



TSE Explanatory Material
*Study Group to review Minority Shareholder Protection
and other Framework of Quasi-Controlled
Listed Companies (Second Phase, Fourth Meeting)*

Exchange & beyond
Tokyo Stock Exchange, Inc.
August 21, 2023

Plan for Future Discussions (Governance)



- Regarding the governance of listed companies with controlling shareholders, what is important from the perspective of protecting minority shareholders is that an effective governance system should be in place and functioning to monitor the risk of structural conflicts of interest between controlling shareholders and minority shareholders.
 - The 2021 revision of the Corporate Governance Code (CG Code) established a new principle that requires companies with controlling shareholders to establish a governance system centered on independent directors who are independent of the controlling shareholders.
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- In light of the discussions to date in this Study Group and the situation surrounding the CG Code, **it is widely thought to be important that independent directors be utilized in terms of the development and functioning of such a governance structure.**
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- **In order for independent directors to be utilized in the development and functioning of governance systems, we would like to discuss the role of independent directors and how to ensure their independence from controlling shareholders from the perspective of what measures are necessary at the stock exchange and in the listing rules (under the current legal system).**

Role of Independent Directors in Listed Companies with Controlling Shareholders

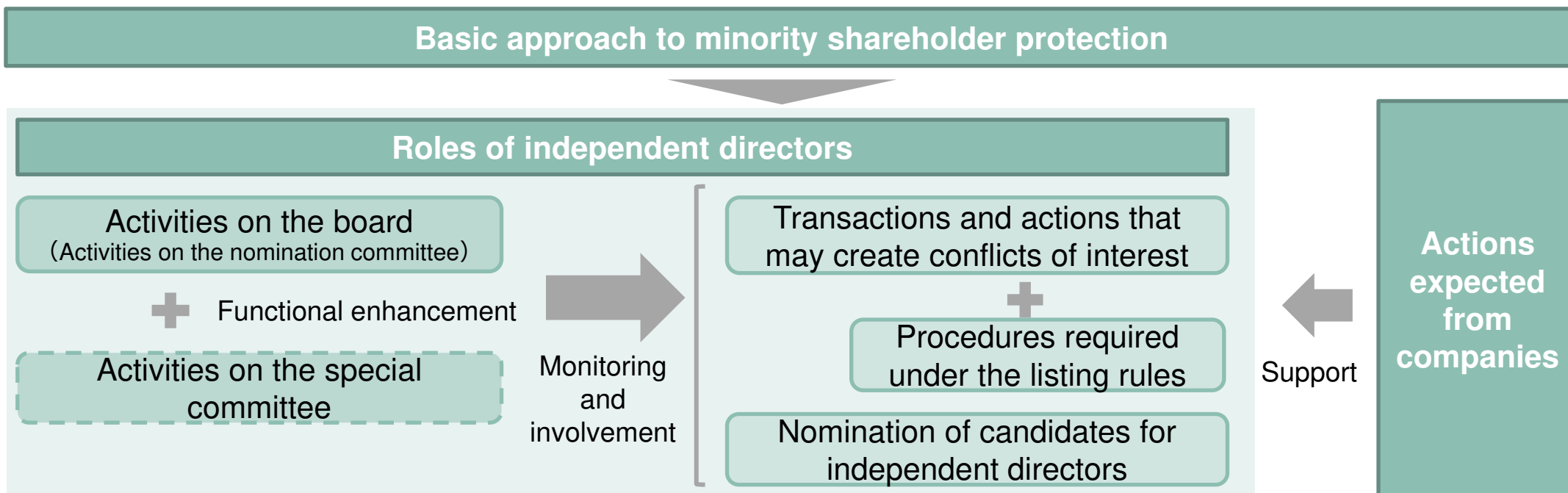


- TSE plans to **present an explanation of the roles expected of independent directors from the perspective of protecting minority shareholders in listed companies with controlling shareholders, including examples of specific situations.**
 - In order to promote understanding of these roles, TSE is also considering educational activities for independent directors, including distribution of the explanation.

Items for discussion

- TSE would like your opinion on the **explanation of the roles of independent directors in listed companies with controlling shareholders** which has been set out on the following pages **based on the discussion so far.**

Structure of the Explanation



Note: In addition to the action from independent directors and listed companies with controlling shareholders that is set out above, controlling shareholders will also need to make sure they do not treat minority shareholders unfairly (see the Notes attached to General Principle 4 of Japan's Corporate Governance Code).

Reasons for protecting minority shareholders' interests

- Listed companies have "general shareholders," which are shareholders who can change as a result of secondary market trading of shares and who cannot have any significant influence over the management of the listed company.
 - Listed companies gain a variety of benefits from having general shareholders, including smooth financing opportunities.
- **In listed companies with controlling shareholders (parent companies or non-corporate controlling shareholders), the general shareholders are "minority shareholders" who are those other than the controlling shareholder and do not have control over the management of the company.**
- **Since minority shareholders have no stake in a company other than that of a shareholder, the interests of minority shareholders are usually aligned with those of the company.**
 - In other words, a loss for minority shareholders means a loss for the listed company.
- **Therefore, for listed companies to achieve their business goals and aim for sustainable enhancement of corporate value, it is important to appropriately protect minority shareholders' interests in the course of company management.**
- In addition, given that the existence of such minority shareholders is essential for listed companies with controlling shareholders to participate in the capital market, **it is also important to appropriately protect their interests in order to foster trust in the fairness of the capital markets and build an environment in which minority shareholders and investors can participate with confidence.**

Key points for protection of minority shareholders' interests

- In listed companies with controlling shareholders, **controlling shareholders and minority shareholders have the same interests in one respect: that they both benefit from the company's sustainable growth and enhancement of corporate value over the medium to long term.**
 - For example, controlling shareholders can be expected to perform a monitoring function by exercising influence over the companies and their management teams, and minority shareholders can also benefit from the increase in corporate value resulting from the exercise of such monitoring.
- On the other hand, **there is a structural conflict of interest risk wherein the controlling shareholder exercises its influence for its own interests (other than those as a shareholder), thereby undermining the interests of minority shareholders and benefiting only the controlling shareholder.**
- **Monitoring of this kind of structural conflict of interest risk is essential for listed companies with controlling shareholders, in order to protect their minority shareholders.**
- Minority shareholders also exist **when a listed company has a shareholder who has substantial control** despite not falling under TSE's definition of a controlling shareholder (because they do not hold a majority of voting rights, for example). In such cases, **the abovementioned needs to protect minority shareholders' interests and monitor the risk of conflicts of interest are still valid.**

General remarks

- Independent directors in a listed company **are entrusted as directors by shareholders in accordance with the Companies Act to take on the role and duty of contributing to the sustainable growth of the company and the enhancement of corporate value over the medium to long term.**
- In a listed company with a controlling shareholder, the interests of minority shareholders are usually aligned with those of the company. In light of this, as part of the role and duty mentioned above, **independent directors of such a listed company take on the roles and duties of appropriately protecting minority shareholders' interests and monitoring the conflicts of interest between the controlling and minority shareholders.**
 - In this aspect, the independent directors of a listed company with a controlling shareholder have expanded roles and duties compared to those of the average listed company.
- However, this does not mean that independent directors must always be cautious of deals with or instructions from the controlling shareholder. **Where it is beneficial to minority shareholders to cooperate with or seek assistance from the controlling shareholder, independent directors should actively support decisions to do so.**

Role on the board

- The role and duty of independent directors to protect minority shareholders **is primarily supposed to be fulfilled in their activities as directors on the board, both in day-to-day monitoring and in deliberation and decision-making on specific transactions and actions, covering comprehensively the entire management and business of the company.**

Roles in day-to-day and specific situations

Day-to-day monitoring

- It is the job of directors to monitor the company's business executors, including executive directors and executive officers, and as part of this monitoring, they are expected to appropriately monitor the risk of conflicts of interest arising within business execution.
 - Bearing in mind that executive directors and executive officers, who are not necessarily independent from the controlling shareholder, and employees who receive instructions and orders from them are particularly vulnerable to the influence of the controlling shareholder, **independent directors must check whether business executors are not prioritizing the interests of the controlling shareholder over that of minority shareholders.**
 - **In order to make sure the issue of conflict of interest is not overlooked, independent directors must keep an ongoing and close watch on this risk through deliberations and reports at board meetings.**
 - Monitoring methods could include the formulation of transaction and conduct standards and reviews/assessments of their application.

Deliberation and decision-making on specific transactions and actions that involve a conflict-of-interest risk

- At times when a conflict of interest could arise between minority and controlling shareholders, namely where the board is deliberating and making decisions on specific transactions or actions, **independent directors must examine whether said transaction or action will benefit the interests of minority shareholders, express their opinions on it, and point out problems.**

Role on the special committee

- In a listed company with a controlling shareholder, a special committee to deliberate and review transactions and actions that pose the risk of conflicts of interest can be established as a mechanism to supplement monitoring by the board, and the members of this committee are expected to be independent directors (see CG Code Supplementary Principle 4.8.3).
- In such a case, **the independent directors, as members of the special committee, are expected to consider whether the transaction or action in question will benefit the interests of minority shareholders and to express their views thereon.**
- Depending on the design of the special committee, it can also be granted the authority to negotiate in the relevant transaction or action. In such cases, **the independent directors, as members of the special committee, are expected to realize the interests of minority shareholders through their own involvement in the negotiations.**

Note regarding the establishment of special committees

- Under the Companies Act, a special committee is not automatically established and granted authorities and duties, but **is established according to the circumstances of each company in order to enhance the monitoring of conflicts of interest by the board.**
- Since **special committees are established to enable deliberations and examinations mainly on issues of conflicts of interest in an environment consisting only of members who are independent from the controlling shareholder,** they may be utilized:
 - **to enhance the effectiveness of monitoring of conflicts of interest in cases where the ratio of directors on the board who are independent of the controlling shareholder is not high**
 - **to enhance the effectiveness of monitoring of conflicts of interest and ensure the appropriateness and transparency of the process in cases where particularly careful consideration on conflicts of interest is required.**
- **It is important for each company to establish a framework to ensure that the results of deliberations at the special committee are reflected in deliberations by the board and in execution of business at the company.**

Transactions and Actions that have Potential for Conflicts of Interest (1)

- Conflicts of interest can arise in various aspects of a company's activities, but **the basic focus of monitoring is to examine each transaction or action as to whether it is in the interest of minority shareholders.**
- Since it is not feasible for independent directors to directly monitor all transactions and actions, **they are required to exercise appropriate monitoring depending on the materiality of each one.**

Outline by category of transaction/action

Category	Origins of conflicts of interest	Focuses of monitoring
(1) Direct transactions	<ul style="list-style-type: none"> • Conflicts of interest may arise whereby the agreed transaction price and other terms and conditions are disadvantageous to the company. • This includes both regular transactions (recurring and ongoing transactions) and non-regular transactions (one-time transactions). 	<p>(Examples of factors to be considered in determining whether transactions are in the interest of minority shareholders)</p> <ul style="list-style-type: none"> ➤ For transactions that could also be executed with third parties: <ul style="list-style-type: none"> • Comparison with the terms and conditions that would be set if the transaction was with a third party • What benefits the company would gain from the transaction, out of the benefits that the controlling shareholder or the entire group would gain • Process of the transaction (e.g., course of negotiations) ➤ For transactions that are specific to the group: <ul style="list-style-type: none"> • Necessity of the transaction • What benefits the company would gain directly from the transaction • What benefits the company would gain from the transaction, out of the benefits that the controlling shareholder or the entire group would gain • Process of the transaction (e.g., course of negotiations) <p>(Examples of factors to be considered in determining materiality)</p> <ul style="list-style-type: none"> ➤ Strength of relationship with the controlling shareholder, such as volume and share of transactions with them, concurrent management positions, etc. ➤ Quantitative factors such as the amount of the transaction, difference in profit margins from transactions with third parties, etc. ➤ Nature of the transaction, such as whether it is a regular or non-regular transaction

Outline by category of transaction/action

Category	Origins of conflicts of interest	Focuses of monitoring
<p>(2) Business transfers or adjustments</p>	<ul style="list-style-type: none"> • As part of the controlling shareholder's business portfolio management of the group: <ul style="list-style-type: none"> ➢ Where a company transfers business to the controlling shareholder or a company within its group, a conflict of interest may arise whereby the agreed transfer price and other terms and conditions of the business transfer are disadvantageous to the company. ➢ Where, in accordance with an instruction by a controlling shareholder, a company suspends entry into a new business field, withdraws from an existing business field, or segregates its business (e.g., by distributing customers) without involving any transactions, a conflict of interest may arise whereby the company loses business and revenue opportunities. 	<p>(Examples of factors to be considered in determining whether transactions are in the interest of minority shareholders)</p> <ul style="list-style-type: none"> ➢ For business transfers: <ul style="list-style-type: none"> • Terms and conditions of the business transfer, including the transfer price • Importance of the relevant business to the company at the time of the transfer (e.g., profitability, growth potential) • What benefits the company would gain from the transfer, out of the benefits that the controlling shareholder or the entire group would gain • Process of the business transfer (e.g., course of negotiations) ➢ For business adjustments without any transactions: <ul style="list-style-type: none"> • Impact of the business adjustment on the company • Importance of the relevant business to the company at the time of the adjustment (e.g., profitability, growth potential) • What benefits the company would gain from the adjustment, out of the benefits that the controlling shareholder or the entire group would gain • Process of the business adjustment (e.g., course of negotiations) <p>(Examples of factors to be considered in determining materiality)</p> <ul style="list-style-type: none"> ➢ Strength of relationship with the controlling shareholder, such as volume and share of transactions with them, concurrent management positions, etc. ➢ Quantitative factors such as the size of the relevant business, transfer price, etc.

Outline by category of transaction/action

Category	Origins of conflicts of interest	Focuses of monitoring
(3) Conversion into a wholly-owned subsidiary by a controlling shareholder	<ul style="list-style-type: none"> • Where a controlling shareholder squeezes out minority shareholders to make the company a wholly-owned subsidiary, a conflict of interest may arise whereby the price paid for the squeeze-out is disadvantageous. 	<ul style="list-style-type: none"> ➤ This is a category of transaction that requires particularly careful consideration of conflicts of interest, and the involvement of independent directors is essential. ➤ Independent directors are expected to serve to protect the interests of minority shareholders based on the Ministry of Economy, Trade and Industry's "Fair M&A Guidelines."
(4) Other (instructions on business and management, etc.)	<ul style="list-style-type: none"> • Instructions from a controlling shareholder on business or management, which do not involve typical transactions, may cause conflicts of interest. • For example, <ul style="list-style-type: none"> ➤ Where an intellectual property development project or other joint project is begun between a company and the controlling shareholder or one of its group companies, a conflict of interest may arise whereby the company is forced to participate in the joint project even though it has little need, or the agreed conditions of the joint project or ownership status of the developed property are disadvantageous to the company. ➤ In a personnel reassignment between a company and the controlling shareholder or one of its group companies, a conflict of interest may arise whereby the controlling shareholder's interests are prioritized in the personnel reassignment. 	<ul style="list-style-type: none"> ➤ Independent directors must consider whether each instruction is in the interest of minority shareholders depending on its contents. ➤ Independent directors must carry out monitoring appropriately depending on the materiality of the instruction in terms of business and management.

Involvement in nomination of candidates for independent director

- **In order for independent directors to fulfill their role of monitoring conflicts of interest, it is important to ensure the independence of the independent directors from controlling shareholders.**
- Therefore, given that this is a situation that is closely related to minority shareholder protection, even though it may not directly lead to conflicts of interest, **independent directors are expected to be involved in the nomination of candidates for independent director in order to ensure their independence from controlling shareholders.**

Involvement in procedures under listing rules

- Under the Code of Corporate Conduct, when a listed company carries out a material transaction or action involving the controlling shareholder, the company is required to obtain an opinion from an entity that has no interest in the controlling shareholder that the transaction will not undermine the interests of minority shareholders (Securities Listing Regulations, Rule 441-2, Paragraph 1).
- **If such procedures are required, independent directors are expected to be involved in the process by providing such opinions, either themselves or as part of a special committee.**
- **Depending on the nature of the transaction, companies could also obtain such an opinion from a third party such as an outside expert. However, even in such cases, independent directors are expected to express, within the company, a judgment that the transaction does not undermine the interests of minority shareholders, based on the third-party opinion.**

Actions Expected from Companies

- In order for independent directors to appropriately fulfill their roles and duties to protect the interests of minority shareholders, it is also important for **the company to take action on their side.**

Action

Governance Structure Establishment

- It is important to **establish a governance structure with reference to CG Code Supplementary Principle 4.8.3**, such as appointing a sufficient ratio of independent directors who are independent of the controlling shareholder on the board of directors and establishing a special committee that includes such independent directors.
- **It is important to develop a decision-making and reporting system** for the board and the special committee **that enables independent directors to understand completely the origins of material conflict of interest risks.**

Operation

- To make sure that conflicts of interest are adequately discussed at board meetings, **it is important for the secretariat to provide support** in practical terms, **such as notifying independent directors in advance briefings that discussion will be needed from a conflict-of-interest perspective.**

Information Disclosure

- Since the monitoring system for conflicts of interest can take various forms depending on the situation of each company, **it is important for each company to disclose how it develops and operates its monitoring system in its Corporate Governance Report** or other documents.
- Such disclosure **leads to more effective governance systems through dialogue with investors**, and also **provides information that allows minority shareholders and investors to invest in the company with confidence.**

Ensuring Independence of Independent Directors from Controlling Shareholders



- The original idea is that **controlling shareholders can exercise their voting rights on the appointment and dismissal of directors, including independent directors, as a way to discipline the company in order to enhance corporate value.**
- On the other hand, **in order for independent directors to play a role in protecting minority shareholders, their independence from controlling shareholders must be ensured.**

Items for discussion

- **While respecting the right that controlling shareholders have to vote on the appointment and dismissal of independent directors, what do you think about the approach of utilizing minority shareholders' voting results to make the protection of minority shareholders by independent directors more effective?** In particular, what do you think about the necessity and effectiveness of this approach and its impact on the voting rights of controlling shareholders?
 - Measures suggested in previous discussions
 1. Majority of Minority (MoM) condition for designation of independent directors (as a requirement under the listing rules)
 - ✓ If a proposal to appoint an independent director is approved by a majority of all shareholders, including the controlling shareholder, but is not approved by a majority of the minority shareholders, the director will be appointed as an outside director under the Companies Act, but cannot be designated as an independent director under the listing rules.
 2. Disclosure of percentage of approval and disapproval votes by minority shareholders for appointment of independent directors
 - ✓ To ensure transparency regarding the level of minority shareholders' confidence in independent directors.
 - This allows minority shareholders and investors to use the level of confidence in the independent directors to evaluate the effectiveness of the governance system in normal times and the effectiveness of the involvement of independent directors in contingencies.
 - It would also be expected to encourage the appointment of independent directors who will contribute to the protection of (obtain the approval of) minority shareholders.
- If a listed company with a controlling shareholder has a (voluntary) nomination committee, **what role do you think the nomination committee should play, in particular from the perspective of ensuring the independence of independent directors from the controlling shareholder?**

MoM condition for nominating independent directors

Necessity/effectiveness

- **Without a certain level of support from minority shareholders, it may not be possible to justify that an independent director is an advocate for the interests of the general and minority shareholders.**
- **At a company without a controlling shareholder, independent directors are qualified through the independence requirements plus an appointment by the general meeting of shareholders, which is also independent. A MoM condition is equivalent to requiring companies with a controlling shareholder to secure similar requirements in practice, and it follows naturally from the current Corporate Governance Code and listing rules.**
- **MoM is a mechanism to ensure independence from the controlling shareholder as an objective attribute and also to have independent directors fulfill their fiduciary duty to minority shareholders.**
- **The concept of independent directors/auditors is to determine independence based on objective attributes, whereas the MoM ensures independence through focusing on the process. Mixing these two ideas is questionable and only one of them should be taken.**

Impact on voting rights of controlling shareholders

- **Because the basic structure of the stock company is based on control backed by the share of voting rights, it would be excessive to always require approval by a majority of minority shareholders for independent director appointments, even in the ordinary course of business.**
 - ✓ We should go back and review the original concept of what shareholder rights and voting should mean. **The perspective that the voting rights themselves represent how much responsibility they have in investing in the company is also very important.**
- **Requiring a MoM does not preclude a parent company from exercising its right to appoint or dismiss executive directors of the subsidiary.** In addition, since the entire board of directors of the subsidiary is responsible for monitoring the subsidiary's operations, the parent company's monitoring function over the subsidiary will still function.

Disclosure of percentage of approval and disapproval votes by minority shareholders for appointment of independent directors

- There would be no large obstacles to implementing this, but it should be noted that companies do not necessarily have an accurate count of the number of voting rights exercised on-site at general shareholders meetings in the current practice.

(Reference) Disclosure in Extraordinary Report on Resolution Results on Director Appointment Proposals

- Companies disclose the results of the resolution on the appointment of directors in an Extraordinary Report if the proposal is approved at the general meeting of shareholders.

1 Reason for filing
(Omitted)

2 Details

(1) Date of relevant general meeting of shareholders
August 21, 2023

(2) Details of matters to be resolved
Proposal 1: Election of Five (5) Directors
The company will appoint A, B, C, D, and E as directors.

(3) Number of voting rights exercised for, against, and abstained; conditions for approval of matters to be resolved; and voting results

Matter to be Resolved	For	Against	Abstained	Voting	
				For (%)	Result
Proposal 1: Election of Five (5) Directors					
A	x,xxx,xxx,xxx	xxx,xxx	0	xx.x%	Approved
B	x,xxx,xxx,xxx	xxx,xxx	0	xx.x%	Approved
C	x,xxx,xxx,xxx	xxx,xxx	0	xx.x%	Approved
D	x,xxx,xxx,xxx	xxx,xxx	0	xx.x%	Approved
E	x,xxx,xxx,xxx	xxx,xxx	0	xx.x%	Approved

(4) Reason for not including some voting rights of shareholders present at the Annual General Shareholders Meeting in the total number of voting rights

The aggregate number of voting rights exercised prior to the Annual General Shareholders Meeting and the voting rights of certain shareholders present on the day, which could be confirmed to represent votes in favor or against, were sufficient to satisfy the conditions for approval of the matters to be resolved, and the resolution was adopted according to the Companies Act on this basis. For this reason, some of the voting rights were not included.

Numbers of Nomination Committees Established

- Nomination committees are essentially a mechanism to mitigate conflicts of interest between management and shareholders in listed companies where voting rights are dispersed.
- On the other hand, looking at the numbers of nomination committees established in listed companies with controlling shareholders (where voting rights are concentrated),
 - If the controlling shareholder is an unlisted parent company or a non-corporate controlling shareholder, a nomination committee is not established in most cases.
 - If the controlling shareholder is a listed parent company, the rate of establishment is around the same as for listed companies without a controlling shareholder.

Numbers of Nomination Committees Established

Prime Market and Standard Market	With a controlling shareholder								Without a controlling shareholder	
	Total		(Listed parent company)		(Unlisted parent company)		(Non-corporate controlling shareholder)			
Nomination Committee in place	229	54.9%	139	68.5%	24	40.7%	66	42.6%	1,919	67.2%
(of which, a majority are outside directors)	190	45.6%	113	55.7%	21	35.6%	56	36.1%	1,624	56.9%
(of which, the chair is an outside director)	154	36.9%	90	44.3%	17	28.8%	47	30.3%	1,227	43.0%
Total no. of companies	417		203		59		155		2,855	

Growth Market

Growth Market	With a controlling shareholder								Without a controlling shareholder	
	Total		(Listed parent company)		(Unlisted parent company)		(Non-corporate controlling shareholder)			
Nomination Committee in place	41	25.3%	9	25.7%	1	12.5%	31	26.1%	74	19.7%
(of which, a majority are outside directors)	27	16.7%	4	11.4%	0	0.0%	23	19.3%	55	14.7%
(of which, the chair is an outside director)	154	19.8%	5	14.3%	1	6.7%	26	21.8%	45	12.0%
Total no. of companies	162		35		8		119		375	

Note 1: CG Code Supplementary Principle 4.10.1, which requires the establishment of a nomination committee and compensation committee, applies to companies listed on the Prime and Standard Markets, but not to companies listed on the Growth Market, so the two are aggregated separately.

Note 2: These figures are an aggregate of statutory and voluntary nomination committees.

Source: Based on Corporate Governance Reports as of July 14, 2022

- A small number of listed companies that have listed or non-listed parent companies mention the establishment of a nomination committee as part of their disclosure on "policy and measures to ensure independence from parent company."

Disclosure in Corporate Governance Reports

ORGANO CORPORATION/6368 (June 30, 2023)

また、同社グループ経営における監督等の観点から、当社は同社からの取締役等を受け入れておりますが、取締役等の選任及び解任等の役員指名並びに報酬等に関する事項については、独立社外取締役が過半数を占める指名・報酬委員会で審議のうえ、取締役会で決定されていることから、コーポレートガバナンス体制の実効性も確保できているものと考えております。

NIPPON SANSO HOLDINGS CORPORATION/4091 (June 21, 2023)

当社は、親会社である三菱ケミカルグループ株式会社と2014年5月13日付で基本合意書を締結しており、当該基本合意書において、三菱ケミカルグループ株式会社は、同社の「グループ経営規程」の下、当社の自主性を尊重し、当社を全面的に支援及び協力することを規定しております。また、当社の取締役は、親会社と親会社以外の株主の利益が相反する場面では、親会社以外の株主の利益が害されることのないよう行動しております。当社は、独立社外取締役5名及び常勤の独立社外監査役2名を選任しており、これらの者が親会社と親会社以外の株主の利益相反が生じないよう監督しています。さらに当社では、取締役会が取締役、監査役の候補者の指名、CEOその他執行役員の選任および解任について諮問する、任意の指名・報酬諮問委員会を設けています。委員の構成は、社長および独立社外取締役5名の計6名で、独立社外取締役が委員長に就任しています。これにより経営陣の選任について親会社からの独立性を担保しています

If the company does not disclose the information in English, only the Japanese is provided. The date of reporting is for English-language materials, if available.

Ref. TOSOH CORPORATION/4042

[ORGANO's parent company] (June 23, 2023)

当該子会社における適正な業務執行ならびにグループ経営における企業価値の最大化を図るため、当社は当該子会社に取り締役等を派遣しておりますが、その経営については上場企業としての独立性を尊重しております。また、当該子会社は当社から独立した立場で独立社外取締役の指名・選解任を実施し、その独立社外取締役が過半数を占める指名・報酬委員会の意見を得た上で、取締役会にて経営陣の指名・報酬が決定されていることから、ガバナンス体制の実効性も確保できているものと考えております。

Ref. Mitsubishi Chemical Group Corporation/4188 [NIPPON SANSO HOLDINGS's parent company] (July 20, 2023)

We have put in place a system to ensure the appropriateness of operations within our Group, and share compliance, risk management and other Group internal control policies with NSHD.

Meanwhile, NSHD and we have agreed to respect the autonomy of NSHD management in the Agreement, and NSHD has established a voluntary Nomination and Compensation Advisory Committee, which advises the Board of Directors on the nomination of candidates for Directors and Statutory Auditors and the election and dismissal of CEOs and other executive officers. The committee consists of six members, the president and five independent outside directors, one of them serving as the chairperson. This ensures NSHD's independence from us regarding the selection of management team members. NSHD seeks to secure the objectivity and transparency of the Board of Directors in deliberations on transactions with the controlling shareholder, by appointing five independent outside directors who are independent of the controlling shareholder so that they make up majority of the nine-member Board of Directors

Note: Relevant parts of each company's disclosure have been extracted and partially edited for inclusion here. Blue text formatting was added by TSE.

- **It is conceivable as a measure for protecting minority shareholders to require listed companies to respect the decisions of their nomination committees, which consist of independent directors.**
- **Use of nomination committees in listed subsidiaries requires careful consideration.**
- **Establishing a nomination committee at a listed subsidiary makes it look like the company is giving consideration to governance, but there are considerable differences among companies in terms of the actual situation. The role that can be expected of a nomination committee when the parent company or controlling shareholder controls most of the voting rights at the AGM is **very different from that of a normal company.****

Note: TSE plans to clarify that the controlling shareholder's policy and approach to exercising voting rights when a nomination committee is established is one of the key points of information disclosure.

- METI's Group Guidelines present the role of the nomination committee in nominating management (rather than independent directors).

Only available in Japanese.

6.4 上場子会社経営陣の指名の在り方

6.4.1 上場子会社経営陣の指名に関する課題

- 上場子会社の経営陣については、支配株主である親会社が実質的には選任権限を有しており、その指名プロセスにも大きな影響を与えているとの指摘もある。
- 上場子会社の経営陣の指名については、支配株主と一般株主との間に利益相反リスクが存在することを踏まえ、一般株主利益にも配慮し、上場子会社として企業価値向上に貢献できる人物を選定することが課題となる。

6.4.2 上場子会社に求められる対応

上場子会社の経営陣については、上場子会社の企業価値向上に貢献するかという観点から、上場子会社が独立した立場で、その後継者計画を策定し、候補者の指名を行うべきである。その際、親会社と連携することは合理的であるが、親会社から提案された候補者についても、その適格性について客観的に判断すべきである。

- 上場子会社の経営陣には、一般株主の利益に配慮しつつ、その企業価値の向上に貢献する役割が求められるため、上場子会社が独立した立場で後継者計画に関する方針を策定し、経営陣を指名することが期待される。
- 他方、上場子会社の企業価値向上のために最適な経営陣の選任を行うことは、通常は、親会社にとっても、グループ全体の利益に資するものであるため、両者の間に利益相反は想定されない。
- このため、上場子会社の企業価値向上にとって最適な人選が行われるよう、親会社の有する知見やネットワークを活用する観点からも、候補者選定に関して協議を行う等、親会社と連携して取り組むことは合理的で

あり、親会社から候補者の提案を受けることも否定されないものの、上場子会社において、その適格性について客観的な判断を行うことが求められる。

6.4.3 上場子会社経営陣の指名に関する課題

上場子会社の指名委員会は、上場子会社の企業価値向上にとって最適な経営陣の指名が行われるよう、親会社からの独立性が実質的に担保されるべきである。

- コード補充原則 4-10④では、上場会社が監査役会設置会社または監査等委員会設置会社であって、独立社外取締役が取締役会の過半数に達していない場合には、経営陣幹部・取締役の指名などに係る取締役会の機能の独立性・客観性と説明責任を強化するため、独立社外取締役を主要な構成員とする指名委員会の設置が原則とされているが、上場子会社においては、自社の企業価値向上に最適な経営陣の指名が行われるよう、指名委員会が実効的に機能するためには、その運営において実質的に親会社からの独立性が担保されていることが重要である。
- 上場子会社の経営陣が親会社から派遣されるケースも想定されるが、上場子会社の指名委員会は、親会社から独立した独立社外取締役が中心となり、その候補者が上場子会社の企業価値向上に貢献できるかについて厳格に審査し、必要な場合には親会社に対して候補者の再考を促すことも検討されるべきである。
- 親会社の指名委員会において、グループ全体の経営陣の後継者計画等に関する審議に当たって、上場子会社における経営陣の指名や育成の状況について報告を受けることやグループ全体の方針を示すことは問題ないが、上場子会社における検討に対し、不当な影響を与えないよう、留意すべきである。

(Reference) Regulations on Conflicts of Interest in Each Market

	Ex ante regulations		Ex post facto regulations (Liability for damages, etc.)
	Regulations on governance structures	Regulations on transactions	
U.S.	<ul style="list-style-type: none"> • <u>Companies with controlling shareholders are exempt from many governance structure regulations.</u> <ul style="list-style-type: none"> ➢ Appointment of a majority of independent directors, establishment of nomination and compensation committees, etc. 	<ul style="list-style-type: none"> • In related party transactions (\$120,000 or more) , <ul style="list-style-type: none"> ➢ <u>An audit committee or another independent body of the board of directors conducts a prior review and oversight and will prohibit the transaction if inconsistent with the interests of the company and its shareholders.</u> (NYSE) ➢ <u>An audit committee or a comparable body of the board of directors conducts a post facto review and oversight.</u> (Nasdaq) 	<ul style="list-style-type: none"> • Based on <u>the fiduciary duty of a controlling shareholder to minority shareholders, the controlling shareholder is liable to the company for damages</u> if the company suffers damages as a result of transactions with the controlling shareholder or deprivation of opportunities by the controlling shareholder (case law).
U.K.	<ul style="list-style-type: none"> • The Articles of Incorporation of a company must <u>have a Majority of Minority rule</u> for the appointment of independent directors (if a shareholder becomes a controlling shareholder after listing, before the next general meeting of shareholders). <ul style="list-style-type: none"> – However, if the MoM is not obtained, the proposal can be re-proposed after a certain period of time, and if a majority of all shareholders approve the re-proposal, the appointment can be made. 	<ul style="list-style-type: none"> • <u>An agreement is required to ensure that transactions with the controlling shareholder are conducted at arm's length</u> (if a shareholder becomes a controlling shareholder after the listing, within six months thereafter). * • <u>Approval by the general meeting of shareholders is required for transactions with related parties other than transactions in the ordinary course of business</u> (with exemptions based on numerical criteria). ** <ul style="list-style-type: none"> – Voting rights of related parties are excluded at the shareholders' meeting. 	N/A
Japan	<ul style="list-style-type: none"> • <u>On a comply-or-explain basis</u>, one of the following is required <ul style="list-style-type: none"> ➢ <u>Appointment of a majority (Prime Market) or at least one-third (Standard Market) of independent directors</u> ➢ <u>Establishment of a special committee to manage conflicts of interest, including independent directors.</u> 	<ul style="list-style-type: none"> • In a transaction with a controlling shareholder, companies are required to <u>obtain an opinion from an entity who has no interest in the controlling shareholder regarding whether the transaction would undermine the interests of minority shareholders</u> 	N/A

* An amendment from rule-based to comply-or-explain-based is under consultation.

** Amendments (1) to relax the numerical criteria and (2) to require confirmation by a sponsor instead of approval at a general shareholders meeting are under consultation.