

Corporate Governance Code (exposure draft)

Summary of Public Comments (submitted in English) and the Corresponding Replies

| No. | Summary of comments (extract) | Replies |
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| ● Preamble | | |
| ▼ “Comply or explain” | | |
| 1 | <p>On “comply or explain”, the 2013 Annual Review of the UK Corporate Governance and Stewardship Codes acknowledges the high levels of compliance with the UK Corporate Governance Code, yet criticises UK listed companies for “struggling to articulate clearly why they have chosen to deviate”. Hong Kong has had a similar experience—despite expanding the Hong Kong CG Code in 2012 with a preamble on what “comply or explain” means, the Hong Kong Stock Exchange sent a reminder to Hong Kong listed companies in 2014 that they need to do a better job in this area, as many Hong Kong companies also fail to explain properly and in a company specific manner. Other “comply or explain” markets face similar challenges.</p> <p>Japan, therefore, has both a unique opportunity and a challenge ahead on the implementation of its new CG Code. On the one hand, “box ticking” should be discouraged and companies must not confuse superficial compliance with good corporate governance. On the other, as the exposure draft explains in Paragraph 12, offering shallow explanations using boilerplate expressions would be inconsistent with the spirit of “comply or explain”.</p> | <p>The Financial Services Agency and securities exchanges will disseminate information widely so that companies and investors will deepen their understanding that superficial compliance based on a “box-ticking” approach and offering superficial explanations using boilerplate expressions are not consistent with the spirit of the Corporate Governance Code.</p> |

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| ●Section 1: Securing the rights and equal treatment of shareholders | | |
| ▼ Principle 1.2 | | |
| 2 | <p>We would find it particularly helpful if all public disclosures were provided in English. The proposed Code only suggests that shareholder convening notices be available in English. In consideration of the significant overseas investments in Japanese companies, this would be welcomed by many. Given the "comply or explain" approach, we believe that companies will have sufficient flexibility if implementation poses challenges.</p> | <p>In addition to the statement in Supplementary Principle 1.2.4 of the Code (exposure draft) that companies should provide English translations of convening notices, it is also provided in Supplementary Principle 3.1.2 that bearing in mind the number of foreign shareholders, companies should, within a reasonable extent, take steps for providing English language disclosures.</p> |
| ●Section 2: Appropriate cooperation with stakeholders other than shareholders | | |
| ▼ Principle 2.4 | | |
| 3 | <p>The diversity requirements should also include different ‘cultures’ and ‘nationalities’, which are vitally important for companies expanding overseas and appealing to different customer bases.</p> | <p>A wide range of elements, including those in your comment, are covered in the diversity requirements in Principle 2.4 in accordance with each company’s particular situation.</p> |
| ●Section 4: Responsibilities of the board | | |
| 4 | <p>We have long advocated for the separation of the role of CEO/President and Chair and for the appointment of an independent Chairman of the board... To that effect, the OECD Principles of Corporate Governance, on which the Code is referenced to be based on, endorses that “the objectivity of the board and its independence from management may be strengthened by the separation of the role of chief executive and chairman, or, if these roles are combined, by designating a lead non-executive director to convene or chair sessions of the outside directors. Separation of the two posts may be regarded as good practice, as it can help to achieve an appropriate balance of power, increase accountability and improve the board’s capacity for decision making independent of management”.</p> | <p>With regard to the separation of the roles of CEO and chairman, we need to build up further debate and practice in Japan. Therefore, we will take note of your opinion as a valuable input for future discussion.</p> <p>Additionally, Supplementary Principles 4.8.1 and 4.8.2 of the Code (exposure draft) mention the meetings consisting solely of independent officers and the appointment of the lead independent director which are proposed as alternative mechanisms to the separation of the roles of CEO and chairman in the OECD Principles.</p> |

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| 5 | <p>...Our policies call for at least two-thirds of the directors on a corporate board to be independent... We recognize that a two-thirds-independent standard may be difficult to implement in Japan immediately, given the historically low percentage of independent directors on Japanese boards. The Draft Code's requirement that Japanese companies appoint at least two independent directors is a step in the right direction. But two is insufficient to form an independent committee—as suggested as a possible best practice in Supplemental Principle 4.10.1—to advise the board on nominations and compensation (remuneration), where objectivity is most critical.</p> | <p>With regard to what you have pointed out, even with 2 independent directors, it would not be impossible to set up a structure to provide advice to the board from an independent and objective standpoint. For example, an advisory committee to advise the board on nominations and remuneration can be made up of 3 directors, with 2 of them being independent directors.</p> <p>Furthermore, Principle 4.8 states that a company may, in its own judgement, appoint one-third of directors as independent directors, and in such a case, further independence and objectivity would be secured in relation to nominations and remuneration.</p> |
| ▼ Principle 4.8 | | |
| 6 | <p>We welcome the suggestion in supplementary Principle 4.8.1 that independent directors meet regularly in executive session...</p> <p>To be truly effective, the code should at least require companies to disclose whether independent directors meet in executive session on a consistent basis. And in time, the code should require executive sessions, which foster a candid exchange of views.</p> | <p>With regard to what you have pointed out, we need to build up further debate and practice in Japan. Therefore, we will take note of your opinion as a valuable input for future discussion.</p> |
| 7 | <p>We agree and strongly encourage the appointment of a lead independent director as well as establishing responsibilities of the lead director towards management and vice versa.</p> | <p>At the moment, we need to build up further debate and practice as to whether the responsibilities of a lead independent director should be clarified and whether the appointment of a lead independent director should be a target of compliance instead of merely using the appointment as an example. Therefore, we hope best practices will be established in due course through the accumulation of proactive initiatives by companies.</p> |
| ▼ Principle 4.10 | | |
| 8 | <p>...While Principle 4.10 touches upon the use of “optional advisory</p> | <p>With regard to what you have pointed out, we need to build up further</p> |

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| | committees” to enhance the function of boards, much greater focus could have been put on the purpose and effective functioning of key committees for audit, nomination and remuneration. We recommend that this be included in the next version of the Code, with the additional stipulation that every board committee should at least have one independent director, preferably as chairman. | debate and practice in Japan. Therefore, we will take note of your opinion as a valuable input for future discussion. |
| ▼ Principle 4.11 | | |
| 9 | We also welcome the recommended best practice outlined in the Code of proper consideration to ensure that independent directors can spend adequate time and capacity in their role. In practice, we do have concerns about whether some independent directors could accomplish their responsibilities effectively, with an apparently demanding number of directorship positions. While other factors such as the size of companies and nature of businesses need to be taken into account, we think companies should carefully consider the amount of time and effort that may be required for the role and advise a number limit for outside positions when nominating independent director candidates. And we suggest this be considered and included in the next version of the Code. | With regard to what you have pointed out, we need to build up further debate and practice in Japan. Therefore, we will take note of your opinion as a valuable input for future discussion. |
| ●Section 5: Dialogue with shareholders | | |
| ▼ General Principle 5.1 | | |
| 10 | We are an organization that was founded to inspire and promote effective corporate governance standards across the world. A “true dialogue” is one in which there is mutual respect and understanding, which can be achieved over the course of time and effort. A long-term relationship between the company and its investors will benefit all stakeholders. | We agree with your comment. |