# Japan

**Takeshi Watanabe**
**Anderson Mōri & Tomotsune**

## Sources of corporate governance rules and practices

### 1 Primary sources of law, regulation and practice

**What are the primary sources of law, regulation and practice relating to corporate governance?**

The Companies Act, its subordinate rules and rules of stock exchanges govern issues relating to incorporation, organisation, operation and administration of corporations. In addition, the Financial Instruments and Exchange Act and rules of stock exchanges regulate disclosure of information by listed corporations. Further, the Japan Corporate Auditors Association has published a Code of Kansayaku Auditing Standards as standards for corporate auditors in the conventional 'corporate auditor-type' governance structure. On 5 March 2015, the Financial Supervisory Agency and the Tokyo Stock Exchange jointly published a draft Corporate Governance Code, which will become effective from 1 June 2015.

### 2 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 activist 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. Commentaries authored by officials of the Department of Justice are sometimes relied upon, however. 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.

## The rights and equitable treatment of shareholders

### 3 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 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 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 shares. Thus if the articles of incorporation provide that the appointment or removal of directors requires the approval of a specific type of shareholder, such 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.

### 4 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, 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 such authority to the board of directors);
- amendment of the articles of incorporation;
- issuance of shares at specially favourable prices;
- issuance of stock options at specially favourable prices;
- change 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);
- transfers of all or a material part of its 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 its entirety by a resolution of shareholders;
- consolidation of shares;
- capital reductions;
- reductions of legal reserves; and
- dissolution of the corporation.

While there is no requirement for a non-binding shareholder vote, the management of companies sometimes obtain shareholders' resolutions as support for their actions.

### 5 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 approval of a general meeting of shareholders or approval of the board of directors also require approval of the meeting of a certain class of shareholders.

### 6 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?**

In order 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 such transfer is registered 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 such other person also be a shareholder. A shareholders' resolution can be passed if all the shareholders agree in writing. As such written resolution requires unanimous agreement, practically speaking a listed corporation cannot pass a written resolution.

### 7 Shareholders and the board

**Are shareholders able to require meetings of shareholders to be convened, resolutions to be put to shareholders against the wishes of the board or the board to circulate statements by dissident shareholders?**

A shareholder that has been holding 3 per cent or more of the entire voting rights for the previous six months has the right to 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 been holding 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 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.

### 8 Controlling shareholders' duties

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

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 having 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.

### 9 Shareholder responsibility

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

Theoretically speaking, 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 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 failure to exercise) his or her voting rights even if the voting is a decisive factor in the general meeting of shareholders.

## Corporate control

### 10 Anti-takeover devices

**Are anti-takeover devices permitted?**

Many listed Japanese corporations have adopted various types of anti-takeover devices recently. 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.

### 11 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 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.

### 12 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 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.

### 13 Compulsory repurchase rules

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

A corporation may not 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.

### 14 Dissenters' rights

**Do shareholders have appraisal rights?**

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

## The responsibilities of the board (supervisory)

### 15 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.

### 16 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 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 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 adopted 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 adopted the audit committee-type governance structure, the board may delegate most of the decision-making powers to individual directors if (i) majority of its directors are outside directors, or (ii) the articles of incorporation contains provisions to allow such delegation.

### 17 Board obligees

**Whom does the board represent and to whom does it 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.

### 18 Enforcement action against directors

**Can an enforcement action against directors be brought by, or on behalf, of those to whom duties are owed?**

A corporate auditor (a person elected at the general meeting of shareholders) of a corporation that 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 such conduct is threatening and such conduct would cause material damage to the corporation. Members of the audit committee of a corporation that adopted the committee-type governance structure and members of audit committee of a corporation that 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 such conduct by a director would cause 'substantially material' damage to the corporation.

### 19 Care and prudence

**Do the board's duties 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 that director 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.

### 20 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. 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.

### 21 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 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 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 incorporations.

In the case of a corporation that 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:
- management policy;
- items necessary for operation of the audit committee;
- allocation of duties among statutory executive officers and matters relating to relationship among plural statutory executive officers;

- identification of the director to whom statutory executive officers should request convocation of a meeting of the board of directors; and
- determination of framework to assure appropriate management of the corporation.

In the case of a corporation that 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 (i) majority of its directors are outside directors, or (ii) the articles of incorporation contain provisions to allow such delegation. The board is also required to determine the following items:
- management policy;
- items necessary for operation of the audit committee; and
- determination of a framework to assure appropriate management of the corporation.

### 22 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, which 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 last 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 a related to any of the directors, statutory executive officers, mangers or other important employees of the corporation.

There are some additional rules relating to qualification of 'outside' directors. In the case of a corporation that has adopted the committee-type governance structure, it has to 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 has to 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 member 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 the position of 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 that of those not classified as outside directors, provided, however, that a corporation can adopt articles of incorporation authorising the corporation to enter into an agreement with each of the outside directors and non-executive director to limit the maximum amount of monetary liability of such directors. Stock exchange rules require a listed corporation to have at least two independent officers. An 'independent officer' is defined as an outside director or corporate auditor whose interest will not conflict with that of general shareholders.

### 23 Board composition

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

None of the following can become a director:
- a legal entity;
- a person subject to guardianship or curatorship;
- a person who was previously subject to any criminal sanction under the Companies Law or other certain types of laws if two years have not passed since the end of the criminal sanction or the probation period; or
- a person who was subject to imprisonment under the laws other than those covered by the item above if that period of imprisonment or probation has not ended.

If a corporation intends to have a board structure, it must have at least three directors. Further, the articles of incorporation of most corporations have provisions regarding the minimum or maximum number of directors. The size of the board is determined by a shareholders' resolution through their power to appoint and remove directors in accordance with such restrictions. Board vacancies must be filled by the appointment of new directors through a resolution of the shareholders' meeting. A shareholders' meeting can appoint a candidate for such substitute director in advance. If there is such substitute director, then such substitute director becomes a director once an existing director resigns or dies.

### 24 Board leadership

**Do law, regulation, listing rules or practice require separation of the functions of board chairman 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 chairman and CEO 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 chairman. If there is a chairman, he or she customarily serves as chairman at board meetings. If there is no chairman, the president customarily serves as chairman at such meetings. The position of chairman 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 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.

### 25 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, they 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 has to set up the nomination, audit and compensation committees and appoint one or more executive officers. Each committee has to 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 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 has to 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 member 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 the position of statutory accounting adviser or statutory executive officer of any of the subsidiaries of the corporation.

## 26 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 each executive director of a corporation that 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.

## 27 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 such access is necessary to claim compensation for damages incurred against a director, statutory accounting adviser, corporate auditor or statutory executive officer of the corporation.

## 28 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 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. 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 such 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 member 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 member of the audit committee. The directors who are also members of the audit committee has the right to express their opinion on the remuneration payable to audit committee members at the general meeting of shareholders. The audit committee member director elected by the audit committee may express opinion 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.

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 while it shall be one year or less for other dierctors. It shall be one year in a committee-type governance corporation. Even if the service contract provides for a longer term, such 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.

## 29 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 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.

## 30 D&O liability insurance

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

D&O insurance is permitted and has recently become common practice. The company can pay the premiums. The portion of premium corresponding to the coverage for directors' obligations against the corporation is treated as taxable salary paid to the relevant directors.

## 31 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?**

There is no explicit provision prohibiting the company from indemnifying directors in respect of liabilities incurred against a third party in their capacity as directors. But such indemnities are not common. If the articles of incorporation of the company 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.

## 32 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.

### Update and trends

Significant amendments to the Companies Act took effect from 1 May 2015. One amendment introduced a new type of governance structure called 'audit committee type'. In the case of the audit committee-type governance structure, at least three directors must be appointed as members of the audit committee at the general meeting of shareholders and a majority of committee members must be outside directors. Under the new law, the qualification of outside directors and outside auditors is modified. The new law and the relevant listing rules now strongly recommend that listed corporations with the corporate auditor-type governance structure appoint at least two outside directors.

In addition to the above, the Financial Supervisory Agency and the Tokyo Stock Exchange published a draft Corporate Governance Code, which will become effective as a soft law from 1 June 2015. The Code provides a code of conduct that the management of listed companies should follow.

### 33 Employees

**What role do employees play in corporate governance?**

Legally, employees do not play 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 they wish to conduct major corporate restructuring.

## Disclosure and transparency

### 34 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 at the head office and major branches of the corporation and the office of the relevant stock exchange, because the articles of incorporation are one of the attachments to a securities registration statement and annual securities report, which a listed corporation must file every year.

### 35 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 EDINET system. It must also file a quarterly report within three months of the end of each quarter. Such reports are available to the public via the EDINET system. Further, stock exchange rules require timely disclosure by listed corporations of major events or decisions of the listed corporation.

## Hot topics

### 36 Say-on-pay

**Do shareholders have an advisory or other vote regarding executive remuneration? 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 that payable to corporate auditors are so approved, no further resolution is required unless such maximum amounts need to be amended. In the case of the audit committee-type governance structure, such amount payable to audit committee member directors and that payable to other directors must be separately determined. In the case of the committee-type governance structure, remunerations of the directors and executive officers are 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.

### 37 Proxy solicitation

**Do shareholders have the ability to nominate directors without incurring the expense of proxy solicitation?**

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 appointment of directors to the general meeting of shareholders, by giving eight weeks' notice.

**ANDERSON MŌRI & TOMOTSUNE**

**Takeshi Watanabe** **takeshi.watanabe@amt-law.com**

Akasaka K-Tower
1-2-7 Motoakasaka, Minato-ku
107-0051 Tokyo
Japan

Tel: +81 3 6888 1052
Fax: +81 3 6888 3052
www.amt-law.com