

Ministry of Economy, Trade and Industry

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**A Proposal for  
Commercial Code  
Reform for  
Business Management  
in the 21st Century**



# Background to Reform

- Changes in the business environment >>>>>
- Need for five aspects of fundamental company law reform



# A Changing Business Environment

- Internationalization of corporate activity and intensification of international competition
- Changes in the Capital Market
- Development of Information Technology (IT)



# Pressures of Internationalization

- Call for more flexible and rapid corporate activity in the face of intensified international competition
- Increase of borderless corporate activity



# Changes in the Capital Market

- Shift from indirect to direct financing
- Increased need for assessment by the stock and bond market
- Need for improved access to venture capital financing



# Development of IT

- Need to maximize use of Information Technology means



# Five Aspects of Fundamental Company Law Reform

- ① Facilitation of speedy and flexible decision-making
- ② Expansion of choice of Management System
- ③ Strengthening market monitoring of public companies
- ④ Diversification of capital focussed primarily on non-public companies
- ⑤ IT Measures



# 1. Facilitation of Speedy and Flexible Decision-Making

- Reduction of matters requiring Shareholders` General Meeting resolution
- Reduction of matters requiring Board of Directors resolution
- Revision of the quorum for special resolutions of Shareholders` General Meetings
- Revision of the Inspector`s Investigation





# Reduction of Matters Requiring Shareholder Approval

## Matters Transferred to Board Responsibility

- Business Transfers - change from transfer of an important part of business to greater than 20% of total net assets
- Mergers, share exchanges, corporate divisions etc. requiring shareholder approval - change from greater than 5% of total net assets etc. to greater than 20%



# Reduction of Matters Requiring Approval of the Board of Directors

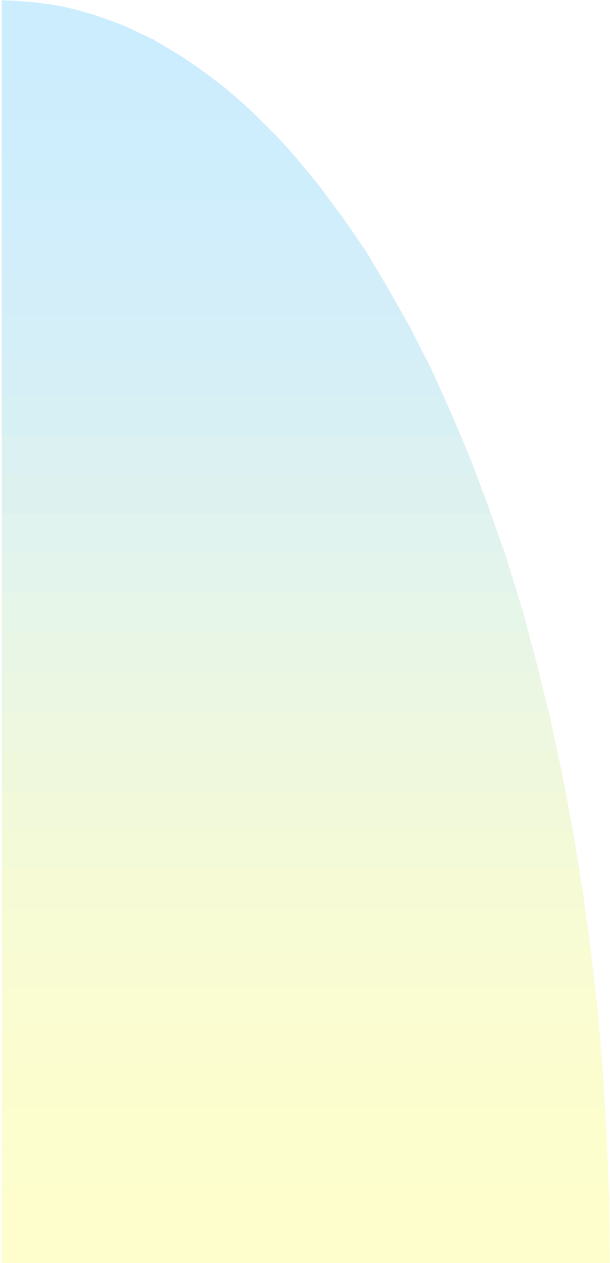
## Matters transferred to Management Responsibility (currently Representative Directors)

- Disposal of property etc.
- Establishment of branch offices or important organizations, appointment of managers or important employees, etc.
- Issuance of new shares, warrants, convertible debentures



# Revision of the Quorum for Special Resolutions of Shareholders' General Meetings

- Change quorum from current majority to greater than or equal to  $1/3$



## 2. Expansion of Choices of Management System

- Establishment of an executive officer system
- Clarification and limitation of directors` responsibility
- Auditor System Exemption
- Improvement of stock options



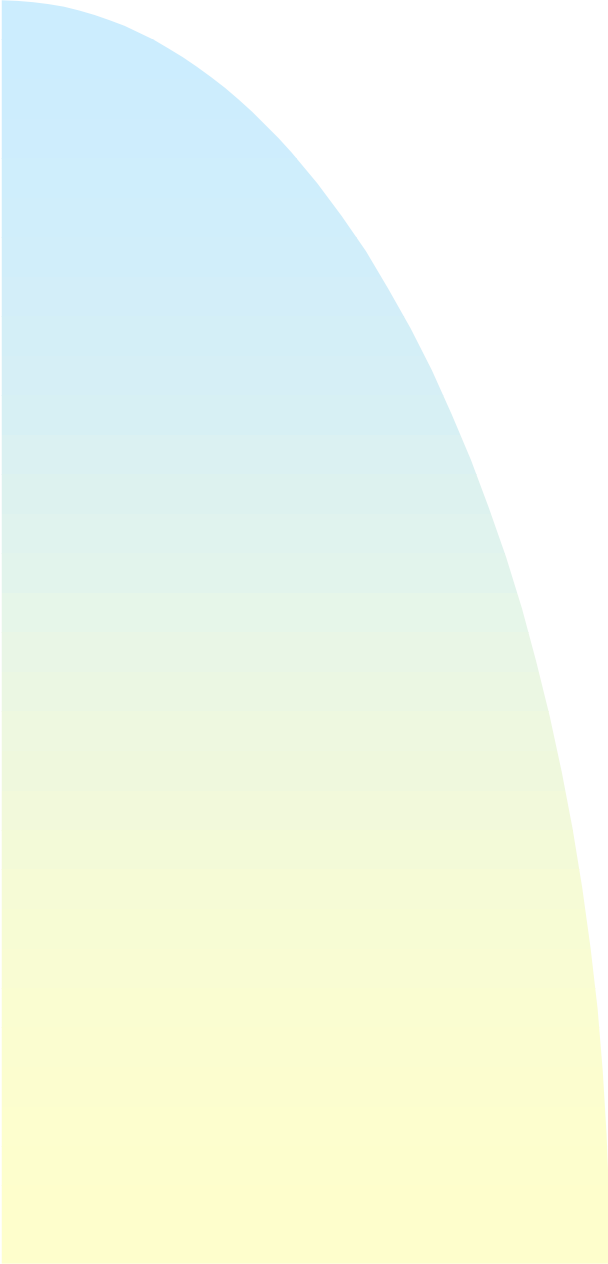
# Establishment of an Executive Officer System

- Possible to choose those responsible for management and operations (currently Representative Directors (Daihyou Torishimariyaku)) from among non-directors



# Clarification and Limitation of Directors` Responsibility

- Possible to limit the liability of directors with only a supervisory role through exemption in the articles of association
- Possible to limit, *ex post facto*, the responsibility of those responsible for management and operations



**Introduction of an  
Executive Officer System  
+  
Clarification of  
Directors` Responsibility**



**Facilitates the Introduction  
of Outside Directors**



# Auditor System Exemption

- Where an audit committee with a majority of outside directors is established within the Board of Directors, possible not to have an auditor (currently auditors are completely separate from Board of Directors)
- Strengthens the auditing function of the company as outside directors act both as voting directors and as auditors





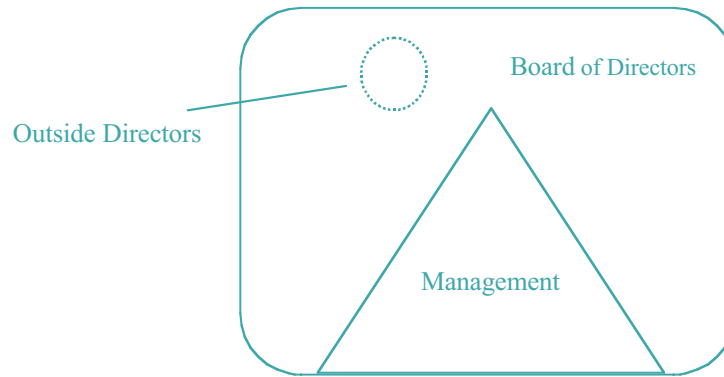
# Improvement of Stock Options

- Elimination of regulations prescribing maximum amount of stock options permissible and limiting those eligible for stock options

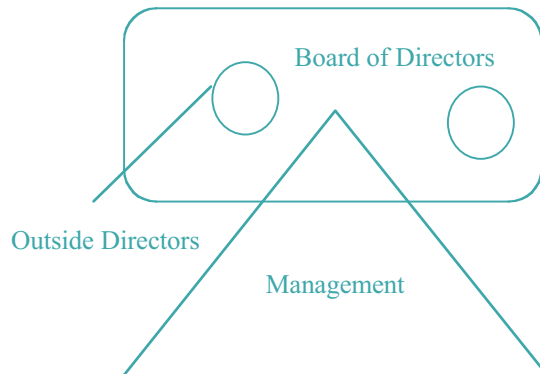
# Possible Management Systems

- A) All management are members of the Board of Directors (typical current system)
  - few outside directors -
- B) Only a portion of the management are members of the Board of Directors
  - many of the directors are outside directors -
- C) A portion of the management attend Board of Directors Meetings and create management reports etc., but do not possess voting rights
  - most of the directors are outside directors -

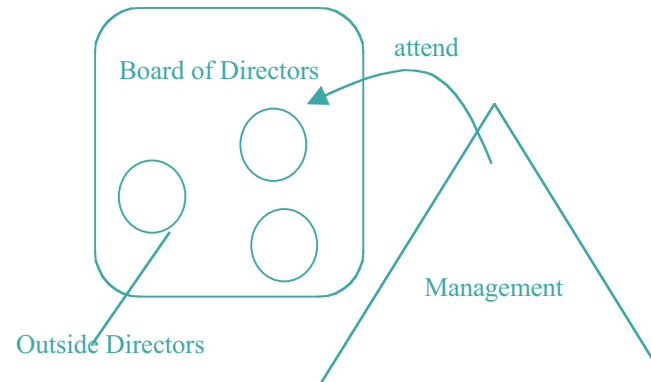
## Examples of Possible Management Systems



A) All officers are members of the Board of Directors  
Å@Current Typical SystemÅ



B) Only a portion of the officers are members of the Board of Directors - many of the directors are outside directors



C) A portion of the officers attend Board of Directors Meetings and create management reports etc., but do not possess voting rights



### 3. Strengthening Market Monitoring of Public Companies

- Recognition of the importance of appropriate market evaluation and of feedback to management
- Adequate disclosure of management system, incentive system and company audit information etc.
- Enhancement of the role of electronic media in the public notice system



# Adequate Disclosure of Management System

- Extent of the introduction of outside directors
- Status of internal compliance
- etc.



# Adequate Disclosure of Incentive System

- Disclosure of Directors` actual total remuneration (including stock options)
- Consider the appropriateness of individual disclosure of those whose actual total remuneration exceeds a certain amount and/or of those with the highest remuneration among directors and officers
- etc.



# Adequate Disclosure of Company Audit Information etc.

- Ensure coordination between disclosure provisions of Company Law and the Securities Exchange Law
- Information with respect to corporate grouping
- etc.



## 4. Various Sources of Capital Centred Primarily on Non-Public Companies

- Elimination of the net asset regulations with respect to share splitting (greater than 50,000/share)
- Creation of voting-type share classes
- Elimination of limits on capitalization (currently 400% of issued capital) for companies with limits on share transfer
- Reduction of the Notice Period for Notice of Shareholders' General Meeting for companies with limits on share transfer, etc.



# 5. Information Technology Measures

- IT and the management of Shareholders` General Meetings, etc.
  - recognize the sending of Notice of Shareholders` General Meetings by electronic means
  - recognize use of electronic voting means
- IT and public notices
  - recognize use of electronic means
- Recognition of Board of Directors` Meetings held electronically - easing of Directors` attendance requirements