitral awards. Although almost all countries are parties to the Convention of New York on the Recognition and Enforcement of Foreign Arbitral Awards, it is sometimes difficult for parties to enforce arbitral awards.

16. And last but not least: the need for specialised courts decreases if the general enforcement infrastructure is better developed. It is therefore of great importance to improve the general enforcement infrastructure. This applies to transition and developing countries in the Asian region. It applies likewise to developed countries in the Asian region and in other regions. For example, in Europe much effort is put and has to be put into the recognition and enforcement of decisions within the European Union in cross-border disputes.

Notes:

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¹ White Paper on Corporate Governance in Asia, fourth printing, 4 December 2003, § 39.

² *Idem*, § 41.

³ *Idem*, § 138.

⁴ J.B. Jacobs, *The Critical Role of Company Courts in Fostering Good Corporate Governance*, Conference report Asian Business Dialogue on Corporate Governance 2003, p. 10.

⁵ Central European and Eurasian Law Initiative, *Specialized Courts: A Concept Paper*, 1996, p. 1.

⁶ For example: R.C. Dreyfuss, Specialized Adjudication, *Brooklyn University Law Review* 1990, pp. 377-441; R.C. Dreyfuss, Forums of the Future: the Role of Specialized Courts in Resolving Business Disputes, *Brooklyn Law Review* 1995, pp. 1-44; Central European and Eurasian Law Initiative, *Specialized Courts: A Concept Paper*, 1996; Ad Hoc Committee on Business Courts, Business Courts: Towards A More Efficient Judiciary, *The Business Lawyer*, 1997, pp. 947-964; L.W.M.M. Drabbe, De specialisatie van de burgerlijke rechter, *Rechtsgeleerd Magazijn Themis*, 1963, pp. 113-138. Very useful for the preparation of paragraph 3 was E.R. Jordan, Specialized Courts: A Choice?, *Northwestern University Law Review* 1981, pp. 745-785.

⁷ Ad Hoc Committee on Business Courts, Business Courts: Towards A More Efficient Judiciary, *The Business Lawyer*, 1997, pp. 947-964 and Parliamentary documents ('Kamerstukken') 2003-2004, 29752, nr. 2.

⁸ See for example: E. Berglöf, S. Claessens, *Corporate Governance and Enforcement*, World Bank Policy Research Working Paper 3409, September 2004.

⁹ References in: E. Berglöf, S. Claessens, *Corporate Governance and Enforcement*, World Bank Policy Research Working Paper 3409, September 2004, pp. 2-3.

¹⁰ P. Alba, S. Claessens, S. Djankov, *Thailand's Corporate Financing and Governance Structures: Impact on Firms' Competitiveness*, 1998, p. 15 (www.ssrn.com). See also the assertion of E. Berglöf and S. Claessens in: *Corporate Governance and Enforcement*, World Bank Policy Research Working Paper 3409, September 2004, p. 36, that civil courts in many developing and transition countries function relatively well, but courts to deal with capital market transactions are not well equipped.

¹¹ F. Lopez-de-Silanes, *A survey of Securities Laws and Enforcement* (preliminary draft), p. 13 and L.F. Klapper, I. Love, *Corporate Governance, Investor Protection, and Performance in Emerging Markets*, World Bank Policy Research Working Paper 2818, April 2002, p. 20.

¹² K. Sahariev, Mitigating Structural and Jurisdictional Risks in the Enforcement of Commercial Contracts: the EBRD's Experience, *Butterworths Journal of International Banking and Financing Law*, March 2002, p. 135 and K. Rao, Day of Judgement Dawns, *Asian Business*, 1997, p. 12

¹³ R. Albuquerque, The composition of international capital flows: risk sharing through foreign direct investment, *Journal of International Economics* 2003, p. 356; Corporate, maybe: but governance, *Economist*, 2003 (8329), p. 11. See also R. La Porta et al., Law and Finance, *Journal of Political Economy* 1998, p. 1152.

¹⁴ R. Albuquerque, The composition of international capital flows: risk sharing through foreign direct investment, *Journal of International Economics* 2003, p. 380.

¹⁵ S. Rifkind, A Special Court for Patent Litigation? The Danger of a Specialized Judiciary., *American Bar Association Journal*, 1951, p. 425-426. See also E.R. Jordan, Specialized Courts: A Choice?, *Northwestern University Law Review* 1981, p. 745.

¹⁶ E.R. Jordan, Specialized Courts: A Choice?, *Northwestern University Law Review* 1981, p. 748.

¹⁷ Central European and Eurasian Law Initiative, *Specialized Courts: A Concept Paper*, 1996, p. 15; M. France, Order in the business court, *Business Week* 1996 (3505), p. 138.

¹⁸ Ad Hoc Committee on Business Courts, Business Courts: Towards A More Efficient Judiciary, *The Business Lawyer*, 1997, p. 953; Central European and Eurasian Law Initiative, *Specialized Courts: A Concept Paper*, 1996, p. 1.

¹⁹ See Ad Hoc Committee on Business Courts, Business Courts: Towards A More Efficient Judiciary, *The Business Lawyer*, 1997, p. 956 and J.B. Jacobs, *The Critical Role of Company Courts in Fostering Good Corporate Governance*, Conference report Asian Business Dialogue on Corporate Governance 2003, pp. 10-11.

²⁰ See for example C. Alva, Delaware and the Market for Corporate Charters: History and Agency, *Delaware Journal of Corporate Law* 1990, p. 918; B.S. Black, Is Corporate Law Trivial?: A Political and Economic Analysis, *Northwestern University Law Review* 1990, pp.589-590 and J.E. Fisch, *The Peculiar Role of the Delaware Courts in the Competition for Corporate Charters*, Research Paper 00-02 (www.ssrn.com).

²¹ Ad Hoc Committee on Business Courts, Business Courts: Towards A More Efficient Judiciary, *The Business Lawyer*, 1997, p. 947. J.L.W. Garrou, New Business Court Improves State's Legal Environment, *Legal Opinion Letter* March 7, 1997.

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- ²² Ad Hoc Committee on Business Courts, Business Courts: Towards A More Efficient Judiciary, *The Business Lawyer*, 1997, p. 957.
- ²³ www.nycourts.gov/comdiv/Brief_History_of_CD.htm.
- ²⁴ R.L. Haig, Business Courts Can Improve State Judicial and Legal Systems, *Legal Opinion Letter*, January 9, 1998.
- ²⁵ *Maryland Business and Technology Court Task Force Report*, p. 2.
- ²⁶ See in general: M. Josephus Jitta, Procedural aspects of the right of inquiry, in: *The Companies and Business Court from a comparative law perspective*, Kluwer – Deventer 2004, pp. 1-42.
- ²⁷ J.H.M. Willems, The Companies and Business Court: Some Introductory Remarks, in: *The Companies and Business Court from a comparative law perspective*, Kluwer – Deventer 2004, p. 188.
- ²⁸ J.M.M. Maeijer, De ondernemingskamer (van het gerechtshof te A'dam) nu en in de toekomst, in: *Rechtspleging*, Kluwer – Deventer 1973, p. 171. Report of the Verdam Committee 1965, p. 67.
- ²⁹ Parliamentary documents ('Kamerstukken') 2003-2004, 29752, nr. 2.
- ³⁰ V. Ariyanuntaka, TRIPS and the Specialised Intellectual Property Court in Thailand, *International review of industrial property and copyright law*, 1999, p. 363.
- ³¹ *Idem*, p. 363. The author is a judge in the Specialised International Property Court.
- ³² See the judicial statistics of the court at: www.geocities.com/cipit_ejournal/.
- ³³ *Idem*, p. 363.
- ³⁴ See O. Fremond, M. Capaul, *The State of Corporate Governance: Experience from Country Assessments*, World Bank Policy Research Working Paper 2858 (June 2002), p. 2 and p. 28, who suggest that in countries with a weak regulatory environment enforcement through the market regulators may be preferable to enforcement through the courts.
- ³⁵ J. Widner, *Are Specialized Courts the Right Approach to Effective Adjudication of Commercial Disputes in Developing Countries?*, 2000, p. 7 (www.dse.de/ef/instn/widner.htm).
- ³⁶ *Idem*, pp. 2-3.
- ³⁷ Compare: S. Djankov et al., Courts, *The Quarterly Journal of Economics*, 2003, pp. 435-517.
- ³⁸ See for an example in the field of American Tax Law: E.R. Jordan, Specialized Courts: A Choice?, *Northwestern University Law Review* 1981, pp. 745-785.