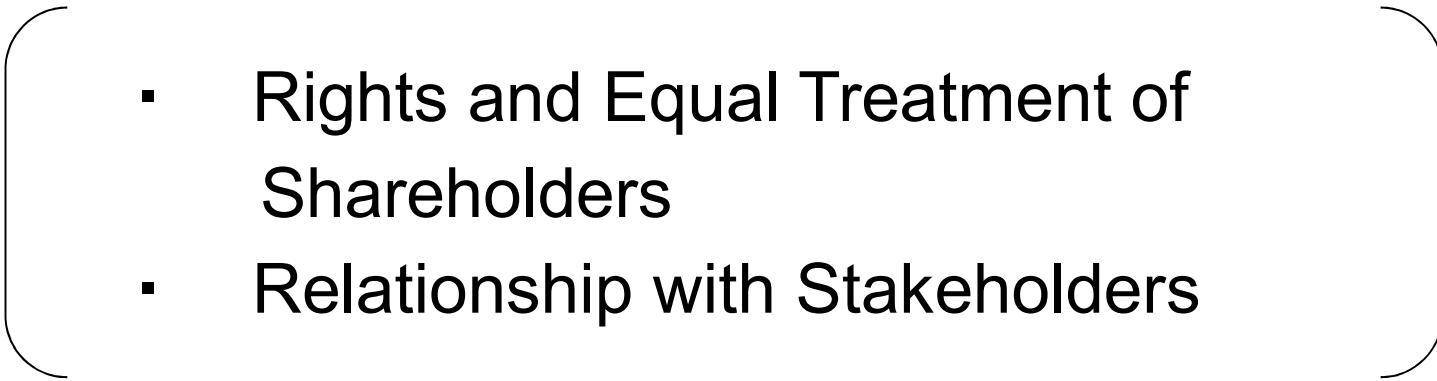


Points of Consideration (Examples)

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- Rights and Equal Treatment of Shareholders
 - Relationship with Stakeholders

September 30, 2014

Rights and Equal Treatment of Shareholders

OECD Principles describe the Rights of Shareholders and Key Ownership Functions (Chapter II) and the Equitable Treatment of Shareholders (Chapter III). Codes of other countries typically refer to general meetings of shareholders as well as protection of minority shareholders' rights. With regard to these matters, are there any points we should keep in mind when we establish the Japanese Code?

OECD Principles, etc.	Points of Consideration (Examples)
<p><u>OECD Principles of Corporate Governance</u></p> <p><i>II. The Rights of Shareholders and Key Ownership Functions</i></p> <p><i>The corporate governance framework should protect and facilitate the exercise of shareholders' rights.</i></p> <p>A. Basic shareholder rights should include the right to: 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant and material information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect and remove members of the board; and 6) share in the profits of the corporation.</p> <p>B. Shareholders should have the right to participate in, and</p>	<p>➤ With regard to “protecting and facilitating the exercise of shareholders’ rights,” what points should be included in the Code?</p>

OECD Principles, etc.	Points of Consideration (Examples)
<p>to be sufficiently informed on, decisions concerning fundamental corporate changes such as: 1) amendments to the statutes, or articles of incorporation or similar governing documents of the company; 2) the authorisation of additional shares; and 3) extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.</p> <p>C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:</p> <ol style="list-style-type: none"> 1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. 	<ul style="list-style-type: none"> ➤ What kind of considerations should be taken into account in order to establish an environment which allows for shareholders to exercise their voting rights effectively? ➤ Companies whose fiscal year ended in March tend to hold general shareholders meetings during the same period as many other companies. In June 2014, approx. 39% of those companies held general meetings on the peak day. Although we can see a progress in the efforts to avoid holding general meetings on the same day, 80% (year 2014) of those companies held general meetings during the last week of June, still showing a high concentration within a certain period. Some argue that further efforts are encouraged for spreading out general shareholders

OECD Principles, etc.	Points of Consideration (Examples)
<p>2. Shareholders should have the opportunity to ask questions to the board, including questions relating to the annual external audit, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.</p> <p>3 . Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members,</p>	<p>meeting dates. What should we think about it? 【see Material 3】</p> <ul style="list-style-type: none"> ➤ As for the notice of general shareholders meetings, quite a few companies attempt to dispatch the notice to their shareholders earlier than the date required by the Companies Act (i.e. to dispatch 2 weeks prior to the date of shareholders meeting). However, some overseas companies dispatch notices 1-2 month(s) prior to the meeting, and thus, some call for further improvement in early dispatch. What should we think about it? In the meantime, what should we think about securing sufficient time for auditing? 【see Material 3】 ➤ Nowadays, even in cases where institutional investors hold shares in the names of trust banks, etc., not in their own names, some companies allow the participation of such actual shareholders in general shareholders meetings. What should we think about this point? ➤ How do we consider utilizing an advisory resolution when it is considered especially useful to listen to shareholders' voices as to the matters other than

OECD Principles, etc.	Points of Consideration (Examples)
<p>should be facilitated. Shareholders should be able to make their views known on the remuneration policy for board members and key executives. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.</p> <p>4. Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.</p>	<p>those to be resolved by general shareholders meeting?</p> <ul style="list-style-type: none"> ➤ It is common in Japan that the upper limit of the total amount of remunerations is resolved by a general shareholders meeting, and the amount of individual remuneration is left to the discretion of the Board of Directors. In such cases, what do we think about utilizing an advisory resolution by a general shareholders meeting with regard to the policy for determining the remunerations of directors/officers and/or individual remuneration amounts?
<p>(The following 4 and 5 are quoted from Chapter III) III A 4. Impediments to cross border voting should be eliminated.</p>	<ul style="list-style-type: none"> ➤ To enable foreign investors to secure sufficient time for consideration, it is pointed out that companies are encouraged to further improve preparing an English translation of notice and disclosing notices online on or before the dispatch. What should we think about it?

OECD Principles, etc.	Points of Consideration (Examples)
<p>5 . Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.</p> <p>D. Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.</p>	<p>【see Material 3】</p> <p>➤ Some argue that there is an urgent need to establish the environment where shareholders can electronically exercise their voting rights (e.g. using Electronic Voting Platform). What should we think about it?</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Liberal Democratic Party of Japan, Japan Economic Revival Headquarters, “Japan Revival Vision” <u>(abridged)</u></p> <p>1. (2) Formulation of a Corporate Governance Code</p> <ul style="list-style-type: none"> ○ Crossholding of equities for “policy” reasons inevitably creates obstacles to effective governance, due to latent conflicts of interest concerning profit-seeking, return of profits to shareholders, and the interests of general stockholders. Hence, unless there is a rational reason, such policy stockholdings should be drastically reduced. </div>

OECD Principles, etc.	Points of Consideration (Examples)
	<ul style="list-style-type: none"> ◦ When “policy stock” is held, the rationale for that holding must be explained in addition to the specific policy goal (e.g. in cases where there is a need for capital injections to raise the value of a company needing DIP finance, or new investments by banks for restructuring borrowers which are in danger of bankruptcy, or conversion of debt into equity). ➤ With regard to cross-shareholdings for strategic purposes, from the standpoints both to seek for strategic partnership between such cross-shareholders, and to ensure appropriate governance, what should we think about it? ➤ As for rational reasons for cross-shareholdings for strategic purposes, specifically what reasons can be considered? ➤ Cross-shareholdings for strategic purposes involve risks associated with fluctuations in stock prices. It is pointed out that clear explanation is rarely given regarding whether cross-shareholders secure or anticipate to earn a fair return relative to the risks. What should we think about it?

OECD Principles, etc.	Points of Consideration (Examples)
	<p style="border: 1px solid black; padding: 5px;"><u>Liberal Democratic Party of Japan, Japan Economic Revival Headquarters, "Japan Revival Vision"(abridged)</u></p> <p>1. (2) Formulation of a Corporate Governance Code</p> <ul style="list-style-type: none"> ○ In order to strengthen the effectiveness of governance, it is necessary to spur stockholders to perform their roles as well. That is, the awareness of institutional investors of their role as stockholders must be enhanced, and there is a need to encourage institutional investors to speak out in favor of improvement of corporate earnings. <u>On this point, there is no fundamental difference between the position of institutional investors and listed companies, which owe a fiduciary duty toward the stockholders of their company.</u> <p>➤ How should we consider listed companies' fiduciary duties toward their shareholders?</p> <p>➤ Especially, how should we consider the roles of such a listed company (cross-shareholder) in terms of raising corporate value of the counterpart company and</p>

OECD Principles, etc.	Points of Consideration (Examples)
<p>E. Markets for corporate control should be allowed to function in an efficient and transparent manner.</p> <ol style="list-style-type: none"> <li data-bbox="226 472 1096 906">1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class. <li data-bbox="226 917 1096 1060">2. Anti-take-over devices should not be used to shield management and the board from accountability. 	<p>facilitating its growth, when the former company exercises its voting right of the latter company as a shareholder?</p> <p>➤ Recently, the number of companies proactively adopting takeover defense measures has been decreasing, yet it is pointed out that companies should fully consider the necessity of and rationale for adoption/management of such measures, ensure that appropriate procedures are in place, and provide sufficient explanation. What should we think about it? [see Material 3]</p>

OECD Principles, etc.	Points of Consideration (Examples)
<p>F. The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.</p>	<p>Liberal Democratic Party of Japan, Japan Economic Revival Headquarters, "Japan Revival Vision" (abridged)</p> <p>1. (2) Formulation of a Corporate Governance Code</p> <p>In order for firms to raise firm value sustainably, and to promote growth of the firm, stockholders should responsibly exercise their rights. Specifically, in exercising voting rights, stockholders should:</p> <ul style="list-style-type: none"> ———Examine thoroughly the suitability and independence of candidates for directorships, in order to secure directors who can perform their functions; ———Make decisions from a high-level, balanced perspective, from the viewpoint of raising the medium and long-term growth of the firm, through investments to raise productivity and return profits to shareholders. ———Disclose adequate information for these purposes, in the case of issuers of listed equities.

OECD Principles, etc.	Points of Consideration (Examples)
<p>1. Institutional investors acting in a fiduciary capacity should disclose their overall corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights.</p> <p>2. Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.</p> <p>G. Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.</p> <p>III. The Equitable Treatment of Shareholders</p> <p><i>The corporate governance framework should ensure</i></p>	<ul style="list-style-type: none"> ➤ It is pointed out that Issuers of listed shares should adequately disclose information necessary for shareholders to exercise their voting rights. What should we think about it? ➤ Japan's Stewardship Code <p>Principle1 Institutional investors should have a clear policy on how they fulfill their stewardship responsibilities, and publicly disclose it.</p> <p>Principle5 Institutional investors should have a clear policy on voting and disclosure of voting activity. The policy on voting should not be comprised only of a mechanical checklist; it should be designed to contribute to the sustainable growth of investee companies.</p> <ul style="list-style-type: none"> ➤ Japan's Stewardship Code <p>Principle2 Institutional investors should have a clear policy on how they manage conflicts of interest in fulfilling their stewardship responsibilities and publicly disclose it.</p> <ul style="list-style-type: none"> ➤ Japan's Stewardship Code <p>Guidance3 of Principle7</p> <p>Exchanging views with other investors and having a forum for the purpose may help institutional investors conduct better engagement with investee companies and make better judgments.</p> <ul style="list-style-type: none"> ➤ In order to secure the equitable treatment of all

OECD Principles, etc.	Points of Consideration (Examples)
<p><i>the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.</i></p> <p>A. All shareholders of the same series of a class should be treated equally.</p> <ol style="list-style-type: none"> 1. Within any series of a class, all shares should carry the same rights. All investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase. Any changes in voting rights should be subject to approval by those classes of shares which are negatively affected. 2. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress. 3. Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares. <p>[Re-posted]</p> <ol style="list-style-type: none"> 4. Impediments to cross border voting should be eliminated. 	<p>shareholders (including minority shareholders), what points should be included in the Code?</p> <p>➤ Regarding a capital policy involving a change in control, it is pointed out that a company should fully consider the necessity and rationale for it, ensure that adequate procedures are in place, and provide sufficient explanation. What should we think about it? (Explanation of necessity and rationale for the allocation of new shares to a third party, MBO, etc.)</p>

OECD Principles, etc.	Points of Consideration (Examples)
<p>[Re-posted]</p> <p>5. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.</p> <p>B. Insider trading and abusive self-dealing should be prohibited.</p> <p>C. Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.</p>	<ul style="list-style-type: none"> ➤ It is pointed out that directors and key executives should voluntarily notify the Board of Directors of their interests in the company. What should we think about it? ➤ In practice, when listed companies trade with controlling shareholders (including parent companies), the following cases are observed: transactions which may cause conflict of interest with minority shareholders or other important transactions require deliberation/resolution by the Board of Directors. It is pointed out that transactions with certain related parties should be approved by the Board of Directors. What should we think about it? 【see Material 3】

OECD Principles, etc.	Points of Consideration (Examples)
	<p>(Reference) Rules under the current Companies Act, etc.</p> <ul style="list-style-type: none"> ▪ Under the Companies Act, the execution of certain important operations requires a resolution of the Board of Directors (BOD). ▪ Transactions between a company and a director require a prior approval of the BOD. ▪ Transactions between related parties (to which neither of the above applies) do not require a resolution of the BOD.

Relationship with Stakeholders in Corporate Governance

OECD Principles describe the Role of Stakeholders in Corporate Governance. With regard to this matter, are there any points we should keep in mind, when we establish the Japanese Code?

OECD Principles, etc.	Points of Consideration (Examples)
<p>“Japan Revitalization Strategy” Revised in 2014 (abridged)</p> <p>(II)1.(3) i) 1 Drafting the Corporate Governance Code, etc.</p> <p>Corporate governance is the system which supports companies making timely entrepreneurial decisions with transparency and integrity and with due regards to the views of shareholders as well as customers, employees, local communities and other stakeholders. Principles outlining key elements of good governance should help companies’ initiatives towards sustainable growth of their corporate values and would thereby contribute to the prosperity of the companies themselves, investors and, ultimately, the whole economy.</p>	<ul style="list-style-type: none">➤ Corporate efforts in making timely intrepid decisions with transparency and fairness and with due regards to the presence and roles of various stakeholders other than shareholders will lead to generation of medium to long-term corporate value. What do we consider about providing sufficient explanation of this concept?

OECD Principles, etc.	Points of Consideration (Examples)
<p>The OECD Principles of Corporate Governance</p> <p><i>IV. The Role of Stakeholders in Corporate Governance</i></p> <p><i>The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.</i></p> <p>A. The rights of stakeholders that are established by law or through mutual agreements are to be respected.</p> <p>B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.</p> <p>C. Performance-enhancing mechanisms for employee participation should be permitted to develop.</p> <p>D. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.</p>	<ul style="list-style-type: none"> ➤ Based on OECD Principles, how should we consider the following points, for example, from the viewpoint of respecting stakeholders' rights? <ul style="list-style-type: none"> ▪ Establishing/reinforcing a internal control system to protect stakeholders' rights and develop active cooperative relations with them ▪ Establishing so-called Code of Conduct (Ethical Standards) to ensure proper implementation of corporate ethics ▪ Responding to the growing social demand for ESG (environment, society and governance), etc. ▪ Ensuring diversity within a corporate structure, including the better use of female talent

OECD Principles, etc.	Points of Consideration (Examples)
<p>E. Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.</p>	<ul style="list-style-type: none"> ▪ Enhancing/employing Whistleblowing System and securing protection of whistleblowers <p>Liberal Democratic Party of Japan, Japan Economic Revival Headquarters, “Japan Revival Vision” (abridged)</p>
<p>F. The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.</p>	<ol style="list-style-type: none"> 1. (2) Formulation of a Corporate Governance Code <ul style="list-style-type: none"> ○ There is a need to build systems to enhance information flow within firms, such as an internal whistleblower system that feeds into both outside directors and statutory auditors.