

(Reference Translation)

## **Principles of Corporate Governance for Listed Companies**

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**Tokyo Stock Exchange, Inc.**

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## **Principles of Corporate Governance for Listed Companies**

### **(Revised on December 22, 2009)**

Corporate governance is generally defined as the framework for disciplining corporate activities.

Most corporate activities have been undertaken principally with a view to generating revenue and thereby enhance the corporate value to shareholders. In expecting the listed companies to generate such performance on a continuous basis, it inevitably becomes necessary to motivate or monitor the management accordingly through a framework for disciplining corporate activities, namely corporate governance.

In other words, the appropriate operation of corporate governance for listed companies is a vitally fundamental demand for enhancing corporate value on a continuous basis, and the underlying aims of corporate governance are to provide an environment for such enhancement.

The profit-pursuing activities of enterprises are not fulfilled in modern economic society without complicated coordination of interests among various concerned parties (shareholders or investors, management, employees, suppliers, creditors, and local communities). As the areas of corporate activity are expanding, corporations face a growing need to take into account the values of different cultures and societies. As such, enterprises will have to engage in their profit-pursuing activities with a greater awareness of their social responsibilities, with greater transparency and fairness in accordance with market principles, while accepting full accountability to the entire economic community as well as shareholders and investors. The relationship with every concerned party bears an influence on corporate governance. From the perspective of the capital market, its focus centers primarily on relations between shareholders (including potential shareholders) and management.

The authority to execute the business of the company is delegated in large part to the management (representative directors, executive officers and directors, principal executives and the like), however such authority is based upon the confidence of shareholders, who ultimately provide the capital and bear the risks.

Shareholders usually empower the directors and auditors they elect with the authority to appoint, supervise and motivate management for the purpose of maximizing corporate value. Management is appointed by the resolution of the board of directors, which is given the authority to execute daily routine work, and permitted to exercise broad authority

subject to the supervision of the board of directors and board of company auditors. Directors, auditors, and the board of company auditors are elected by shareholders and have the obligation as prudent managers to fulfill the responsibilities mentioned above and the perform duties faithfully for the company and shareholders.

Any of the above can serve as a framework for governing the relations between shareholders and management. How to operate them effectively is the core issue of corporate governance.

Corporate governance, i.e., the framework for disciplining corporate activities, particularly those pertaining to the relationship between shareholders and management, is expected to fulfill various functions. The most important of these functions are as follows. Above all, it is crucial that the rights and interests of shareholders be protected and equally secured. Secondly, respecting the basic rights and interests of concerned parties other than shareholders (whose responsibilities have been increasing), and building smooth relationships with other such parties are crucial to the enhancement of a company's corporate value. In taking steps to effectively protect the rights and interests of all these interested parties, the transparency of corporate activities must be secured through the timely and accurate disclosure of information. Finally, the board of directors, auditors, and board of company auditors all hold key responsibilities and must fulfill all the duties expected of them.

These functions expected of corporate governance should be realized through the actual corporate governance policies adopted by a company. In reality, however, a specific model with a set of policies alleged to enhance corporate governance may not apply to every enterprise, but there are various combinations of policies suitable for individual enterprises. More important than adopting actual policies for corporate governance is the duty of individual companies to search for methods to better fulfill these functions in the light of cost-benefit relations to achieve the desired results.

The basic principles of a market economy hold that shareholders and investors evaluate these efforts and the state of information disclosure to make investment judgments and exercise their voting rights. Individual companies should review and improve their efforts on the basis of such evaluation.

In addition, the Principles of Corporate Governance apply to listed companies. However, with the recent development of forming a group of companies through the use of a holding company, etc., it is important for a listed company to ensure corporate governance of not only the parent company, but also the corporate group as a whole.

Therefore, a listed company is required to make efforts so that corporate governance functions effectively as a corporate group as a whole.

The following points, as Principles of Corporate Governance, raise the issues to which all companies should direct their attention, based on the expected functions of corporate governance.

## **1. Rights of shareholders**

**Corporate governance for listed companies should protect the rights of shareholders.**

Corporate governance has been structured with the primary focus on shareholders. There are many stakeholders (concerned parties) other than shareholders who have relationships with companies. They include employees, creditors, suppliers, customers, and communities. Indeed, the continuous profit from corporate activities would not be generated without smooth relationships with these stakeholders. However, looking at corporate governance from the perspective of a capital market, the shareholders (i.e. the providers of the capital) lie at the core of corporate governance.

For the purpose of fulfilling their responsibilities as the element at the core of corporate governance, shareholders shall be authorized to exercise various rights in managing a company. This should include the right to participate and vote in general meetings of shareholders on basic decisions of the company, including elections and dismissals of directors and auditors, fundamental corporate changes, the basic right to share various profits such as dividends, and the special right to make derivative lawsuits and injunction of activities in contravention of laws, regulations and other rules. That these rights as established by law should be protected and secured is the underlying condition for the proper function of corporate governance in conjunction with shareholders' awareness of their rights.

### **Issues requiring attention**

Listed companies shall direct their attention to the following issues in order to protect the rights of shareholders:

#### **(1) Respect of shareholders' basic rights**

##### **a. Respect of voting rights**

. Development and improvement of an environment in which shareholders exercise voting rights appropriately;

. Development and improvement of an environment in which shareholders are inclined to participate in general meetings of shareholders;

. Mutual communication with shareholders at the general meetings of shareholders;

b. Return of profit to shareholders

(2) Due consideration to the infringement of rights of existing shareholders

a. Enhanced disclosure of information to shareholders in situations where specified shareholders have excessive control that is not in proportion to the ownership ratio, and the rights of other shareholders are substantially infringed.

b. Securing fair treatment of and enhanced information disclosure to shareholders in cases where the ownership distribution of the company is, or will be, changed.

## **2. Equal treatment of shareholders**

**Corporate governance for listed companies should ensure the equal treatment of all shareholders, including minority and foreign shareholders.**

The equal treatment of all shareholders of the same class in proportion to their equity interests is an important element of corporate governance. Management, directors, auditors and controlling shareholders may find opportunities to abuse their positions to benefit themselves, and such activities are certain to cause disadvantages to investors and minority shareholders. The prohibition of abusive or fraudulent use of corporate assets or insider information by parties closely related to the company is an inevitable step to be taken both to protect investors and to maintain their confidence in the capital markets.

### **Issues requiring attention:**

Listed companies shall direct their attention to the following issues in order to secure equitable treatment of shareholders:

- (1) Development and improvement of a system to prohibit transactions against the primary interests of the company or shareholders through the abuse of concerned parties' positions such as officers, employees, and controlling shareholders;
- (2) Enhanced disclosure of information to shareholders in cases where concerned parties conduct actions that are likely to damage the primary interests of the company or shareholders;
- (3) Prohibition of special benefits provided to specified shareholders.

### **3. Relationship with stakeholders in corporate governance**

**Corporate governance for listed companies should help create corporate value and jobs through the establishment of smooth relationships between the company and its stakeholders and encourage further sound management of the enterprise.**

That companies sustain and improve their competitive strengths and enhance their values through the pursuit of profit on a continuous basis is a principal interest common to shareholders, but this is the result of the provision of company resources by all stakeholders. Thus, the establishment of smooth relationships with stakeholders other than shareholders based on active cooperation and constructive criticism would be in the long-term interests of enterprises.

#### **Issues requiring attention:**

Listed companies should direct their attention to the following issues in order to establish smooth relationships with stakeholders other than shareholders:

- (1) Cultivation of a corporate culture that respects the positions of stakeholders, and development of internal systems therefore;
- (2) Timely and accurate disclosure to stakeholders of material information relating to stakeholders, and development of internal systems therefore.

#### **4. Disclosure and transparency**

**Corporate governance for listed companies should ensure that timely and accurate disclosure is conducted on all material matters including the financial condition, performance results and ownership distribution.**

Listed companies shall be obliged to conduct timely and accurate disclosure regarding corporate activities. Such disclosure is indispensable for appropriate investor evaluation of enterprises in the market, and concurrently for the appropriate exercising of voting rights by shareholders. For this purpose, shareholders require periodic, reliable and comparable information sufficient to evaluate the operational conditions of businesses by the management, and further timely disclosure regarding material events taking place during the intervals between periodic disclosures. Such disclosure shall be conducted simultaneously to ensure equal treatment of shareholders. Fair disclosure helps to secure the confidence of investors in the market and is an important means to prevent the abuse of insider information.

#### **Issues requiring attention:**

Listed companies should direct their attention to the following issues in order to conduct timely and accurate disclosure:

- (1) Enhanced disclosure of quantitative information on financial conditions and operating results and enhanced disclosure of qualitative information that deepens the understanding of the management conditions of companies by investors ;
- (2) Securing opportunities for investors to access information equally and easily;
- (3) Development and improvement of internal systems to secure the accuracy and promptness of disclosure.

## **5. Responsibilities of Board of Directors, Auditors, Board of Company Auditors, and other relevant group(s)**

**Corporate governance for listed companies should enhance the supervision of management by the Board of Directors, Auditors, Board of Company Auditors, and other relevant group(s)(\*1), and ensure their accountability to shareholders.**

(\*1) The term “Board of Directors, Auditors, Board of Company Auditors, and other relevant group(s)” refers to the organization responsible for supervising management, mainly the Board of Directors and Auditors or Board of Company Auditors.

The legal framework or basis for corporate governance permits the choice of a corporate auditors system or committees system. In either case, the Board of Directors, Auditors, Board of Company Auditors, and other relevant group(s) should evaluate whether the management (\*2) has been accurately and efficiently executing business pursuant to their strategic guidance on strategies, and prevent the occurrence of conflicts of interest between the company and the management by reflecting on such evaluation prior to the election or discharge of management or the execution of decisions on compensation, and thereby fulfill their appropriate supervision responsibilities.

(\*2) The term “management” means the persons recognized by the company to have actually been involved in the management of the company, including representative directors and executive officers, which in turn include representative executives and executives.

### **Issues requiring attention:**

Listed companies should direct their attention to the following issues to ensure that the Board of Directors, Auditors, Board of Company Auditors, and other relevant group(s) sufficiently fulfill their responsibilities for management supervision and accountability to shareholders:

- (1) Monitoring of the management by the Board of Directors and Auditors or Board of Company Auditors and other relevant group(s) (\*3)
  - a. Organization of a Board of Directors, Auditors, Board of Company Auditors, and

other relevant group(s) suitable for making an objective determination on the execution of business by the management;

b. Development and improvement of a system under which the Board of Directors, Auditors, Board of Company Auditors, and other relevant group(s) assume responsibility for supervising the management;

c. Development and improvement of an internal check and balance system under which the Board of Directors, Auditors, Board of Company Auditors, and other relevant group(s) make reasonable judgments on their compliance with laws and regulations and accuracy of business operation conditions.

(\*3) The following measures shall be included in the monitoring of the management by auditors (or board of company auditors) from the viewpoint of strengthening the functions of auditors:

1. Maintain adequate human resources and infrastructure to support audits carried out by the auditors (cooperating with internal audit and internal control divisions for this purpose)
2. Appoint highly independent outside auditors; and
3. Appoint auditors with an in-depth knowledge of finance/accounting.

(2) Motivation for the management to maximize corporate value through positive convergence of management and company interests by appropriate means.

(3) Development and improvement of a mutual monitoring system by directors under which fulfillment of duty and integrity as prudent managers should be secured and under which illegal activities and inappropriate activities from the perspective of generally accepted views are prevented.

(Note) Structure of board of directors/auditors (board of company auditors), etc.

The following three corporate governance models have been proposed as those considered to be appropriate for many listed companies to secure the confidence of shareholders, investors, and others.

However, as described in the preface of the "Principles of Corporate Governance for Listed Companies", the best form of corporate governance varies depending on the structure, size, line of business and other aspects of each individual enterprise. Therefore, it is difficult to uniformly apply the same rule to all listed companies. In fact, there are various corporate governance structures.

Consequently, each listed company is required to sufficiently disclose the details of its corporate governance structure and the reasons for its selection of a particular structure.

The three models proposed in the "Report by the Financial System Council's Study Group on the Internationalization of Japanese Financial and Capital Markets" (publicized on June 17, 2009)

