

## Points of Consideration (Examples)

- The Responsibilities of the Board  
(focusing on the composition, form of company organization, procedures, etc.)

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# The Responsibilities of the Board

(focusing on the composition, form of company organization, procedures, etc.)

OECD Principles and the codes of other countries describe the responsibilities of the board.

Taking into consideration the previous discussions on the roles/functions of the board, upon drafting the Code in Japan, are there any points we should keep in mind concerning the composition, form of company organization, procedures of the board, as well as training for directors, and other related points?

OECD Principles	Points of Consideration (Examples)
<p data-bbox="188 715 902 754">OECD Principles of Corporate Governance</p> <p data-bbox="188 767 797 807"><i>VI. The Responsibilities of the Board</i></p> <p data-bbox="188 820 1050 1059"><i>The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.</i></p>	<p data-bbox="1077 786 2078 866">➤ At the last meeting, we discussed that key roles/functions of the board include:</p> <ul style="list-style-type: none"> <li data-bbox="1171 882 2018 922">(1) Setting the broad direction of corporate strategy;</li> <li data-bbox="1171 930 2078 1066">(2) Developing an environment that supports appropriate risk-taking by management (ensuring accountability); and</li> <li data-bbox="1171 1074 2078 1161">(3) Monitoring the management and directors effectively from the independent and objective standpoint;</li> </ul> <p data-bbox="1133 1169 2078 1402">in order to increase the company's profitability and capital efficiency and facilitate sustainable growth, taking into account fiduciary responsibility to shareholders. Furthermore, it was pointed out that such roles/functions should be fulfilled adequately and equally regardless of</p>

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<p>E. The board should be able to exercise objective independent judgement on corporate affairs.            (Annotations to the OECD Principles, 5<sup>th</sup> paragraph)  <u>Independent board members can contribute significantly to the decision-making of the board.</u>            They can bring an objective view to the evaluation of the performance of the board and management. In addition, they can play an important role in areas where the interests of management, the company and its shareholders may diverge such as executive remuneration, succession planning, changes of corporate control, take-over defences, large acquisitions and the audit function.</p>	<p>which form of company organization each company adopts (such as Company with <i>Kansayaku</i> Board and Company with Three Committees).            Taking the above arguments into account, what should we think about the following matters?</p> <p><u>Independence/Objectivity,</u>  <u>Knowledge/Expertise/Competency</u></p> <ul style="list-style-type: none"> <li>➤ To ensure the exercise of objective and independent judgment on corporate affairs by the board, what should be kept in mind?</li> <li>➤ What should we think about expecting independent director to play the following roles?               <ul style="list-style-type: none"> <li>▪ To provide advice for improving management efficiency</li> <li>▪ To oversee the management through participating in significant decision-makings such as the evaluation and selection/ dismissal of the management</li> <li>▪ To oversee conflict of interests between the company and the management/controlling shareholder</li> <li>▪ To appropriately reflect views of shareholders (including minority shareholders) and other stakeholders to the board, from a standpoint that is independent from the management/controlling shareholder</li> </ul> </li> </ul>

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<p>(Annotations to the OECD Principles, 5<sup>th</sup> paragraph)</p> <p>In order for them to play this key role, <u>it is desirable that boards declare who they consider to be independent and the criterion for this judgement.</u></p>	<ul style="list-style-type: none"> <li>➤ Listed companies appoint an independent officer who satisfies the independence standards set by the financial instruments exchange, and disclose related information. What should we keep in mind concerning the independence standards and disclosure related to independence? [See Material 3] <ul style="list-style-type: none"> <li>(*) In case of a community-based company, some argue that it is difficult to nominate independent director, because many potential candidates have certain business relationships with the company. What should we think about it?</li> </ul> </li>   <li>➤ Considering the expected roles of an independent director, what should we think about their knowledge, expertise, competencies, aptitude and other factors? [See Material 3] <ul style="list-style-type: none"> <li>(*) Some argue that because independent director do not have profound knowledge of the company and industry, we cannot expect sufficient performance/contribution from them. Others counter-argue that such argument is not necessarily true, given that the function which independent director are required to perform is not execution, but rather oversight, and requirements of knowledge, expertise and other factors should be satisfied by the board as a whole. What should we think about these arguments?</li> </ul> </li> </ul>

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<p>(Annotations to the OECD Principles, 1<sup>st</sup> paragraph)</p> <p>In order to exercise its duties of monitoring managerial performance, preventing conflicts of interest and balancing competing demands on the corporation, it is essential that the board is able to exercise objective judgement. In the first instance this will mean independence and objectivity with respect to management with important implications for the composition and structure of the board. Board independence in these circumstances usually <u>requires that a sufficient number of board members will need to be independent of management.</u></p>	<ul style="list-style-type: none"> <li>➤ To ensure the board fulfills its key role, which is to oversee the execution of operations in an effective manner, it is argued to be essential that the board ensures an appropriate balance among members in terms of knowledge, expertise, competencies, etc., and that the number of directors is adequate for effective discussions. What should we think about diversity and the adequate size of the board?</li> <li>➤ Pursuant to the rules of financial instruments exchange, listed companies are required to strive to secure at least one independent outside director.</li> </ul> <p>Regarding the number of independent director, adverse effects of setting numerical standards are sometimes pointed out. In the meantime, it is also pointed out that the board, in general, need to secure a sufficient number of independent directors so that independent directors effectively perform their expected roles.</p> <p>Taking the above arguments into account, how should we consider the following provisions of the minimum number of independent directors? [See Material 3]</p> <ul style="list-style-type: none"> <li>▪ At least 2 directors (see next page)</li> </ul>

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	<ul style="list-style-type: none"> <li>▪ At least 3 directors               <ul style="list-style-type: none"> <li>(*) The number of directors which allows for holding executive sessions (meetings of independent director) or selecting a lead independent director who serves as a chairperson of the executive sessions</li> </ul> </li> <li>▪ At least one-third of the board members (French &amp; Singaporean Code, the Viénot Report in France)               <ul style="list-style-type: none"> <li>(*) French Code: in case of companies with controlling shareholders</li> <li>(*) Singaporean Code: in case chairperson of the board is an independent director</li> </ul> </li> <li>▪ At least a half of the board (the UK, French &amp; Singaporean Codes, the US Exchange Rules)               <ul style="list-style-type: none"> <li>(*) French Code: in case of widely-held corporations without controlling shareholders</li> <li>(*) Singaporean Code: in case chairperson of the board is not an independent director.</li> </ul> </li> </ul>

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	<div data-bbox="1088 264 2018 357" style="border: 1px solid black; padding: 2px;"> <p>Liberal Democratic Party of Japan, Japan Economic Revival Headquarters, "Japan Revival Vision"(abridged)</p> </div> <p>1.(2)Formulation of a Corporate Governance Code</p> <ul style="list-style-type: none"> <li>▪ The issuers of listed equities must secure two or more independent directors on the Board of Directors.</li> <li>▪ When two or more independent directors are not secured for the Board of Directors, at the scheduled general shareholders meeting of the said company, the firm must explain the reasons why it is not appropriate to have two or more independent directors on the Board.</li> </ul> <div data-bbox="1075 802 1968 892" style="border: 1px solid black; padding: 2px;"> <p>Administration, committees, training and other related matters</p> </div> <p>➤ For the purpose of securing the effectiveness of the board's functions, what should we keep in mind concerning the administration of the board? For instance, what should we think about the following points?</p> <ul style="list-style-type: none"> <li>▪ To distribute reference materials well advance of the board meeting</li> <li>▪ To fix the annual schedule of the board meetings and expected agenda in advance</li> </ul>

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<p>(Annotations to the OECD Principles, 1<sup>st</sup> paragraph)</p> <p>In a number of countries with single tier board systems, the objectivity of the board and its independence from management may be strengthened by <u>the separation of the role of chief executive and chairman</u>, 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 <u>achieve an appropriate balance of power, increase accountability and improve the board's capacity for decision making independent of management.</u></p>	<ul style="list-style-type: none"> <li>▪ To appropriately set the number of agenda and the frequency of meetings</li> <li>▪ To secure sufficient time for deliberation</li> <li>▪ To secure active, frank and constructive discussions</li> <li>▪ To ensure fair and efficient proceedings etc.</li> </ul> <p>➤ What should we think about the leadership of chairperson of the board in order to realize the board administration as written above?</p> <p>➤ What should we think about combining the roles of chairperson of the board and Chief Executive Officer (CEO)? [See Material 3]</p> <p>[Reference] Data in 2013</p> <p>US: 45% of S&amp;P500 companies, or 221 companies separate the roles of chairperson and CEO</p> <p>UK: 94% of FTSE350 companies, or 329 companies separate the roles of chairperson and CEO</p> <p>➤ For the objective of appropriately reflecting shareholders' views to the board, what should we think about making</p>



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<p>1. Boards should consider <u>assigning a sufficient number of non-executive board members capable of exercising independent judgement</u> to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are <u>ensuring the integrity of financial and non-financial reporting, the review of related party transactions, nomination of board members and key executives, and board remuneration.</u></p> <p>2. When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.</p>	<p>independent director play such a role through designating such director as the chairperson of an executive session (meeting of independent director) or a lead independent director?</p> <ul style="list-style-type: none"> <li>➤ Concerning nomination and remunerations of directors and senior managements, it is pointed out that relevant committees should be established under the board to ensure objective and independent judgment. For example, in case of a Company with <i>Kansayaku</i> Board as well as a Company with Audit and Supervisory Committee, what should we think about establishing optional committees for nomination and remunerations of directors and senior managements?</li> <li>➤ In addition to the above-mentioned committees, what should we think about establishing other special committees to address individual companies' special circumstances (for example, risk management committee, CSR committee)?</li> <li>➤ In case the board establishes optional committees, what should we think about the idea that such committees' mandate, composition and working procedures should be well defined and disclosed by the board?</li> </ul> <p>(*) During the previous meeting, it was pointed out that optional committees should consist mainly of directors,</p>

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<p>3. Board members should be able to commit themselves effectively to their responsibilities.</p> <p>(Annotations)</p> <p>Service on too many boards can interfere with the performance of board members. Companies may wish to consider whether multiple board memberships by the same person are compatible with effective board performance and disclose the information to shareholders. Some countries have limited the number of board positions that can be held. Specific limitations may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders. Achieving legitimacy would also be facilitated by the publication of attendance records for individual board members (e.g. whether they have missed a</p>	<p>including independent director, who have the duty of due care as a prudent manager and can make objective and independent judgments, for the purpose of ensuring accountability for the shareholders.</p> <ul style="list-style-type: none"> <li>➤ What should we think about the idea that directors should secure sufficient time to effectively fulfill their responsibilities?</li> <li>➤ What should we think about the number of board memberships in multiple companies by the same person (for example, specifying the maximum number of board memberships that one person could assume in multiple companies in the Code)? Under the current circumstances where it is said to be difficult for companies to find candidates for independent director, who have appropriate knowledge, expertise, competencies and aptitude, what should we think about balancing multiple board memberships with the current circumstances?</li> </ul>

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<p>significant number of meetings) and any other work undertaken on behalf of the board and the associated remuneration.</p> <p>(Annotations)</p> <p>In order to improve board practices and the performance of its members, an increasing number of jurisdictions are now encouraging companies to engage in board training and voluntary self-evaluation that meets the needs of the individual company. This might include that board members acquire appropriate skills upon appointment, and thereafter remain abreast of relevant new laws, regulations, and changing commercial risks through in-house training and external courses.</p>	<ul style="list-style-type: none"> <li>➤ To ensure that directors and <i>kansayaku</i> sufficiently fulfill their expected roles, each member, including newly-appointed one, is encouraged to gain better understanding of such roles, and learn and develop oneself to acquire/update necessary knowledge. Furthermore, companies are expected to offer/arrange such training opportunities and bear the training costs. What should we think about these ideas?</li> <li>➤ What should we think about disclosure of training policy? [See Material 3]</li> <li>➤ Training may not be suitable for all matters, which directors and <i>kansayaku</i> must learn. How should we consider this point?</li> </ul>

In addition to the above points, taking the previous discussions into account, are there any supplementary comments or consideration for drafting the Code?