CORPORATE GOVERNANCE

Japan

LEXOLOGY
Getting The Deal Through

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Corporate Governance

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Quick reference guide enabling side-by-side comparison of local insights into corporate governance issues worldwide, including sources of rules and practice; responsible agencies and notable opinion formers; shareholder powers, decisions, meetings, voting, duties and liabilities; employee role in governance; corporate control issues; board structure and composition, duties, leadership, committees, meetings and evaluation; director and senior management remuneration; director protections; disclosure and transparency; hot topics, such as shareholder engagement, and sustainability, pay ratio and gender gap reporting; and other recent trends.

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SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The Companies Act (www.japaneselawtranslation.go.jp/ja/laws/view/4135 , www.japaneselawtranslation.go.jp/ja/laws/view/4136), its subordinate rules and the rules of stock exchanges govern issues relating to the incorporation, organisation, operation and administration of corporations. In addition, the Financial Instruments and Exchange Act (www.japaneselawtranslation.go.jp/ja/laws/view/3986) and the rules of stock exchanges (www.jpx.co.jp/english/rules-participants/rules/regulations/tvdivq0000001vyt-att/listing_regs_1-842_20220404.pdf) regulate the disclosure of information by listed corporations. Further, the Japan Corporate Auditors Association has published a Code of Audit and Supervisory Board Member Auditing Standards (www.kansa.or.jp/wp-content/uploads/support/cf76c3571c904a7d02a39867a68b6b351a4d90c9.pdf), a Code of Audit Committee Auditing Standards (www.kansa.or.jp/wp-content/uploads/2022/10/el001_20221025_03.pdf) and a Code of Audit and Supervisory Committee Auditing and Super vision Standrds (www.kansa.or.jp/wp-content/uploads/2022/10/el001_20221025_05.pdf). The Corporate Governance Code (www.jpx.co.jp/english/news/1020/b5b4pj0000046kxj-att/b5b4pj0000046l07.pdf) has been published jointly by the Financial Supervisory Agency and the Tokyo Stock Exchange through amendment of the rules of the stock exchanges. Most of the rules of stock exchanges are mandatory rules but the provisions in the rules relating to the Corporate Governance Code apply on a comply or explain basis.

Law stated - 17 April 2023

Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms, whose views are often considered?

There are no specific government agencies or other bodies responsible for enforcing the statutes except for the courts; however, commentaries authored by officials of the Department of Justice are sometimes relied upon. The rules of stock exchanges are enforced by the exchanges through a listing agreement between the exchange and the listed company. There are no well-known shareholder rights protection groups whose views are considered.

Law stated - 17 April 2023

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

Directors of a stock corporation are elected at the general meeting of shareholders by a simple majority of votes (where shareholders hold at least a majority (or a lesser number set forth in its articles of incorporation but at least one-third) of voting rights present) unless otherwise provided for in its articles of incorporation. A director of a stock corporation can be removed at the general meeting of shareholders by a simple majority of votes unless also otherwise provided for. Shareholders of a stock corporation do not have the direct power to decide the course of action of the corporation except for certain material actions, such as mergers and corporate splits. They can do so only through the appointment of directors and proposals at general meetings of shareholders. A stock corporation can issue special shares that have voting rights only in respect of items specified in the articles of incorporation. Thus, shareholders with limited voting rights cannot appoint or remove directors if the items listed in the articles of incorporation do not include such an appointment or removal. Further, the articles of incorporation can specify items that require the approval of a meeting of holders of a specific type of share. Therefore, if the articles of incorporation provide that the appointment or removal of directors requires the approval of a specific type of shareholder, these shareholders have the right of veto in respect of the appointment or removal of directors.

Non-public stock corporations can issue a class of shares that carries exclusive power to appoint a certain number of directors, but this type of share is not permitted for public corporations.

Law stated - 17 April 2023

Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

The scope of decisions reserved to the shareholders differs depending on the type of governance structure adopted by corporations. The following shows the scope for corporations that have adopted the corporate auditor-type governance structure:

- appointment and dismissal of directors, statutory accounting advisers, corporate auditors (corporate auditors do not exist in corporations that adopted the committee-type governance structure) and accounting auditors;
- payment of dividends and disposition of loss (with certain exceptions);
- payment of dividends in kind;
- determination of remuneration for directors (except for committee-type governance corporations), statutory accounting advisers and corporate auditors;
- discharge of liabilities of directors, statutory accounting advisers, corporate auditors, executive officers and accounting auditors (unless the articles of incorporation give this authority to the board of directors);
- amendments of the articles of incorporation;
- issuance of shares at especially favourable prices;
- issuance of stock options at especially favourable prices;
- changes of types of corporations;
- mergers;
- corporate splits;
- statutory share transfers (a procedure to create a wholly owning parent above an existing corporation by operation of law);
- statutory share exchanges (a procedure under which one corporation becomes a wholly-owned subsidiary of another corporation by operation of law);
- statutory share delivery (a procedure to acquire shares of another corporation as a subsidiary);
- transfers of all or a material part of the business;
- leases of all the business;
- entrustment of all the business to another party;
- agreements to share all the profit with another party;
- acceptance of the entire business of another corporation;
- acquisition of material assets within two years of its incorporation;
- authorisations to purchase its own shares for counter value with certain exceptions;

- acquisition of special shares that are specified as shares that may be acquired by the issuing corporation in their entirety by a resolution of shareholders;
- consolidation of shares;
- capital reductions;
- reductions of legal reserves; and
- dissolution of the corporation.

While non-binding shareholders' votes are not required, the management of companies sometimes try to obtain shareholder resolutions to support their actions.

Law stated - 17 April 2023

Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

Under the Companies Act, a stock corporation may adopt the unit system for its shares where one voting right is granted to one unit of shares. For example, if a corporation's articles of incorporation provide that 1,000 shares of common stock constitute one unit, a shareholder that owns 2,000 common shares has two votes for his or her shares. The number of shares constituting one unit for one class of shares can be different from that for another class of shares. So, if the corporation sets different numbers for different classes of shares, it can effectively give disproportionate voting rights. In addition, a corporation can issue shares with limited voting rights (namely, shares that do not have voting rights in respect of the items specified in the articles of incorporation of the corporation). Lastly, the articles of incorporation of the company may provide that certain matters that are subject to the approval of a general meeting of shareholders or approval of the board of directors also require the approval of the meeting of a certain class of shareholders.

Law stated - 17 April 2023

Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

To attend and vote at a general meeting of shareholders, a shareholder must have his or her name registered in the register of shareholders of the corporation. Once his or her name is registered, it will remain on the register until the shareholder transfers the relevant shares to a third party, and this transfer is logged in the register. A shareholder may delegate authority to another person to act as a proxy. However, under their articles of incorporation, many corporations require that this other person also be a shareholder. A shareholders' resolution can be passed if all the shareholders agree in writing. As such a written resolution requires unanimous agreement, in practice, a listed corporation cannot pass a written resolution. A stock corporation can designate more than one place to have a shareholders' meeting, but audio (or chat) and visual connections must be established in all places. Virtual meetings (without physical meeting) of shareholders are permitted if a listed corporation acquires confirmation from the Minister of Economy, Trade and Industry and its articles of incorporation have a provision for such virtual-only meetings.

Law stated - 17 April 2023

Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

A shareholder that has held 3 per cent or more of the entire voting rights for the previous six months may require that directors of the corporation convene a general meeting of shareholders (the scope of qualified shareholders can be expanded by the articles of incorporation). If directors fail to convene a general meeting of shareholders without delay, the requesting shareholder may convene a meeting after obtaining the approval of the court. A shareholder who has held 1 per cent or more of the entire voting rights or 300 or more voting rights for the previous six months has the right to require the corporation to include its proposals (including a list of director candidates) in the agenda of the general meeting of shareholders by sending written notice to that effect to the corporation eight weeks prior to the date of the meeting (the scope of qualified shareholders can be expanded by the articles of incorporation). Shareholders do not have the right to require the board to circulate their dissenting statements.

Law stated - 17 April 2023

Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

There are no specific provisions in the Companies Act or established court precedents that establish the duties of controlling shareholders. However, a resolution of a general meeting of shareholders can be nullified through a resolution nullification suit if the resolution is unduly tainted as a result of the exercise of voting rights by one or more shareholders with a special interest in the resolution. A resolution nullification suit must be filed with the court within three months of the date of the relevant shareholders' meeting.

Law stated - 17 April 2023

Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

Theoretically, a shareholder could be held responsible for the acts or omissions of the company if a director representing the company commits a tort when he or she is an employee of the shareholder and acts under the control of that shareholder, or a director representing the company and the relevant shareholder jointly commit a tort. However, a shareholder will not be held responsible solely for the exercise of (or the failure to exercise) his or her voting rights, even if the voting is a decisive factor in the general meeting of shareholders.

Law stated - 17 April 2023

Employees

What role do employees have in corporate governance?

Legally, employees do not have any role in corporate governance in Japan. As a minimum matter of course, in many instances, the management of a corporation consults the union or the representative of employees when it wishes to conduct major corporate restructuring.

Law stated - 17 April 2023

CORPORATE CONTROL

Anti-takeover devices

Are anti-takeover devices permitted?

Many listed Japanese corporations have adopted various types of anti-takeover devices. Most of them are structured to enable the board of directors to issue stock acquisition rights that cannot be exercised by a hostile acquirer. The validity of these devices has, however, not been fully tested by the courts. Recently, there has been a trend to abolish this type of anti-takeover device in response to demands from institutional investors. At the same time, there have also been some recent cases where listed companies have introduced an anti-takeover device only after actual hostile acquirers had emerged.

Law stated - 17 April 2023

Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

In the case of listed corporations, as long as the issue price is nearly equal to the market price, the board can issue new shares without shareholder approval under the Companies Act. However, the rules of the Tokyo Stock Exchange require:

- an independent party opinion confirming the necessity and appropriateness of the issuance; or
- shareholder approval if:
  - the number of the new shares is 25 per cent or more of the outstanding shares; or
  - the issuance results in a change of controlling shareholder.

Law stated - 17 April 2023

Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

No share transfer restrictions enforceable by the corporation itself are allowed in the case of listed corporations. Agreements among large shareholders sometimes contain this type of provision. In the case of non-listed corporations, the Companies Act allows a corporation to have a provision in its articles of incorporation where the transfer of shares requires the approval of the board of directors. If a shareholder of such a corporation wishes to sell his or her shares, but the board of directors does not approve such a transfer, the shareholder may require the board of directors to appoint a purchaser who is acceptable to them.

If a listed corporation amends its articles of incorporation to include such a provision, its shares are delisted in accordance with stock exchange listing rules.

Law stated - 17 April 2023

Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

A corporation may not directly force its shareholders to sell their shares to it unless such a compulsory repurchase is specifically provided for in its articles of incorporation as a characteristic of the relevant shares. A corporation can effectively force its shareholders to sell their shares by attaching this repurchase provision by the resolution of a shareholders' meeting in which a large shareholder has a controlling stake. Further, a shareholder holding 90 per cent or more may force the other shareholders to sell their shares to him or her under the special provisions in the Companies Act.

Law stated - 17 April 2023

Dissenters' rights

Do shareholders have appraisal rights?

Yes. Shareholders have appraisal rights in cases of mergers, corporate splits, statutory share exchanges, statutory share transfers and certain changes of the terms of shares.

Law stated - 17 April 2023

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

The conventional Japanese governance structure is one-tier. The board of directors consists of all the directors of the corporation, including directors who can represent the company (namely, representative directors). In addition, a listed corporation has a board of corporate auditors consisting of at least three corporate auditors (in the case of a corporation with a stated capital of ¥500 million or more or with total debts of ¥20 billion) or at least one corporate auditor (in the case of other corporations) whose duty, in both cases, is to audit the directors' conduct. The Companies Act also allows two types of two-tier governance structures. One is a committee-type structure consisting of the board of directors (appointed by the shareholders), its three committees (audit, nomination and compensation) and executive officers appointed by the board. The other is an audit committee-type structure consisting of the board of directors and an audit committee. Members of the audit committee are directors separately elected as such at the shareholders' meeting.

Law stated - 17 April 2023

Board's legal responsibilities

What are the board's primary legal responsibilities?

In the case of corporations that have adopted the conventional corporate auditor-type governance structure, the board of directors determines all management matters unless they are specifically reserved for a general meeting of shareholders under the Companies Act (such as a merger) or they are delegated by the board to a representative director (a director with the power to represent and bind the corporation, who is also a member of the board). The

Companies Act specifically requires a board resolution if a corporation wishes to conduct any material actions, including, but not limited to, the following actions:

- disposition or acceptance of important assets;
- borrowing of substantial amounts of money;
- appointment and dismissal of managers and other important employees;
- establishment, change and abolition of branches and material organisations;
- determination of material items relating to the issuance of bonds;
- determination of a corporate governance system; and
- discharge of liabilities of directors, statutory accounting advisers, corporate auditors, statutory executive officers and accounting auditors authorised by the articles of incorporation.

The board may not delegate these items to a director. In the case of corporations that adopt the committee-type governance structure, the board may, and normally does, commission most of the powers to executive officers appointed and supervised by the board. In the case of corporations that adopt the audit committee-type governance structure, the board may delegate most of the decision-making powers to individual directors if the majority of its directors are outside directors or the articles of incorporation contain provisions to allow this delegation.

Law stated - 17 April 2023

Board obligees

Whom does the board represent and to whom do directors owe legal duties?

The board of directors is the decision-making body of a corporation. Each director owes fiduciary duties to the corporation. Therefore, he or she may not act for the benefit of a major shareholder if such an action is against the interests of the shareholders as a whole. Further, directors are required by the Companies Act to exercise the duty of care of a prudent manager in performing their duties.

Law stated - 17 April 2023

Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgment rule?

A corporate auditor (a person elected at the general meeting of shareholders) of a corporation that has adopted the conventional corporate auditor-type governance structure may apply to the court seeking injunctive relief if the conduct of a director goes beyond the objectives of the corporation or violates the law or the articles of incorporation, or the conduct is threatening and it would cause material damage to the corporation. Members of the audit committee of a corporation that has adopted the committee-type governance structure and members of the audit committee of a corporation that has adopted the audit committee-type governance structure also have the same power. A shareholder who has held shares in the corporation for the preceding six-month period may also apply for injunctive relief if there is a possibility that the conduct by a director would cause ‘substantially material’ damage to the corporation. The courts apply a business judgment rule when evaluating the legality of directors' conduct.

Law stated - 17 April 2023

Care and prudence

Do the duties of directors include a care or prudence element?

Each director owes fiduciary duties to the corporation. A director is also required to exercise the duty of care of a prudent manager in performing his or her duties. A director may not engage in business that competes with the business of the corporation unless he or she first obtains the board's approval. Further, a director may not enter into a transaction with the corporation unless he or she first obtains board approval. Even if a director obtains board approval in connection with a transaction with the corporation, he or she is still liable for any damages incurred by the corporation as the result of such a transaction.

Law stated - 17 April 2023

Board member duties

To what extent do the duties of individual members of the board differ?

As a general rule, the duties of individual members of the board do not differ from each other, irrespective of the difference in skill or experience. In the case of a corporation that has adopted a conventional corporate auditor-type governance structure, however, there is no separation of the functions of directors and those of officers in charge of the day-to-day management of the corporation. So, in most corporations, each director also serves as an officer in charge of a specific aspect of management of the corporation. In this sense, the duties of individual members of the board may differ. In the case of a corporation that has adopted a committee-type governance structure, the members of each committee perform additional duties. The same applies to members of the audit committee in a corporation that has adopted the audit committee-type governance structure.

Law stated - 17 April 2023

Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

In the case of a corporation that has adopted the conventional corporate auditor-type governance structure, in principle, the board acts as a management body as well as a supervising body. But the board may delegate its responsibilities to each director except for material matters regarding the business of the corporation (including but not limited to those specifically identified in the Companies Act) and the following matters:

- disposition or acceptance of important assets;
- borrowing of a substantial amount of money;
- appointment and dismissal of managers and other important employees;
- establishment, change and abolition of branches and material organisations;
- determination of material items relating to the issuance of bonds;
- determination of the corporate governance system; and
- discharge of the liabilities of directors, statutory accounting advisers, corporate auditors, statutory executive officers and accounting auditors authorised by the articles of incorporation.

In the case of a corporation that has adopted the committee-type governance structure, the board is expected to act mainly as supervising body and can delegate management decisions to statutory executive officers except for the limited number of items specified in the Companies Act. The board is also required to determine the following items:

- the management policy;
- items necessary for the operation of the audit committee;
- the allocation of duties among statutory executive officers and matters relating to the relationships between statutory executive officers;
- identification of the director to whom statutory executive officers should request the convocation of a meeting of the board of directors; and
- a framework to ensure appropriate management of the corporation.

In the case of a corporation that has adopted the audit committee-type governance structure, the board can delegate management decisions to individual directors except for the limited number of items specified in the Companies Act if the majority of its directors are outside directors or the articles of incorporation contain provisions to allow this delegation. The board is also required to determine the following items: the management policy; items necessary for the operation of the audit committee; and a framework to ensure appropriate management of the corporation.

Law stated - 17 April 2023

Non-executive and independent directors

Is there a minimum number of ‘non-executive’ or ‘independent’ directors required by law, regulation or listing requirement? If so, what is the definition of ‘non-executive’ and ‘independent’ directors and how do their responsibilities differ from executive directors?

If a listed corporation that has adopted the conventional corporate auditor-type governance structure does not have an outside director, it must explain, at the annual general meeting of shareholders, why it is appropriate not to have an outside director. In other words, the Companies Act strongly recommends that listed corporations have at least one outside director. An ‘outside director’ is defined as a director who:

- is not an executive director, statutory executive officer, manager or other employee of the corporation or any of its subsidiaries;
- has not served as executive director, statutory executive director, manager or other employee of the corporation or any of its subsidiaries for the 10-year period immediately preceding the appointment as a director;
- is not a director, statutory executive officer, manager or other employee of its parent corporation;
- is not an executive director, statutory executive officer, manager or other employee of any of the subsidiaries of its parent corporation; and
- is not related to any of the directors, statutory executive officers, managers or other important employees of the corporation.

There are some additional rules relating to the qualification of ‘outside’ directors. In the case of a corporation that has adopted the committee-type governance structure, it must establish three committees (audit, nomination and compensation committees) and appoint one or more executive officers. Each committee must consist of at least three directors (a majority of whom must be outside directors). None of the members of the audit committee may hold the position of statutory executive officer, executive director, manager or employee of the corporation or any of its subsidiaries or statutory accounting adviser of any of the subsidiaries. In the case of a corporation that adopted the audit committee-type governance structure, it must establish an audit committee. The audit committee must consist of at least three directors (a majority of whom must be outside directors). Each member of the audit committee of this type of corporation is a director elected as such at the general meeting of shareholders. None of the members of the audit committee of this type of corporation may hold the position of executive director, manager or other employee of the corporation, or statutory accounting adviser or statutory executive officer of any of the subsidiaries of the corporation.

Legally, the responsibility of the outside directors is the same as those not classified as outside directors, provided, however, that a corporation can adopt articles of incorporation authorising it to enter into an agreement with each of the outside directors and non-executive directors to limit the maximum amount of monetary liability of these directors.

Stock exchange rules require a listed corporation to have at least one independent officer. An ‘independent officer’ is defined as an outside director or corporate auditor whose interests do not conflict with that of general shareholders. Further, under the Corporate Governance Code, listed companies are urged to have at least two independent outside directors.

Law stated - 17 April 2023

Board size and composition

How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

Articles of incorporation of a Japanese stock corporation provide the minimum or maximum number of directors. Further, under the Companies Act, a corporation with a board of directors (a listed corporation always has a board) must have at least three directors. Vacancies must be filled with the resolution of the general meeting of shareholders.

The Corporate Governance Code requires that a listed corporation should have directors that can effectively perform their roles and responsibilities (from knowledge, experience and capacity perspectives). Listed companies are required to disclose their responses to this requirement in their corporate governance reports.

Law stated - 17 April 2023

Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

The Companies Act does not require the separation of the functions of board chair and chief executive or president. In a corporation that has adopted the corporate auditor-type governance structure or audit committee-type governance structure, the board of directors appoints one or more representative directors from among themselves. A representative director represents, and may legally bind, the corporation. Customarily, one of the representative directors is the president and another is the chair. If there is a chair, he or she customarily serves as chair at board meetings. If there is no chair, the president customarily serves as chair at these meetings. The position of chair at meetings is customarily provided for in the articles of incorporation or the regulations of the board of directors of the corporation. In a corporation that has adopted the committee-type governance structure, the board appoints statutory executive officers, who run the day-to-day business of the corporation, and the representative statutory executive officer or officers, who represent the corporation and can legally bind it. Statutory executive officers may be elected from among the directors. One of the representative statutory executive officers customarily uses the title of CEO.

Law stated - 17 April 2023

Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

In the case of a corporation that has adopted the corporate auditor-type governance structure, board committees are not mandatory. Although the corporation may have internal board committees, these are not legally recognised bodies under the Companies Act.

In the case of a corporation that has adopted the committee-type governance structure, the corporation must set up the nomination, audit and compensation committees and appoint one or more executive officers. Each committee must consist of at least three directors (a majority of whom must be external directors not also serving as executive officers). None of the members of the audit committee may be a statutory executive officer, executive director, manager or employee of the corporation or any of its subsidiaries or statutory accounting adviser of any of the subsidiaries. The nomination committee has the power to determine proposals to be submitted to the general meeting of shareholders as to the appointment and removal of directors. The audit committee has the power to audit the performance of directors and statutory executive officers and to determine proposals to be submitted to the general meeting of shareholders as to the appointment, removal or non-renewal of outside accounting auditors. The compensation committee has the power to determine the compensation payable to directors, statutory executive officers and statutory accounting advisers.

In the case of a corporation that has adopted the audit committee-type governance structure, it must establish an audit committee. The audit committee must consist of at least three directors (a majority of whom must be outside directors). Each member of the audit committee of this type of corporation is a director elected as such at the general meeting of shareholders. None of the members of the audit committee of this type of corporation may hold the position of executive director, manager or other employee of the corporation, or statutory accounting adviser or statutory executive officer of any of the subsidiaries of the corporation.

Law stated - 17 April 2023

Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

The Companies Act requires that each representative director and executive director of a corporation that has adopted the corporate auditor-type governance structure or the audit committee-type governance structure reports on how he or she has been carrying out the business to the board of directors at least once every three months. Therefore, the meeting of the board of directors must be held at least once every three months. In the case of a corporation that has adopted the committee-type governance structure, similar obligations are imposed on executive officers. Therefore, the meeting of the board of directors must be held at least once every three months.

Law stated - 17 April 2023

Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

The governance structure of the corporation is registered in the commercial register. The corporation’s commercial register is a public record. If it is necessary for a shareholder of a corporation or a shareholder of the parent of a corporation to exercise his or her rights, he or she can access and make copies of the minutes of the board meetings after obtaining court permission. A creditor of a corporation can also apply for court permission if this access is necessary to claim compensation for damages incurred against a director, statutory accounting adviser, corporate auditor or statutory executive officer of the corporation.

Law stated - 17 April 2023

Board and director evaluations

Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

Under the Corporate Governance Code, which is enforced only on a ‘comply or explain’ basis, the board of directors is required to analyse and evaluate the effectiveness of the board management every year and disclose the outline of the result of this analysis and valuation to the public. While the valuation must be made through self-evaluations of each director, the purpose of this is to evaluate the entire board.

Law stated - 17 April 2023

REMUNERATION

Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors’ service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

In a corporation that has adopted the corporate auditor-type governance structure, the remuneration of directors must be approved at a general meeting of shareholders unless there are relevant provisions in its articles of incorporation. Most stock corporations approve the maximum aggregate amount of remuneration payable to the entire group of directors and give the board of directors the power to decide how it is allocated among the directors. The board of directors generally delegates this power to the president and representative director. In a corporation that has adopted the audit committee-type governance structure, the remuneration of directors who are to serve as members of the audit committee must be approved at a general meeting of shareholders separately from that payable to directors who are not to serve as members of the audit committee. The directors who are also members of the audit committee have the right to express their opinion on the remuneration payable to audit committee members at the general meeting of shareholders. The audit committee director elected by the audit committee may express opinions on the remuneration payable to directors who are not audit committee members. In a corporation that has adopted the committee-type governance structure, the remuneration of the directors must be approved by the compensation committee. The Corporate Governance Code requires that a listed corporation should have a compensation structure that will enhance its sustainable growth by combining compensation linked to its mid-term and long-term performance or combining cash compensation and stock plans.

In a corporate auditor-type governance corporation, the length of directors' service shall be two years or less. In an audit committee-type governance corporation, it shall be two years for audit committee member directors and one year or less for other directors. It shall be one year in a committee-type governance corporation. Even if the service contract provides for a longer term, this provision will not limit the power of the general meeting of shareholders to replace the directors upon expiry of the two-year period. For the corporation to advance a loan to its director or to enter into a transaction with its director, the relevant director is required to obtain a board resolution in respect of such a loan or transaction.

Law stated - 17 April 2023

Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

No law, regulation, listing requirement or practice exists that affects the remuneration of directors. Loans to directors and other transactions between the company and directors must be approved by the board of directors (or general meeting of shareholders if the company has not adopted a board system). Board approval is also required for loans to, and transactions with, statutory executive officers in cases where corporations have adopted a committee-type governance system.

Law stated - 17 April 2023

Say-on-pay

Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

In the case of the corporate auditor-type governance structure, a resolution of the general meeting of shareholders is required for a Japanese listed corporation to pay remuneration to its directors or corporate auditors unless it is already provided for in its articles of incorporation. Once the maximum amount of the aggregate amount of remuneration payable to directors and to corporate auditors has been approved, no further resolution is required unless this maximum amount needs to be amended. In the case of the audit committee-type governance structure, the amount payable to audit committee directors and to other directors must be separately determined. In the case of the committee-type governance structure, the remuneration of the directors and executive officers is determined by the remuneration committee. So, in this case, shareholders do not have any direct power to determine the remuneration of directors and executive officers. In respect of senior management, shareholders do not have any control over their remuneration.

Law stated - 17 April 2023

DIRECTOR PROTECTIONS

D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

Directors' and officers' (D&O) insurance is permitted and has recently become common practice. The company can pay the premiums if so resolved at the board meeting.

Law stated - 17 April 2023

Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

The company may enter into an indemnity agreement with directors in respect of their liabilities incurred against a third party in their capacity as directors if the execution of such indemnity agreement and the contents thereof is authorised by the board meeting. If the company's articles of incorporation contain a specific provision, the board may discharge a certain portion of the directors' liabilities against the company itself, which exceeds the amount calculated based upon the formula specified in the Companies Act. The corporation can enter into a contract with its outside directors or non-executive directors, limiting their liabilities against the company to a certain amount if it is so authorised in its articles of incorporation.

Law stated - 17 April 2023

Advancement of expenses to directors and officers

To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

Companies can and will be required (if so required by directors) to pay expenses to their directors to the extent that these expenses were expected to be paid by the directors as part of their performance of their role. However, the company cannot and will not be required to pay expenses that relate to the directors' wrongdoings, so expenses for defence can be reimbursed only when the directors succeed in defending the case. However, companies can pay the entire D&O insurance premium if this payment is approved by a board resolution.

Law stated - 17 April 2023

Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

A two-thirds vote at the shareholder meeting can limit the liability of directors and officers to certain statutorily calculated amounts (except in the case of certain types of liability) unless the relevant damages incurred by the company are caused by gross negligence of the relevant director or officer. This power can be delegated to the board of directors by amending the articles of incorporation of the company. Liabilities of outside directors, non-executive directors and auditors can be limited by a liability-limiting agreement if the articles of incorporation contain a provision permitting such an agreement.

Law stated - 17 April 2023

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

The articles of incorporation are the only constitutional document of a stock corporation. There are no by-laws or corporate charters. Under the Companies Act, the articles of incorporation are only available to shareholders and creditors. In the case of a listed corporation, its articles of incorporation are publicly available on the website of the stock exchange as well as at the head office and major branches of the corporation and the office of the stock exchange.

Law stated - 17 April 2023

Company information

What information must companies publicly disclose? How often must disclosure be made?

A listed corporation is required to file an annual securities report setting forth the business results of the corporation with the appropriate local finance bureau within three months of the end of its fiscal year via the electronic corporate disclosure system, EDINET . It must also file a quarterly report within three months of the end of each quarter. These reports are available to the public via EDINET. Further, stock exchange rules require timely disclosure by listed corporations of major events or decisions of the listed corporation.

Law stated - 17 April 2023

HOT TOPICS

Shareholder-nominated directors

Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

A shareholder or a group of shareholders who have held 1 per cent or more of the outstanding voting rights for the previous six months can ask the directors to present a proposed agenda, including the appointment of directors to the general meeting of shareholders, by giving eight weeks' notice.

Law stated - 17 April 2023

Shareholder engagement

Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

In Japan, listed companies' engagement with their shareholders is relatively limited. But when there is a proposed resolution that is not very popular among the shareholders, the company sometimes contacts shareholders to urge them to cast positive votes at its shareholders' meeting. These actions are often conducted by persons within the company's general affairs bureau under the supervision of directors.

Law stated - 17 April 2023

Sustainability disclosure

Are companies required to provide disclosure with respect to corporate social responsibility matters?

The Corporate Governance Code requires that a listed corporation must cultivate a corporate culture that respects the rights of various stakeholders, such as employees, customers, counterparties, creditors and the surrounding society, and establish management policies that respect these stakeholders' rights. The code requires that listed corporations publicly disclose these management policies.

Law stated - 17 April 2023

CEO pay ratio disclosure

Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

No such pay ratio disclosure is required. But if the total compensation value payable to one director is ¥100 million or more, then his or her name, the amount of the compensation and other information must be disclosed in its Annual Securities Report.

Law stated - 17 April 2023

Gender pay gap disclosure

Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

No such disclosure is required.

Law stated - 17 April 2023

UPDATE AND TRENDS

Recent developments

Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

The section classification of the Tokyo Stock Exchange changed on 4 April 2022. The old sections (First, Second, Mothers, JASDAQ Standard and JASDAQ Growth) were reclassified into three new sections (Prime, Standard and Growth). All the principles of the Corporate Governance Code apply to the corporations listed in the Prime and Standard Sections, while special rules enhancing higher governance requirements apply to corporations listed in the Prime Section. Only basic principles will apply to corporations listed in the Growth Section.

Separately from the above, an amendment to the Companies Act that enabled corporations to distribute materials for shareholders' meetings to shareholders electronically without consent from each shareholder became effective from 1 September 2022.

Law stated - 17 April 2023

Jurisdictions

Australia	Kalus Kenny Intelex
Brazil	Loeser e Hadad Advogados
China	BUREN NV
France	Aramis Law Firm
Germany	POELLATH
India	Chadha & Co
Japan	Anderson Mōri & Tomotsune
Kenya	Robson Harris Advocates LLP
Malta	GVZH Advocates
Mexico	Chevez Ruiz Zamarripa
Netherlands	BUREN NV
Nigeria	Streamsowers & Köhn
South Korea	Lee & Ko
Switzerland	BianchiSchwald LLC
Thailand	Chandler MHM Limited
Turkey	Gün + Partners
USA	Sidley Austin LLP