

PUBLIC COMMENT ON REVISIONS
TO THE CORPORATE GOVERNANCE CODE

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*(This public comment solely expresses the opinion
of the author as an individual, and not that of any organization.)*

I respectfully submit the following comments regarding the draft revisions to Japan's Corporate Governance Code.

Summary

Some 13 years after I proposed the concept of a corporate governance code to the ruling party in 2013¹, the 2026 draft revision of the Corporate Governance Code (CGC) still does not sufficiently address many deeply-rooted obstacles to improving governance that remain because of Japan's long postwar history of insider-only "management boards".

The draft revision represents a lost opportunity to present more specific and practical guidance on governance implementation to Japanese companies at a time when many of them are still struggling to break away from past habits and adopt modern practices. It also represents a lost opportunity to add a number of principles and topics that are considered "best practices" elsewhere or are necessary because of Japan's unique history and board habits. Further, because it will reduce required disclosures and their comparability, and does not address the JPX/TSE's defective XBRL format, the draft reduces the efficacy of the "two wheels of a cart" concept that I proposed in 2013.

Overall, the draft revision falls significantly short when compared to other markets' governance codes on a global basis. (Please see the analysis below.) It purports to encourage boards to have more governance "substance" while providing precious little new substance of its own.

I recommend that the Council continue to meet regularly and discuss the following issues, with the goal of making another revision of the CGC within the next two years.

¹ See: "How I Got Japan's Governance Code Started, Including a Diversity Principle", at: <https://bdti.or.jp/en/cgcodejapanbirth/>

Organization of this Public Comment

This public comment is organized as follows:

1. Reduction of Required Disclosure Items Will Dilute the CGC's Impact
2. The Defective Format of TSE "Corporate Governance Reports" Remains Unfixed
3. The Draft Revision Leaves out Important Features Found in Other CGCs
4. The Draft Revision Omits Practices that are Especially Needed in Japan
5. Analysis Reveals Major Gaps Compared to Other OECD Nations, Especially Regarding "Use of Independence"
6. Conclusion

1. Reduction of Required Disclosure Items Will Dilute the CGC's Impact

In my speech proposing the CGC to a subcommittee of the LDP's Headquarters for Japan's Economic Revitalization on February 6, 2014, the very first page of my materials read:

- *"In Japan, compared to other countries, there are fewer disclosure rules that facilitate comparisons of corporate governance practices. This means that valuable systems such as the stewardship code will not function effectively, ending up as a "pie in the sky" .*
- *The role of corporate governance codes or similar frameworks in many countries is not to mandate certain mechanisms or practices, but rather to encourage disclosure of information about governance systems and practices by requiring companies to be accountable—the "comply or explain" principle."*

This concept was the genesis of the CGC. My point was that in order to improve governance and increase economic productivity, a CGC was needed in order to require more disclosure about governance as it was actually being practiced at different firms – disclosures that would enable between-firm comparisons to be made by the many asset managers that were then being asked to sign the new Stewardship Code.

In line with this logic, in previous memos to lawmakers, I had referred to these two codes as "Two Wheels of a Cart".

Thereafter, the CGC was adopted, and per my suggestion, a number of items requiring disclosure (the "disclosure items") were set forth in the format for Corporate Governance Reports submitted to the Tokyo Stock Exchange (the JPX). However, according to materials recently made public by the JPX in Japanese but apparently not in English, under the draft revised code the following four items will no longer need to be disclosed:

- Sustainability initiatives, etc. (Supplementary Principle 3-1③)

- Determination of the scope of delegation to management and disclosure of its outline (Supplementary Principle 4-1^①)
- Criteria for determining the independence of independent outside directors (Principle 4-9)
- Concurrent positions held by directors and auditors (Supplementary Principle 4-11^②)

These are important disclosures that investors will no longer be able to easily access. Moreover, changing the headings and format of the required disclosure items will cause a break in the 11-year consistent format of Corporate Governance Report disclosure. This will make databases constructed henceforth difficult to align with the prior 11-year time series of data, and will stymie analysis.

This problem could be eliminated if defects in the XBRL taxonomy of reports were to be fixed (see below), but it does not appear that this will be done.

In addition, the overall impact of "streamlining" and subsuming certain topics to "interpretive guidance" will be demoralizing and confusing for those executives at companies who are sincerely attempting to adopt practices and disclosure set forth in the current CGC. Having said that, one should stress that much of the interpretive guidance is good material. As described below, there simply needs to be much more of it, on topics that presently are completely omitted. (See below.).

2 The Defective Format of TSE "Corporate Governance Reports" Remains Unfixed

Ironically, the major cause of the low-quality of disclosures in Corporate Governance Reports is the Tokyo Stock Exchange's own XBRL format (taxonomy) for Corporate Governance Reports, which prevents computers from effectively parsing text of the separate "disclosure items." This occurs because some 16 distinct disclosure topics are all identified by a single XBRL tag² identifying one huge text block, into which each company dumps all of the separate items using a variety of different formats and headings, -- and often using click-through URLs which may have lapsed, leading to "404" web pages.

Since 2015, the result has been to make automated analysis and comparison of the disclosure by computers essentially impossible. I have raised this issue to the JPX, the FSA, lawmakers, investors, and the general public, for at least eight years.

Without the ability to easily compare companies, many investors do not read what they refer to as "garbage disclosure." Companies that are not "called out," remain lazy. It is a vicious circle.

Elsewhere in Corporate Governance Reports, the JPX's use of XBRL is of very high quality. For this reason, it is an utter mystery why it continues to use XBRL for the "disclosure items"

² The XBRL tag is: "DisclosuresRequiredByThePrinciplesOfTheCorporateGovernanceCode", a tag for one massive text block.

section of its reports (only) in a way that makes separation, analysis and comparison difficult, -- the exact opposite of what XBRL coding is intended to do.

Because access to the database for these reports is sold by the JPX to generate revenues as a private company, this is even more of a mystery. One would think that the JPX would *want* to make the data generated by its own CGC more user-friendly and valuable. This is especially so in the age of AI, when comparisons and automated analysis can be highly effective if data is properly structured.

One can only speculate that in 2015 when the CGC became effective, not many companies had many written governance "policies" to disclose, and so in deference to its corporate clients that pay it listing fees, the JPX may have intentionally made this disclosure difficult to extract and compare, in a sort of "*sontaku*". Whatever the reason, the current XBRL taxonomy flies directly in the face of the "two wheels of a cart" concept of making good stewardship and engagement possible and easier.

11 years after the CGC became effective, companies should not be excused for not having written governance policies they can describe without copying from reports of other companies. Likewise, the JPX should not be excused for failing to repair its defective taxonomy.

3. The Draft Revision Leaves out Important Features Found in Other CGCs

As is well known, until many Japanese companies became self-financing in the 1970s and 1980s, Japan's postwar economic history was at first dominated by "bank governance", with banks allocating capital and serving an effective "oversight" role. After that, listed companies quickly became full "management boards", overwhelmingly (if not entirely) dominated by executives, "overseeing" themselves.

Because of this past history, there remains a wide gap between what is not in the new draft, but is often included in other nations' CGCs or governance-related practice guides. Much of the draft is still high-level, and provides no detailed guidance to firms about a number of important governance practices that are now necessary because the percent of independent directors has significantly increased.

Because Japan is a country that had "management boards" for many years, if anything such guidance is more necessary than in many other countries. If given, it would not simply result in "box-ticking".

To the contrary, it would be very helpful advice to boards and secretariats sincerely striving to improve their practices amid the virtual chaos of many firms at different stages of "self-ordering" because of an absence of guidance, and the additional confusion created by three separate governance formats.

The advisory council should address these critical gaps, including:

- Defining "Corporate Value": The CGC uses the term but fails to define it. Does it mean "long-term shareholder value," as in Singapore, or subjective "intrinsic value" determined by management? Most OECD governance frameworks explicitly anchor board responsibilities in relation to shareholders or shareholder value.
- Independent Board Composition: The draft provides no incentives for a majority-independent board. In contrast, in Singapore and Malaysia, not having a majority (having only one-third) is only permitted for firms that have an independent chair. As a result, in Singapore 77.7% of listed firms have a board where at least half of the members are independent directors.

A draft preamble that is attached to the code notes that "it has been pointed out" that certain companies "should eventually ensure that the majority of their directors are independent." However, this language does not appear in the draft code itself, and is presented as no more than the opinion of certain members.

- Independent Board Leadership: The draft does nothing to further promote adoption of an independent chair or a lead independent director, both of which are rare in Japan. Without these roles, management retains too much control over key levers -- including the board secretariat role described in the draft code itself.
- The Role of the Chair: Remarkably, unlike the clear language in CGCs of countries like Singapore, Hong Kong or Malaysia, the influential role of the chair is not described at all -- despite recent high-profile governance scandals leading to chairmen resigning at firms like Nidec and Fuji Media. In Japan, the role of the chair - especially, the role of a truly independent chair who does have (and has never had) an executive role, is not well understood. Expectations and habits for this role have yet to be developed.
- Investor Point of Contact: The role of the lead independent director is still described as purely internal "coordination," rather than also serving as a point of contact for large shareholders. Without such specificity, guidance urging companies to facilitate more engagement in general, including meetings between outside directors and shareholders will have little impact at most firms.
- Term Limits: There is no suggestion of the need for director term limits. After 8-10 years, an outside director's contributions tend to diminish. The director's position becomes a bit like that of an "insider", inasmuch as he or she is discussing past policies and strategies that he or she continuously approved in the past. As an example, at the end of my own term at Advantest at the end of this coming July, I will retire voluntarily as an independent director. I will have served seven years at that point, and believe the board needs to be gradually "refreshed", for this and other reasons.

4. The Draft Revision Omits Practices that are Especially Needed in Japan

Because of Japan's somewhat unique postwar history, guidance is vitally needed in the following areas:

- Special Committees and Procedural Guidelines: There is no suggestion of the possibility to establish committees for risk or governance, nor any mention of baseline procedural rules for committees in general, in a country where historically most firms did not have committees at all. Nor does the draft provide guidance on setting up a special committee in advance to address emerging activist demands or takeover situations. It merely advises independent directors to "act to protect the common interests of shareholders" and asks firms to "ensure appropriate procedures and safeguard the interests of minority shareholders."

Currently many investors are very dissatisfied with the low quality of decision-making by "special committees" at Japanese companies, especially in the case of change-of-control transactions. Although this is an issue that can arise in any jurisdiction, most other major developed countries do not have as many listed companies for which such committees may be needed, have legal infrastructure, stock exchange rules, or court cases that provide directors with guidance or generate results more satisfying to investors, and do not have as long a past history of insider-only "management boards" as Japan.

- Procedures to Encourage Director and Pre-Director Training: Until the advent of the CGC, Japan had no custom of serious director training for many persons. The public-interest nonprofit that I founded in 2009, BDTI, has led the market in this area. Although Japan's CGC has provided that "companies should provide and arrange training opportunities suitable to each director", based on BDTI's many years of experience, this principle is conspicuous by virtue of frequent and flagrant non-compliance by many firms. Companies leave judgement of what is "suitable" (if anything) to the directors themselves, and claim to be complying with the principle based on their policy simply because they "implicitly" offered the "opportunity" to receive training even if that "offer" was never actually made or availed of.

Despite the fact that many market persons, even members of the Council, complain about the low "quality" of directors in Japan -- many of whom cannot even read financial statements -- the new draft contains no language that would change this state of affairs.

The new draft should clearly mention the necessity to understand financial statements, and should contain interpretive guidance that also encourages: (a) pre-assignment training for all internal "executive officers"³, some of whom will likely sit on the board later; (b) pre-assignment training for directors at major subsidiaries; (c) that the role of

³ As a matter of best practice, such persons should serve under fiduciary contracts so that they are subject to legal liability under a "duty of due" care standard, rather than serving as employees under labor law contracts.

the lead independent director and/or independent chair should include a yearly evaluation of what training, if any, is "suitable" for each member of the board, followed by a one-on-one interview recommending such training in the context of discussing results of the board's self-evaluation, which also evaluated each board member's individual participation during the prior year; and (d) disclosure of policies and prior-year concrete actions related to the above items.

5. Analysis Reveals Major Gaps Compared to Other OECD Nations, Especially Regarding "Use of Independence"

The draft revision stresses the need to "make effective use of independent directors", but compared to many other countries, it provides strikingly little specific guidance to boards as to practices that will actually bring this about.

The following chart depicts key elements of board leadership, independence, and orientation in the governance codes or similar guidelines/rules in OECD Countries vs. Japan:

Board Leadership, Independence, and Orientation: OECD Countries vs. Japan⁴

Summary Comparison (OECD excluding Japan, N = 37, vs. Japan)

Principle, Rule, or Recommendation	OECD (ex-Japan)	Japan
Reference to shareholder interests or shareholder value	~80–95%	Not specified (uses "corporate value")
Chair role explicitly defined in code	~80–90%	Not specified
Independent chair (recommended, comply-or-explain)	~60–70%	Not specified
Lead independent director / equivalent as contact person for investors	~25–35%	Not specified
Board-level investor contact (explicit designation)	~40–60%	Not specified
CEO–Chair separation (recommended or required)	~75–85%	Not specified
≥50% independent directors (recommended or required)	~50–65%	Not specified (baseline ≈ one-third)
Explicit tenure limits (years specified)	~50–60%	Not specified
Tenure limits (any form)	~65–75%	Limited / indirect

⁴ Analysis using Chat-GPT, based on data from OECD Corporate Governance Factbook 2025.

6. Conclusion

In view of the gaps described in this Public Comment, I recommend that the Council continue to meet regularly and discuss the issues set forth in this public comment, with the goal of making another revision of the CGC within the next two years.

[End of Public Comment]