

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-gaisha*) 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 3,558 companies (as of March 31, 2017), including major Japanese companies. The TSE imposes corporate governance requirements on its listed companies.

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

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 needs to abide by regarding the rights and obligations of management members, organs, the disclosure of information, etc. This Act also requires “Large Companies” (companies with capital of JPY500 million or more or with total debts of JPY20 billion or more) with a board of directors to establish a basic policy regarding the internal control system. The Companies Act applies whether or not the 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. All stock companies are required under the Companies Act 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 (“FSA”) offers fundamental principles for effective corporate governance of listed companies in Japan. A brief overview is provided in question 1.3.
- (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) (see question 2.2), provide criteria for proxy voting that influence the corporate governance of listed companies.

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 (the “Amendments”) were promulgated in 2014, and became effective on May 1, 2015. The push towards reform arose primarily from domestic and foreign investors’ concerns over the quality of Japanese corporate governance. A brief overview of the Amendments is provided below:

■ A new internal governance model – Companies with an Audit and Supervisory Committee

Companies may opt into a new corporate governance model that coexists with the traditional Japanese models. The new model is a “Company with an Audit and Supervisory Committee” within the board of directors. This new model is the intermediate model between the traditional “Company with Statutory Auditor(s)” and “Company with Three Committees” models. Unlike a “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 a “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*).

■ Amendment to the qualification of outside officers

Eligibility requirements for outside directors and statutory auditors have been amended. Directors, executive officers and employees of a parent company, executive directors, executive officers and employees of a sister company, and close relatives of directors and executives of the company would no longer be eligible.

The Amendments do not mandate that listed companies have at least one outside director; instead, any listed company that is required to submit an annual securities report and that has no outside directors on its board must disclose why appointing an outside director would be inappropriate (the so-called “comply or explain” approach).

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 adopts a principles-based approach in order 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 responsibilities of boards of directors, the Code provides that listed companies should appoint two or more 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.

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

In listed companies, the operation and management of the company is the responsibility of the directors (in the case of Companies with Three Committees and executive officers, see question 3.1) 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);
- (c) approval of financial statements (except for companies which 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) and discharging of directors’ liabilities (see question 3.9).

2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?

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, the Principles for Responsible Institutional Investors (Japan’s Stewardship Code) published by the Council of Experts Concerning the Japanese Version of the Stewardship Code established by the FSA 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.

2.3 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

In Japan, companies commonly hold an annual shareholders’ meeting within three months after 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). Companies also hold extraordinary shareholders’ meetings in order 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. Shareholders are entitled to ask questions relating to the agenda items at the shareholders’ meeting.

2.4 Can shareholders be liable for acts or omissions of the corporate entity/entities?

Shareholders 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.

2.5 Can shareholders be disenfranchised?

The situations where shareholders of listed companies can be disenfranchised are limited. The minority shareholders of listed companies can be squeezed out by (i) share-for-share exchanges or triangular share-for-share mergers or exchanges, (ii) cash-for-share mergers or exchanges, (iii) a method using consolidation of shares, or (iv) a demand for cash-out of shares.

All of these procedures, other than (iv), require the approval of no less than two-thirds of the voting rights of shareholders present at a shareholders' meeting, and the minority shareholders who are squeezed out have appraisal rights. Since capital gains tax is not incurred at corporate level, the "consolidation of shares" scheme (see (iii) above – this scheme employs a consolidation of shares at the consolidation ratio where the minority shareholders would be allocated only a fractional share (i.e. less than a whole share) and receive cash) is recently the most common procedure used to squeeze out minority shareholders, if a majority shareholder holds less than 90% of voting rights (please note that tax treatment in the squeeze out process is soon to be amended, and new treatment will apply after October 1, 2017).

However, if a majority shareholder holds, directly or indirectly, 90% or more of the voting rights in a company, such a shareholder (defined as "Special Controlling Shareholder") has the right to demand other shareholders to sell all their shares in the company to the Special Controlling Shareholder under the Amendments (see (iv) above). This procedure does not require the approval of a shareholders' meeting; therefore, the Special Controlling Shareholder may accomplish the squeeze-out process more quickly than with other procedures.

A shareholder may not exercise his or her voting rights at a shareholders' meeting of a listed company if the listed company owns 25% or more of the voting rights of such shareholders.

2.6 Can shareholders seek enforcement action against 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 by 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.

2.7 Are there any limitations on, and disclosures required, in relation to 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 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 devices 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; if a foreign investor's holding rate of a listed company that engages in weapons manufacturing, the airline industry, nuclear industry, oil industry, or other specified industries relating to the national interest of Japan will be 10% or more, the investor must file a report with the relevant authorities 30 days prior to the closing of the transaction, which could be subject to investigation by the relevant authorities. Furthermore, there are other special limitations on holding rates of foreign investors in specified industries. For example, a company in the air transportation industry may, when foreign investors request to be registered in the shareholders' list, refuse to do so, and, if the company registers them to the effect that more than one-third of its shares are owned by foreign investors, it is not allowed to engage in the air transportation business.

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". While a Company with Statutory Auditor(s) is the most commonly used corporate structure for Japanese listed companies, the number of Companies with an Audit and Supervisory Committee, the corporate structure for which was introduced by the Amendments (see question 1.3), is gradually growing. As of March 31, 2017, over 700 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 appoints representative director(s) 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), 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. 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.

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 to a certain director (typically a representative director) the authority to make important decisions, 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 appoints 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 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 contracts 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.

In addition, the FIEA requires that companies disclose in the securities report the type of compensation (cash, stock options, 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 2.7, 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 described in the reference materials provided at the 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).

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 necessary 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 the 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 which 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.

Many listed companies in Japan have already introduced outside directors. However, for the listed companies which have not already done so, one of the key challenges currently facing the management

bodies of such companies is the strong demand of introducing outside directors to enhance corporate governance. As stated in question 1.3, any listed company that is required to submit an annual securities report which has no outside directors on its board must disclose why appointing an outside director would be inappropriate (the so-called "comply or explain" rule). In addition, Japan's Corporate Governance Code includes the principle that listed companies should have two or more independent outside directors. It is expected that some listed companies which are not able to find appropriate persons as outside directors will change their structure to a Company with an Audit and Supervisory Committee by appointing previous outside auditors as directors who are members of the Audit and Supervisory Committee.

3.8 What public disclosures concerning management body practices are required?

Under the Companies Act, a company is required to disclose, in its business report to be submitted to the shareholders once every fiscal year, the directors' names, positions at the company, positions concurrently held at other companies, total amount of remuneration, the primary activities of outside directors, such as attending board of directors' meetings, related remarks, the company's efforts to avoid any inappropriate business operations, etc.

3.9 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 under the Amendments.

Directors, statutory auditors, and executive officers are permitted to take out liability insurance. The tax authority in Japan has announced and clarified that insurance premiums paid by a company covering the liability of a director shall be treated as insurance rather than as part of the compensation paid to such a director, if (i) the insurance premiums have been approved by a board of directors' meeting, and (ii) there is approval of either (a) a voluntary committee, the majority of which is outside directors, or (b) all of the outside directors.

4 Other Stakeholders

4.1 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.

4.2 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 community or other stakeholders are important for them to increase their corporate value in a sustainable manner.

4.3 What, if any, is the law, regulation and practice concerning corporate social responsibility?

No laws regulate corporate social responsibility (“CSR”). In practice, however, many listed companies consider CSR important and have tried to highlight their efforts by disclosing CSR reports.

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency?

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.

5.2 What corporate governance related disclosures are required?

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). In addition to these disclosures through securities reports and disclosure through business reports as described in question 3.8, 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 the financial statements.

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

5.3 What is the role of audit and auditors in such disclosures?

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 the company managed by directors including internal control systems (see question 3.7 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 or not 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.

5.4 What corporate governance information should be published on websites?

Companies are not required to post corporate governance information on their websites, unless companies elect to do so under the Companies Act. Annual securities reports, quarterly reports, extraordinary reports, and other reports of listed companies are publicly disclosed by the Ministry of Finance through the Electronic Disclosure for Investors’ Network (“EDINET”). Further, certain information relating to corporate governance of listed companies, such as corporate governance reports, is publicly disclosed by TSE through the Timely Disclosure Network.

**Nobuya Matsunami**

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

Tel: +81 3 6250 6200
Email: n_matsunami@jurists.co.jp
URL: www.jurists.co.jp/en/

Nobuya Matsunami is a Partner of Nishimura & Asahi and a member of the corporate department. He has broad 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 delistings of publicly held companies. Mr. Matsunami is admitted to practise law in both Japan and New York.

**Kaoru Tatsumi**

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

Tel: +81 3 6250 6200
Email: k_tatsumi@jurists.co.jp
URL: www.jurists.co.jp/en/

Kaoru Tatsumi is a Counsel at Nishimura & Asahi. His practice focuses on domestic and cross-border acquisitions, ongoing private transactions, restructurings and spin-offs, joint ventures, and numerous other kinds of M&A. Mr. Tatsumi has recent experience of working at the Japanese Ministry of Justice, mainly for the amendment of the Companies Act, and using such experience, he provides a wide range of legal services in the areas of corporate law and corporate governance. Mr. Tatsumi is admitted to practise law in both Japan and New York.

NISHIMURA & ASAHI

Nishimura & Asahi is one of Japan's premier full-service law firms, covering all aspects of domestic and international business and corporate activity. The firm currently has more than 500 Japanese and foreign lawyers and employs over 500 support staff, including tax accountants, and one of the largest teams of paralegals in Japan.

Through the enhancement of professional and organisational synergies resulting from the firm's expansion, an unprecedented level of client service is made possible in highly specialised and complex areas of commercial law. Nishimura & Asahi understands its clients' growing needs, and its fully integrated team of lawyers and professional staff is proud to share the same fundamental philosophy: an uncompromising commitment to excellence.