International
Comparative
Legal Guides

Corporate Governance

2024

17th Edition

Contributing Editors:
Adam Emmerich & Elina Tetelbaum
Wachtell, Lipton, Rosen & Katz

glg Global Legal Group

Q&A Chapters

1 **Austria**
Schoenherr Attorneys at Law: Roman Perner & Gabriel Ebner

9 **Canada**
Fasken Martineau DuMoulin LLP: Sarah Gingrich, Sean Stevens, Gordon Raman & Marie-Josée Neveu

16 **China**
DeHeng Law Offices: Harrison (Hui) Jia, Shidong Sang, Gan Lin & Yijin Li

26 **Cyprus**
Andreas Th. Sofokleous LLC: Lorenzo Toffoloni & Despina Sofokleous

32 **Finland**
Hannes Snellman Attorneys Ltd: Klaus Ilmonen, Elina Toivakainen & Jon Termonen

41 **France**
Lacourte Raquin Tatar: Guillaume Roche, Antoine Lassier & Sacha Partensky

57 **Germany**
POELLATH: Dr. Eva Nase & Emanuel Trotta

64 **Greece**
Bernitsas Law: Evi Kitsou & Yolanda Kalogirou

72 **India**
Cyril Amarchand Mangaldas: Cyril Shroff, Anchal Dhir & Anshu Choudhary

83 **Italy**
Delfino e Associati Willkie Farr & Gallagher LLP Studio Legale: Maurizio Delfino & Carlotta Orlando

91 **Japan**
Nishimura & Asahi: Nobuya Matsunami & Kaoru Tatsumi

99 **Korea**
Jipyong LLC: Min Shin, Bohee Park, Jihye Lee & Yujin Lee

107 **Liechtenstein**
Schurti Partners Attorneys-at-Law Ltd.: Alexander Appel, Andreas Schurti & Hemma Kohlfürst

114 **Luxembourg**
GSK Stockmann: Dr Philipp Moessner, Anna Lindner, Chara Papagiannidi & Maria Gusinski

122 **Mexico**
Mijares, Angoitia, Cortés y Fuentes: Francisco Glennie & Pedro García

127 **Netherlands**
NautaDutilh: Stefan Wissing, Maarten Buma, Geert Raaijmakers & Frans Overkleeft

134 **Nigeria**
Fred-Young & Evans LP: Emmanuel Ekpenyong, Luka Joel Awoke & Jude Otakpor

151 **Norway**
BAHR: Svein Gerhard Simonnæs & Asle Aarbakke

156 **Spain**
Uría Menéndez: Eduardo Geli & Sara Gómez

169 **Sweden**
Mannheimer Swartling Advokatbyrå: Patrik Marcelius, Cecilia Björkwall & Josefine Rex

177 **Switzerland**
Advestra: Rashid Bahar & Annette Weber

186 **United Kingdom**
Slaughter and May: Harry Hecht, Julie Stanbrook & Gabriel Lim

197 **USA**
Wachtell, Lipton, Rosen & Katz: Adam O. Emmerich, Elina Tetelbaum, Carmen X. W. Lu & Samantha M. Altschuler

209 **Zambia**
Gill & Seph Advocates: Gilbert Kaemba Mwamba, Muleba Joseph Chitupila & Vanessa Ndashe Sholande

Japan

Nobuya Matsunami

Kaoru Tatsumi

Nishimura & Asahi

1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

The corporate entities discussed in this chapter are stock companies (*kabushiki kaisha*) listed on the Tokyo Stock Exchange (the "TSE"). Stock companies are the most common form of corporate entity used for business enterprises in Japan. Generally, only securities issued by stock companies can be listed on a securities exchange in Japan.

The TSE is one of the largest equity markets in the world, listing approximately 3,941 companies (as of April 8, 2024), including major Japanese companies. The TSE imposes corporate governance requirements on its listed companies.

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

In Japan, the main sources of corporate governance rules are as follows:

Regulatory sources

(a) **Companies Act (Act No. 86 of 2005) (the "Companies Act")**. The Companies Act, along with its subordinate regulations, sets forth the basic principles that a company must abide by regarding the rights and obligations of management members, organs, the disclosure of information, etc. This Act also requires (i) "Large Companies" (companies with capital of JPY500 million or more, or with total debts of JPY20 billion or more) with a board of directors, (ii) Companies with an Audit and Supervisory Committee, and (iii) Companies with Three Committees to establish a basic policy regarding their internal control system (see questions 3.1 and 3.7 below). The Companies Act applies whether such companies are listed.

(b) **Financial Instruments and Exchange Act (Act No. 25 of 1948) (the "FIEA")**. This Act, along with its subordinate regulations, requires that listed companies disclose issues relating to corporate governance by way of filing annual securities reports or quarterly reports, disclosing material information in a timely manner by way of extraordinary reports, and submitting internal control reports to the authorities, etc.

(c) **The Securities Listing Regulations published by the TSE (the "TSE Regulations")**. The main corporate governance requirements for listed companies that these regulations set forth are as follows: (i) to submit corporate governance reports; and (ii) to elect and disclose the name of at least one "Independent Officer", who is defined as an outside director or outside statutory auditor who does not (even potentially) have a conflict of interest with shareholders, and to submit a written notice regarding the Independent Officer.

Non-regulatory sources

(a) **Articles of incorporation and other internal regulations of each company**. Under the Companies Act, all stock companies are required to establish articles of incorporation that regulate their corporate governance, including organs and the number of directors. In addition, many listed companies have other internal regulations regarding board meetings or other material meetings.

(b) **Japan's Corporate Governance Code**. Japan's Corporate Governance Code, published by the Council of Experts Concerning the Corporate Governance Code established by the TSE and the Financial Services Agency (the "FSA"), offers fundamental principles for effective corporate governance of listed companies in Japan. A brief overview is provided in question 1.3 below.

(c) **Proxy voting criteria provided by investor groups**. Some investor groups, including the Pension Fund Association, under the influence of the Principles for Responsible Institutional Investors (Japan's Stewardship Code), provide criteria for proxy voting that influence the corporate governance of listed companies. Recently, it has become more common for such investor groups to disclose the results of the exercise of voting rights (see question 2.2 below).

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

Amendments to the Companies Act

Amendments to the Companies Act in 2019 (the "2019 CA Amendment") were promulgated in December 2019. They fully became effective by September 1, 2022. The push toward reform arose primarily from domestic and foreign investors' concerns over the quality of Japanese corporate governance. The content of the 2019 CA Amendment is referred to in the following relevant questions.

Japan's Corporate Governance Code

The Council of Experts Concerning the Corporate Governance Code, established by the TSE and FSA, released Japan's Corporate Governance Code on March 5, 2015, which became effective from June 1, 2015. This Code was revised twice, in June

2018 and June 2021, respectively. This Code adopts a principles-based approach to achieve effective corporate governance in each company's particular situation. The general principles that the Code offers are those regarding (i) protecting the rights and ensuring the equal treatment of shareholders, (ii) appropriate cooperation with stakeholders other than shareholders, (iii) ensuring appropriate information disclosure and transparency, (iv) responsibilities of the board, and (v) dialogue with shareholders for the purpose of achieving effective corporate governance. For example, regarding the responsibilities of boards of directors, the amendment of the Code in June 2021 set the principle that companies listed on the Prime Market (see below) should appoint at least one-third of their directors as independent directors and that companies listed on other markets should appoint at least two independent directors.

The Code also adopts a "comply or explain" (either comply with a principle or, if not, explain why not) approach for implementation. Therefore, if in its circumstances a company finds a certain principle inappropriate, the company does not need to comply with the principle, provided that the company fully explains the reason why it does not comply.

Reorganisation of TSE market segments

In April 2022, the TSE reorganised its market segments, composed of the Market First Section, Market Second Section, Mothers, and JASDAQ (Standard/Growth), and began operating three markets: Prime, Standard, and Growth. According to the TSE, they have conceptualised the Prime Market as a market for companies focusing on constructive dialogue with global investors. The 2021 revisions to the Code mentioned above included addition of provisions for listed companies on the Prime Market that aim for a higher level of governance, such as the appointment of one-third or more independent outside directors, enhancement of the quality and quantity of climate change disclosures, enhancement of English disclosures, and use of an electronic voting platform for institutional investors.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short termism and the importance of promoting sustainable value creation over the long term?

In Japan, the risks of short-termism, such as the possibility of bringing about under-investment in tangible and intangible assets including R&D that may produce long-term value, have recently been widely recognised. Based on such recognition, various efforts to create corporate value over the mid- and long-term have been promoted to maximise the profits of Japanese companies for sustainable economic development in Japan. The introduction of both Japan's Corporate Governance Code (see question 1.3 above) and the Principles for Responsible Institutional Investors (Japan's Stewardship Code) (see question 2.2 below) may be positioned as part of such efforts.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

In listed companies, the operation and management of the company is the responsibility of directors (in the case of Companies with Three Committees and executive officers, see question 3.1 below) and only material issues, including the items set forth below, must be approved by a shareholders' meeting under the Companies Act. Most items can be resolved by a majority of the voting rights of shareholders present at the meeting; however, some material issues must be resolved by a greater proportion of voting rights, such as no less than two-thirds of the voting rights of shareholders present at the meeting (e.g. amendments to the articles of incorporation, mergers, etc.).

The rights and powers of the shareholders' meeting include the following items:

(a) amendments to the articles of incorporation;
(b) appointment and dismissal of directors, statutory auditors, or accounting auditors (see question 3.2 below);
(c) approval of financial statements (except for companies that satisfy certain requirements);
(d) approval of mergers, demergers, share exchanges/transfers, or business transfers (with *de minimis* exceptions);
(e) payment of dividends (unless otherwise provided for in the articles of incorporation);
(f) issuance of shares or stock options at especially favourable prices; and
(g) determination of directors' remuneration (see question 3.3 below) and discharging of directors' liabilities (see question 3.8 below).

2.2 What responsibilities, if any, do shareholders have with regard to the corporate governance of the corporate entity/entities in which they are invested?

Since the responsibility of shareholders is limited to the amount of their invested capital, general shareholders do not have any responsibilities as regards corporate governance. Regarding institutional investors, however, the Principles for Responsible Institutional Investors (Japan's Stewardship Code) was published in 2014 by the Council of Experts Concerning the Japanese Version of the Stewardship Code established by the FSA. It offers the principles to be followed for a wide range of institutional investors to appropriately discharge their stewardship responsibilities, with the aim of promoting sustainable growth of investee companies. These principles include that institutional investors should have a clear policy on how they fulfil their stewardship responsibilities, and should publicly disclose such a policy.

After its first revision in 2017, in March 2020, the Principles for Responsible Institutional Investors (Japan's Stewardship Code) were revised for a second time after the discussion at the Council of Experts on the Stewardship Code. Although the revision extends throughout the Code, one major change of the revision is that the revised Code has added principles regarding the responsibility of service providers for institutional investors, such as proxy advisors and investment consultants for pensions.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have with regard to such meetings?

In Japan, companies commonly hold an annual shareholders' meeting within three months of the end of each fiscal year. In this meeting, shareholders vote on items, such as the appointment of directors/statutory auditors and the distribution of dividends (see question 2.1 above). Before an annual shareholders' meeting, a convocation notice, including reference materials for exercising voting rights, financial statements and business reports, must be provided to shareholders at least two weeks before the date of the meeting. In addition, the 2019 CA

Amendment has introduced a system under which listed companies must make these materials available on the Internet at least three weeks before the date of the meeting. Companies also hold extraordinary shareholders' meetings to obtain shareholder approval of other corporate actions, such as mergers.

Shareholders who have met certain requirements (level of shareholding or holding period) have the right to demand that directors convene a shareholders' meeting. If directors do not convene within a specific period despite such demands, the shareholder may convene a meeting after obtaining court permission. A shareholder who meets certain requirements may also require that the company include specific proposals as agenda items for a shareholders' meeting by a request made eight weeks or more prior to the date of the shareholders' meeting. In this regard, considering that there were some cases in which shareholders abused this right, and made a large number of proposals, the 2019 CA Amendment has limited the number of proposals that a shareholder can make at a shareholders' meeting to 10. Shareholders are entitled to exercise their voting rights and to ask questions relating to the agenda items at the shareholders' meeting.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

Generally, shareholders do not owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities, and are not liable for acts or omissions of corporate entities because the liability of shareholders is limited to the amount of their capital invested in the shares for which they have subscribed. Although shareholders can be theoretically liable for the company's acts or omissions under the doctrine of "piercing the corporate veil", the likelihood of a successful application of such a doctrine to the shareholders of a listed company is very low. Relating to the stewardship principles, the Principles for Responsible Institutional Investors (Japan's Stewardship Code) have been in place since 2014 (see question 2.2 above).

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

Shareholders may seek enforcement action against the members of the management body (i.e. directors, statutory auditors, and executive officers) mainly through two methods. One method is to initiate a lawsuit on behalf of the company (i.e. a derivative claim). The other method is to pursue board members directly as individuals (i.e. a direct claim).

Before filing a derivative claim, the shareholders need to request that the company sue such members of the management body, and if the company does not sue the management members within 60 days of such a request, the shareholders may sue the members on behalf of the company. These claims are usually brought on the basis of a breach of fiduciary duty by the directors, statutory auditors or executive officers.

If a shareholder suffers damages due to the wilful misconduct or gross negligence of the directors, statutory auditors or executive officers in the performance of their duties, the shareholder may directly claim damages against such members.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

The main disclosure requirements are provided for in the Companies Act, the FIEA, and the TSE Regulations. The Companies Act provides that a company must state in its business report the names, number, and shareholding ratio of its top 10 shareholders as of the end of each fiscal year. The FIEA provides that a shareholder in a listed company must file a report with the authorities concerning its shareholding ratio, the purpose of the holding, and other related matters if the holding ratio exceeds 5%, and to file a report if the holding ratio increases or decreases by 1% or more. In addition, the FIEA and the TSE Regulations provide that a listed company must report or disclose in a timely manner when a main shareholder (i.e. a shareholder who holds 10% or more of the voting rights of the company) changes.

The acquisition of securities by a shareholder is not limited unless otherwise provided for in the relevant laws. Parties that intend to acquire one-third or more of the voting rights of a listed company outside the market should be aware of the tender offer regulations under the FIEA, which limit the method, timing and speed with which shareholders may purchase shares in listed companies. Some Japanese companies have adopted anti-takeover measures which are triggered when a bidder acquires a certain pre-determined shareholding ratio (in many cases, 20% of the voting rights of the company). The Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade imposes a 30-day pre-notification requirement if (i) a purchaser's voting rights exceed 20% or 50% of all voting rights after the contemplated transaction, and (ii) the aggregate amount of domestic sales of the parties' group companies exceed certain thresholds.

Foreign investors should be aware of FDI restrictions under the Foreign Exchange and Foreign Trade Act (the "FEFTA"). Recently, the FEFTA has been amended to significantly lower the threshold from 10% to 1%, which came into effect in June 2020. If a foreign investor's holding ratio of a listed company in specified industries relating to the national interest (e.g. weapons manufacturing, airline industry, nuclear industry, and oil industry) will become 1% or more, the investor must file a report with the relevant authorities 30 days (which may be shortened or lengthened depending on the circumstances) before the closing of the transaction, which could be subject to investigation by the relevant authorities. This obligation is, however, exempt under certain circumstances. For example, if the foreign investor agrees to and complies with certain conditions, such as it will not serve as a director or statutory auditor of a listed company which engages in the specified industries above, the foreign investor is not required to file the pre-closing report but is only required to file a post-transaction report within 45 days, on condition that, in the case of a listed company which engages in the "core" specified industries, the investor's holding ratio does not reach 10% or more. When a listed company in which a foreign investor acquires the interest of 1% or more does not engage in the specified industries above, the foreign investor will not be required to file any report until the holding ratio reaches 10% or more, where the investor must file a report with the relevant authorities within 45 days.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

The FIEA requires any shareholder who holds more than 5% of the total number of issued shares of the relevant listed

company to file a large shareholding report. In such large shareholding report, a large shareholder has to disclose its intention or purpose for holding the shares as concretely as possible.

Other than this large shareholding report system, there are no mandatory disclosure requirements of the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested. However, under the Principles for Responsible Institutional Investors (Japan's Stewardship Code), institutional investors should publicly disclose a clear policy on how they fulfil their stewardship responsibilities and voting records for each investee company on an individual agenda item basis (see question 2.2 above).

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Shareholder activism has become more common in Japan in recent years, and there have been several movements which require attention every year. Recently, there have been an increasing number of cases where activist shareholders propose certain corporate actions, such as M&A transactions to companies, or activist shareholders intervene to prevent a company from conducting certain corporate actions or propose seeking better conditions. While there are some discussions about the need to regulate shareholder activism, it is generally not regulated in Japan at this time.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

The management body of a company can be classified into three types: a "Company with Statutory Auditor(s)"; a "Company with an Audit and Supervisory Committee"; and a "Company with Three Committees". A Company with Statutory Auditor(s) is still the most commonly used corporate structure for Japanese listed companies. As of April 8, 2024, approximately 2,179 listed companies on the TSE had adopted this corporate structure. Nonetheless, a Company with an Audit and Supervisory Committee, the corporate structure introduced by the amendments to the Companies Act in 2014, has also become very popular. As of April 8, 2024, approximately 1,559 listed companies on the TSE had adopted this new structure.

Company with Statutory Auditor(s)

Shareholders elect both directors and statutory auditors, and the directors constitute a board of directors. The board of directors appoint one or more representative directors from among the directors, who can bind the company and take general responsibility for the management and operation of the company on a daily basis. Directors must monitor the performance of duties of other directors, and statutory auditors must audit the management of the company by the directors. Important decisions of the company provided by law or the articles of incorporation must be resolved at a board meeting. Most listed companies fall under the category of a "Large Company" (see question 1.2 above), and the statutory auditors of a Large Company must form a board of statutory auditors.

Company with an Audit and Supervisory Committee

Shareholders elect directors who are members of the Audit and Supervisory Committee and other directors separately, and the directors constitute the board of directors. No statutory auditor is appointed. The majority of Audit and Supervisory Committee members must be outside directors. The board of directors appoint one or more representative directors from among the directors, who are given the authority to bind the company and take general responsibility for the management and operation of the company on a daily basis. The Audit and Supervisory Committee is empowered with broader audit authority than the statutory auditors in the traditional model. This model was introduced as an intermediate model between the traditional "Company with Statutory Auditor(s)" model and the "Company with Three Committees" model by the amendments to the Companies Act in 2014. Unlike the "Company with Statutory Auditor(s)" model in which the statutory auditors are not directors, members of the Audit and Supervisory Committee in a "Company with an Audit and Supervisory Committee" are directors. Further, unlike the "Company with Three Committees" model, there is no obligation in a "Company with an Audit and Supervisory Committee" to establish a nominating committee or a compensation committee, or to appoint executive officers (*shikkoyaku*).

As with a Company with Statutory Auditor(s), important decisions of the company as provided by law or the articles of incorporation must be resolved at a board meeting. However, if a majority of directors are outside directors or the articles of incorporation so provide, the board may delegate the authority to make important decisions to a certain director (typically a representative director), including the issuance of shares to a third party, important disposals of company property, etc.

Company with Three Committees

Shareholders only elect the directors, and the directors form a board of directors and elect the members of three committees from among these directors. No statutory auditor is appointed. The three committees are (i) the audit committee, which mainly audits the directors and executive officers, (ii) the nominating committee, which determines proposals to be submitted at the shareholders' meeting regarding the appointment and dismissal of directors, and (iii) the compensation committee, which determines compensation for each director and executive officer. Each committee must have three or more members who concurrently serve as directors, and a majority of the members must be outside directors. The board of directors appoint executive officers who manage and operate the company on a daily basis, and directors and the board of directors supervise the executive officers. If two or more executive officers are elected, the board of directors must select a representative executive officer(s). Directors who are not outside directors may concurrently serve as executive officers.

3.2 How are members of the management body appointed and removed?

In a Company with Statutory Auditor(s), directors are appointed and removed by a shareholders' resolution passed by a majority of the voting rights of shareholders present at a shareholders' meeting. The period of tenure of a director is two years, unless such a term is reduced by the articles of incorporation or a resolution at a shareholders' meeting. The representative director is appointed and removed among directors by the board of directors. Statutory auditors are appointed and removed by a shareholders' resolution passed by a majority (in the case of removal, two-thirds or more) of the voting rights of shareholders present at a shareholders' meeting. The period of tenure of a statutory auditor is four years, and such a term cannot be reduced by the articles of incorporation or a resolution at a shareholders' meeting.

In a Company with an Audit and Supervisory Committee, directors are appointed and removed by a shareholders' resolution passed by a majority (in the case of removal of members of the Audit and Supervisory Committee, two-thirds or more) of the voting rights of shareholders present at a shareholders' meeting, and directors who are members of the Audit and Supervisory Committee are appointed separately from other directors. The period of tenure of directors who are members of the Audit and Supervisory Committee is two years, which cannot be reduced by the articles of incorporation or a resolution at a shareholders' meeting. On the other hand, the period of tenure of other directors is one year, unless reduced by the articles of incorporation or a resolution at a shareholders' meeting. Representative directors are appointed and removed from among directors who are not members of the Audit and Supervisory Committee by the board of directors.

In a Company with Three Committees, directors are appointed and removed by a shareholders' resolution. Members of the audit committee, the nominating committee, and the compensation committee are appointed and removed by the board of directors. Executive officers, including representative executive officer(s), are elected and removed by the board of directors. The tenure of a director or executive officer is one year, unless the term is reduced by the articles of incorporation. The board of directors may always remove executive officers.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

The Companies Act provides that, for a Company with Statutory Auditor(s), the remuneration of directors must be approved at a shareholders' meeting. Most companies approve a maximum aggregate amount of remuneration for all directors and delegate the board of directors to determine the amount for individual directors. For a Company with an Audit and Supervisory Committee, the remuneration of directors who are members of the Audit and Supervisory Committee must be approved separately from that of other directors. In the case of a Company with Three Committees, the compensation committee determines the remuneration of each director and executive officer. The Companies Act provides that a company's business report must state the aggregate amount of compensation (including severance allowance) for directors (in a Company with an Audit and Supervisory Committee, (i) directors who are members of the Audit and Supervisory Committee, and (ii) other directors), statutory auditors, and executive officers, respectively. In the case of a Company with Three Committees, information regarding how the company determines the directors' and executive officers' remuneration, and an outline of the company's compensation policy, must be included in the company's business report. The 2019 CA Amendment has imposed this requirement on Companies with Statutory Auditor(s) that satisfy certain requirements and Companies with an Audit and Supervisory Committee.

In addition, the FIEA requires that companies disclose in the securities report the type of compensation (cash, stock options and bonuses), the total amounts of compensation for directors, statutory auditors, and executive officers, respectively, and the number of members of each group, and the amount of compensation for each individual director, statutory auditor, or executive officer whose total compensation is JPY100 million or more.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

In addition to the disclosure requirement described in question 2.6 above, directors, executive officers and statutory auditors are required to report sales and purchases of securities in order to ensure that they do not violate insider trading regulations; if a director, executive officer or a statutory auditor of a listed company buys and sells shares in his/her company within a six-month period and realises profits, the company may require the director, executive officer or statutory auditor, as the case may be, to disgorge the profits to the company. Furthermore, under the FIEA, the number of shares held by directors, executive officers and statutory auditors must be disclosed in the company's securities reports. Under the Companies Act, the number of stock options held by directors, executive officers or statutory auditors must be stated in the company's business report, and the number of shares held by the nominees of directors or statutory auditors must be stated in the reference materials provided at shareholders' meetings.

3.5 What is the process for meetings of members of the management body?

Directors specified in the articles of incorporation of the company can convene a board meeting by giving one week's prior notice (unless a shorter period is provided in the articles of incorporation) to all directors (and statutory auditors in the case of a Company with Statutory Auditor(s)), and other directors may require that the board meeting be held whenever necessary. Resolutions are passed with a simple majority of directors present at the meeting, and a quorum is represented by a majority of all directors with voting rights (unless otherwise provided in the articles of incorporation). A director who has a special interest in a resolution may not participate in the vote for such a resolution. A resolution may be passed by obtaining the written or electronic consent of all directors if so provided in the articles of incorporation.

The representative directors and the executive officers are required to report to the board at least once every three months regarding the status of the execution of his/her duties, and these reports cannot be made by way of notice. Therefore, a company must hold a board meeting at least once every three months.

3.6 What are the principal general legal duties and liabilities of members of the management body?

The principal duties of directors include the following: (i) duty of care (directors must manage the business with the care of a good manager); (ii) duty of loyalty (directors must perform their duties for the company in a loyal manner); (iii) duty to monitor (directors must monitor the performance of other directors, including representative director(s)); and (iv) duty to establish a risk management system (directors must establish internal control systems to manage risks associated with the business; see question 3.7 below).

If directors or executive officers neglect their duties, they will be liable to the company for damages arising as a result thereof. In addition, they are liable to third parties, such as creditors, for damages incurred by such third parties arising as a result of wilful misconduct or gross negligence in the performance of their duties.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

The Companies Act requires Large Companies, Companies with an Audit and Supervisory Committee and Companies with Three Committees to have internal control systems to ensure that (i) directors, executive officers and other employees perform their duties in an efficient manner, (ii) the company properly manages the risks associated with its operations, (iii) directors, executive officers, and other employees perform their duties in compliance with relevant laws, regulations, and articles of incorporation, and (iv) the performance of duties by directors, executive officers, and other employees are properly audited and monitored by statutory auditors, an Audit and Supervisory Committee or the audit committee, respectively. The systems that must be determined by the board of directors include a system to ensure that the business of the company group, consisting of the company, the parent company, and the subsidiaries, is conducted properly.

As for the board composition, the 2019 CA Amendment introduced a mandatory obligation under which large public companies that are obligated to file securities reports (which generally include listed companies) must appoint at least one outside director.

Further, regarding board diversity, the Japanese government formulated and published the "Basic Policy on Gender Equality and Empowerment of Women (the Intensive Policy for Gender Equality and the Empowerment of Women 2023)" in June 2023. Based on this policy, in October 2023, the TSE set numerical targets for appointment of female executives, such as directors, by listed companies on the Prime Market to at least one in or around 2025 and to 30% or more of total executives by 2030. The TSE also recommends that such listed companies develop action plans to achieve these numerical targets.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

If the articles of incorporation of a company so provide, some of the directors' liabilities to the company may be discharged to a limited extent by board resolution. Further, some of the directors' liabilities may be discharged by a shareholder resolution without the authorisation of the articles of incorporation, though approval of all shareholders is required to discharge the directors' liability in full. Further, a company may also, if allowed by the articles of incorporation, enter into contracts with its directors who are not executive directors or employees, and statutory auditors, limiting their liabilities to the company.

Directors, statutory auditors, and executive officers are permitted to take out liability insurance and/or to enter into indemnification agreements. The 2019 CA Amendment introduced and clarified the procedure under which companies taking out liability insurance or entering into an indemnification agreement must resolve certain related matters at a board meeting and disclose related matters in their business reports. The tax authority in Japan has announced and clarified that insurance premiums paid by a company covering the liability of a director must be treated as insurance rather than as part of the compensation paid to such a director if the insurance has been resolved at a board meeting.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

It is understood that setting and changing the strategy of the corporate entity/entities should be done primarily by the management body (i.e. the board of directors) itself, or by the relevant corporate department (such as corporate development department) under the supervision and ultimate responsibility of the management body of the company.

4 Other Stakeholders

4.1 May the board/management body consider the interests of stakeholders other than shareholders in making decisions? Are there any mandated disclosures or required actions in this regard?

General Principle 2 of Japan's Corporate Governance Code states that, under Section 2 titled "Appropriate Cooperation with Stakeholders Other Than Shareholders": "Companies should fully recognise that their sustainable growth and the creation of mid- to long-term corporate value are brought about as a result of the provision of resources and contributions made by a range of stakeholders, including employees, customers, business partners, creditors and local communities. As such, companies should endeavour to appropriately cooperate with these stakeholders." The primary reasons for the adoption of this principle include the fact that Japan's Corporate Governance Code has followed the structure of the G20/OECD Principles of Corporate Governance, and it recognises that Japanese companies have traditionally had a strong corporate culture of fully respecting stakeholders' rights and positions.

At the same time, however, we believe that this principle does not allow the board/management body to give priority to the interests of these stakeholders over those of shareholders, and that the board/management body still needs to consider maximising the interests of shareholders. We are not aware of any mandated disclosures or required actions specifically for these stakeholders.

4.2 What, if any, is the role of employees in corporate governance?

No laws provide a specific role for employees in corporate governance. In practice, however, some listed companies negotiate with employees or labour unions with regard to management matters, such as company reorganisation. In addition, the misconduct of several companies has been brought to light by employee whistleblowers. In this regard, the Whistleblower Protection Act prohibits a company from treating employees unfavourably for blowing the whistle on illicit behaviours within the company.

4.3 What, if any, is the role of other stakeholders in corporate governance?

There are no legal or regulatory duties or voluntary codes providing a specific role for other stakeholders in corporate governance. Many listed companies, however, consider that customers, suppliers, local communities or other stakeholders are important for them to increase their corporate value in a sustainable manner (see question 4.1 above).

4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility and similar ESG-related matters?

Until recently, no laws had mandated disclosures on corporate social responsibility ("CSR") or similar ESG-related matters. In practice, however, many listed companies had already considered CSR and ESG as important. They had been trying to highlight their efforts by voluntarily publishing relevant reports, such as CSR reports, in accordance with the principles of the Corporate Governance Code. Also, it was becoming more common for listed companies to include relevant descriptions regarding ESG-related matters in securities reports. Based on these trends and intensive discussions, the FSA introduced the mandatory disclosure requirement relating to corporate sustainability in 2023 (see question 5.3 below).

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency and what is the role of audits and auditors in these matters?

The representative director (or the representative executive officer in the case of a Company with Three Committees) is in charge of the operation and management of the company and, therefore, is primarily responsible for disclosure and transparency.

Statutory auditors (in the case of a Company with an Audit and Supervisory Committee or a Company with Three Committees, the Audit and Supervisory Committee or the audit committee assumes the same role, respectively) audit the business operations of a company managed by directors including internal control systems (see question 3.7 above for further details), as well as an annual business report to ensure proper disclosure. The board of statutory auditors presents an auditor report to shareholders, which states (i) whether the business report describes the company's situation properly, and (ii) any unlawful act or material fact that violates laws, regulations or the articles of incorporation in connection with the performance of duties by directors and executive officers, if any. In addition, the accounting auditor, who must be a licensed accountant or accounting firm, audits the financial statements of the company.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

The FIEA requires listed companies to disclose (i) their corporate governance policies (e.g. an outline of their policies and the reasons for adopting such policies, etc.), and (ii) information regarding the compensation of directors, statutory auditors and executive officers (see question 3.3 above). In addition to these disclosures through securities reports and disclosure through business reports, the FIEA requires listed companies to submit an internal control report once every fiscal year to the relevant local finance bureau, setting forth an assessment of their internal procedures designed for ensuring the credibility of their financial statements and information that might materially influence financial statements.

Furthermore, TSE Regulations require listed companies to submit a corporate governance report setting forth matters including an outline of the corporate governance system, basic policy regarding an internal control system, and the relationship of the directors, statutory auditors, and executive officers with the company.

These disclosures are made through the websites established and maintained by the FSA and the TSE, and most listed companies are also voluntarily publishing these disclosures on their own website.

5.3 What are the expectations in this jurisdiction regarding ESG- and sustainability-related reporting and transparency?

Until recently, there had been no legally binding requirements relating to CSR or sustainability. Enhancement of disclosure of governance information in securities reports was actively discussed, and such an atmosphere encouraged listed companies to voluntarily report on ESG- and sustainability-related matters in their securities reports. Based on these discussions, in January 2023, the FSA published revisions to the related ordinances of the FIEA and added a new section relating to corporate sustainability to securities reports. Applicable companies, including listed companies on the TSE, are now required to include such disclosures in their securities reports from the fiscal year ending March 2023.

5.4 What are the expectations in this jurisdiction regarding cybersecurity and technology-related reporting and transparency?

There are no legally binding requirements relating specifically to cybersecurity and technology-related matters. However, regarding corporate sustainability information, which was added as a disclosure item for securities reports (see question 5.3 above), the FSA published its interpretation that sustainability information could include matters such as the environment, society, employees, respect for human rights, anti-corruption, anti-bribery, governance, cybersecurity, data security, etc. Each company needs to consider what information is material for it. Accordingly, companies that consider cybersecurity and technology-related matters as material must include and publish these matters in their securities reports.

Nobuya Matsunami is a partner at Nishimura & Asahi and a member of the corporate department. He has extensive experience in international and domestic M&A transactions, as well as general corporate matters. Mr Matsunami engages in various kinds of transactions, including stock and asset acquisitions, tender offers, joint ventures, and de-listings of publicly held companies. Mr Matsunami is admitted to practise law in both Japan and New York.

Nishimura & Asahi
Otemon Tower, 1-1-2 Otemachi
Chiyoda-ku, Tokyo, 100-8124
Japan

Tel: +81 3 6250 6200
Email: n.matsunami@nishimura.com
URL: www.nishimura.com/en/people/nobuya-matsunami

Kaoru Tatsumi has extensive experience advising on US-Japan cross-border corporate transactions, such as mergers, MBOs/LBOs, joint ventures, venture capital investments, and other M&A transactions, as well as general corporate matters and commercial disputes. He previously worked at the Japanese Ministry of Justice, mainly on the amendment to the Companies Act, and draws on that experience to provide a wide range of legal services in the areas of corporate law and corporate governance. His key clients include major business companies, financial institutions, and private equity funds. He is admitted to practise law in both Japan and New York and was named Foreign Expert for Corporate/M&A in the USA in the 2024 edition of *Chambers Global*.

Nishimura & Asahi
1251 Avenue of the Americas, 23rd Floor
New York, NY 10020
USA

Tel: +1 212 830 1600
Email: k.tatsumi@nishimura.com
URL: www.nishimura.com/en/people/kaoru-tatsumi

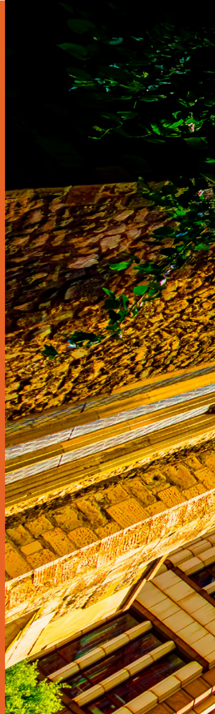
Nishimura & Asahi is Japan's largest full-service international law firm. With more than 800 professionals globally (including some associate and alliance offices), the diversity and depth of expertise offered by our world-class lawyers is singular.
Leveraging our global network of offices, including associate and alliance offices, we provide a full suite of cross-border legal services throughout our network. We have a presence in Bangkok, Shanghai, Dubai, Frankfurt, Düsseldorf, Hanoi, Ho Chi Minh City, New York, Singapore, Taipei and Yangon, as well as our Japan offices in Tokyo, Osaka, Nagoya, Fukuoka and Sapporo, and our associate offices in Jakarta, Kuala Lumpur, and Manila.

www.nishimura.com/en

NISHIMURA & ASAHI

International Comparative Legal Guides

The **International Comparative Legal Guide** (ICLG) series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.



Corporate Governance 2024 features 24 Q&A jurisdiction chapters covering key issues, including:

- Sources and Overview: Legislative and regulatory sources, current trends and developments, short termism risks and long-term value creation
- Shareholders: Rights and powers, responsibilities, shareholder meetings, duties and liabilities, enforcement action, necessary disclosures, shareholder activism
- Management Body and Management: Identity and appointments, disclosure requirements, meeting process, legal duties and liabilities, corporate governance responsibilities/functions, indemnities and insurance
- Other Stakeholders: Stakeholder role and interests, role of employees, laws and regulations on CDR and ESG

The International Comparative Legal Guides are published by: glg Global Legal Group