

Counselor's Office
Civil Affairs Bureau
Ministry of Justice
Post: 1-1-1 Kasumigaseki,
Chiyoda-ku
Tokyo 100-8977
Japan

31 January 2012

Email: minji27@moj.go.jp

Re: Interim Proposal Concerning Revision of Companies Act

Dear Sir:

This letter is jointly submitted by Sodali and J-Eurus Investor Relations Ltd. to provide a global perspective on corporate governance issues raised by the Ministry of Justice Interim Proposal Concerning Revision of the Companies Act (the Proposal).

Sodali (www.sodali.com) is a leading international consultancy specializing in corporate governance, shareholder transactions and institutional investor relations. The firm's services include corporate governance consulting, board evaluation, investor communication, shareholder meetings, proxy solicitation, strategic research and consulting. The firm is recognized as a thought leader in matters relating to corporate governance and is an active participant in programs of organizations such as the International Corporate Governance Network (ICGN), the World Bank, Global Corporate Governance Forum, the Council of Institutional Investors, the Conference Board and other such groups. Sodali has offices and representatives in Athens, Geneva, London, Madrid, Milan, New York, Paris, Rome, Sao Paulo and Tokyo.

J-Eurus Investor Relations Ltd. is an independent consulting firm founded in Japan in 2000 by pioneering IR practitioners for the purpose of helping Japanese companies deal with the global challenges of corporate governance and investor relations. The firm's founders participate in major domestic and international organizations on matters of governance and the capital markets, including the Tokyo Stock Exchange Best Disclosure Companies Selection Board and the ICGN Board of Governors. J-Eurus is a thought leader on these issues in Japan and helps bring the Japanese perspective to other global markets.

Japan is one of the world's most successful and admired economies. For many decades Japanese listed companies have defined success in global competitiveness and multinational operations, with

one exception – corporate governance. With respect to corporate governance Japanese companies and regulators have chosen not to embrace the reforms that during the past 25 years have established a widely accepted set of global principles, rules and best practices. Japan has chosen to stand apart from these developments, preferring to rely on traditional ways of doing business in spite of criticism and pressure from the global institutional investor community, shareholder proponents, corporate governance advocates, academics and other experts.

Japan is currently the third largest global economy, with China now in second place, and may soon move to fourth place behind India. While market experts do not claim a causal connection between the strength of Japan's economy and its corporate governance practices, they do note the declining interest in Japanese companies among international sources of equity capital as their focus shifts to more rapidly growing markets with higher standards of excellence in corporate governance. Some of these markets, particularly Brazil, provide outstanding examples of effective use of corporate governance to attract global capital. We urge the Ministry of Justice to carefully examine the example of Brazil's Novo Mercado, a tiered stock exchange based exclusively on corporate governance criteria that companies voluntarily adopt in order to improve their economic performance, lower their cost of capital, reduce risk and attract investment from outside their local market.

We have enormous respect for the accomplishments of the Japanese business community and we believe that it is capable of maintaining its global leadership. However, we are concerned that without a fundamental rethinking of its system of corporate governance there will continue to be a flight of global capital from Japan to other markets.

The Ministry of Justice's Proposal represents small but meaningful steps forward. We recognize in particular that the requirement for an independent director on the boards of Japanese companies represents a breakthrough, both conceptually and symbolically, that deserves endorsement. However, from a global perspective, we wish the steps were larger. In Europe, Latin America and many countries in Asia, governance principles require listed companies to have independent directors and best practice standards call for a substantial percentage of board members to be independent. Among developed markets, Japan stands alone in taking exception to this fundamental corporate governance principle.

We are hopeful that the Proposal will stimulate a broader discussion of the role, function and responsibility of boards at Japanese listed companies. The tradition in Japan has been to view the board as an extension of the top level of executive management. This is essentially a private company model. In other markets, there is recognition that the private company model does not provide adequate protection for the investing public and minority shareholders and is not an effective mechanism for oversight of management and avoidance of conflicts of interest. Protection of the public interest in listed companies has led to the establishment of the form of governance represented by the "Corporate Governance Triangle" (see Appendix 1), in which the board's role in

overseeing management and representing the interests of the company and its investors is critical. This role can be performed effectively only if the board is independent from management.

While the addition of a single independent director represents an important symbolic change, we are concerned that it may be insufficient in practical terms. A single independent voice may not be effective in a board dominated by insiders and former executives, particularly in a culture where consensus is the goal. Accordingly, we urge the Ministry of Justice to open the door to more independent directors at Japanese companies, either voluntarily or through regulatory incentives. Again, the techniques adopted by Brazil's Novo Mercado are instructive.

We urge the Ministry of Justice also to consider the core corporate governance principles and standards that are now the global norm. These principles have been developed with the backing of important organizations such as the OECD, the World Bank, the European Commission, the U.S. Securities and Exchange Commission, the UK Financial Services Authority, global stock exchanges such as the New York Stock Exchange, many local financial market regulators, and have been endorsed by influential groups such as the International Corporate Governance Network, the Council of Institutional Investors and countless business groups and organizations representing boards of directors. Common to all these groups is insistence on a clearly defined role for the board of directors of listed companies that includes:

- A clear separation between the duties of board and responsibilities of executive management.
- An independent oversight role for the board as representative of all constituencies affected by the company's business, particularly the providers of capital and the shareholders for whom the board acts as elected representatives.
- A majority of independent directors responsible for exercising business judgment in the best long-term interest of the business enterprise and its investors.
- Three key standing committees of independent directors: (i) nominating and governance committee, (ii) compensation committee, (iii) audit committee.
- A focus on policies defined collectively as "ESG" (environmental practices, social policy and governance) that protect the rights and interests of all constituencies and promote the company's long-term sustainability.

These core principles do not necessarily dictate a single standardized form of corporate governance. Indeed, in different countries corporate governance achieves its goals in many different ways, while following the road map of these goals. Although Japan's approach to corporate governance has historically been rooted in the U.S. "rules-based" system, we recommend that the "principles-based" approach, which dominates in all markets outside the U.S., offers a better model for governance reform in Japan. Principles-based governance relies on a voluntary "comply-or-explain" mechanism that gives companies broad discretion and flexibility to determine the corporate governance

arrangements that are most effective for their individual company. However, they must explain why actual or perceived non-compliance with governance norms makes sense in their particular circumstances. This discretionary but rigorous approach would provide a path for Japanese companies to adopt over time a new set of customized corporate governance practices that meet the expectations of the global business and financial community.

The goal should be for Japanese companies to adopt what is best in global corporate governance standards while preserving what is best in Japanese business culture and practices. We are confident that Japanese companies are capable of achieving this goal.

We appreciate the opportunity to express our views on these important issues.

If you have any questions, please feel free to contact the undersigned.

Respectfully submitted,



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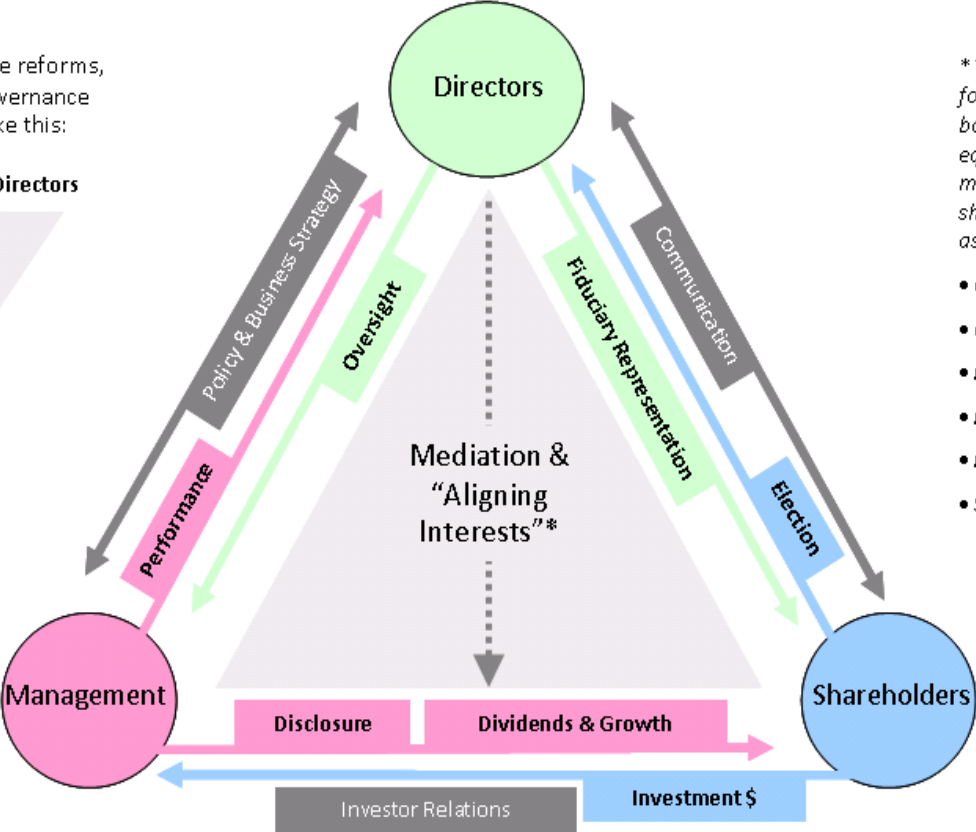


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The Corporate Governance Triangle

Before governance reforms, the Corporate Governance Triangle looked like this:



* The Board is responsible for aligning interests by balancing the conflicting but equally valid perspectives of management and shareholders on issues such as:

- Capital Structure
- Control
- Director Nomination
- Executive Remuneration
- Risk Management
- Shareholder Rights