



## Corporate Governance

### Subcommittee Prepares Interim Proposal for Amendment to the Companies Act

On February 14, 2018, the Companies Act (in relation to Corporate Governance, etc.) Sub-Committee of the Legislative Council prepared an Interim Proposal for the Amendment to the Companies Act (in relation to Corporate Governance, etc.) ("Proposal"). The Proposal indicates the future direction for amending the Companies Act with respect to corporate governance rules. The key provisions of the Proposal are as follows:

- Electronic Distribution of Shareholders' Meeting Materials.** Under the current Companies Act, the consent of each shareholder is required for a stock company to make shareholders' meeting materials available via the internet as opposed to sending the materials to the shareholders in writing. The Proposal would allow companies to make such materials available via the internet, without obtaining the consent of each shareholder, by following certain procedures such as amending the articles of incorporation.
- Limitation of the Right of Shareholders to Make Proposals.** In order to prevent shareholders from abusing the right to propose matters for adoption by shareholder resolution, the Proposal would introduce an upper limit to the number of proposals that a shareholder can submit at a shareholders' meeting and would allow companies to reject improper proposals.
- Creating Proper Incentives for Directors and Officers.** The Proposal would revise the rules regarding director compensation such that directors are properly incentivized to perform their duties. For example, the Proposal would obligate directors to explain at shareholders' meetings the company's policy for director compensation. In addition, the Proposal would allow companies to indemnify officers against third-party claims and would introduce new provisions concerning Directors and Officers Liability Insurance, known as D&O Insurance.
- Use of Outside Directors.** Because there are divergent opinions as to whether the Proposal should introduce an obligation to appoint outside directors, the Proposal includes both: (i) language that introduces such an obligation, mainly for listed companies, to appoint outside directors; and (ii) language that does not amend the current Companies Act.
- Establishment of Bond Administration Staff.** Due to the high cost of establishing bond administrators, it has become necessary to establish a system for delegating the minimum necessary bond administration work to third parties. The Proposal would introduce a system for bond administration staff to assist with the administration of bonds on behalf of bondholders.
- Statutory Share Delivery (*Kabushiki Kofu*).** Under the current Companies Act, when a stock company uses its own shares to acquire another stock company and make it a subsidiary, an investigation must be conducted by an inspector of the acquired company's shares contributed in kind. This is because such an acquisition involves a subscription of shares in exchange for shares of the target company that are contributed in kind. However, such an investigation is not required where the

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stock company conducts a statutory reorganization called a "share exchange" through which the target company becomes a wholly owned subsidiary of the acquiring company. In order to avoid the application of the rules regarding contributions in kind, the Proposal would establish a new type of statutory reorganization called a "Share Delivery (*Kabushiki Kofu*)" with rules equivalent to those of share exchanges, even if the target company does not become a wholly owned subsidiary.

The Proposal has been open to public comment since February 28, 2018. According to media reports, an outline of the bill will be prepared by the end of March 2019, and the bill is expected to be submitted to the Diet in 2019 at the earliest. Companies should pay close attention to future legislative trends, as this issue will have a significant impact on business practices relating to the Companies Act.

## Tax

### New Guidelines on Amended CFC Rules in Japan

As previously reported in the [December 2016/January 2017](#) issue of this newsletter, the 2017 Tax Reform included amendments to the CFC Rules in Japan. As a result, beginning April 1, 2018, a Japanese parent company must recognize the income of a controlled foreign corporation ("CFC") that is subject to an effective tax rate of 20 percent or more in its home country (currently excluded from the CFC Rules) if the CFC constitutes a "shell company" or certain other types of entities. On January 31, 2018, the National Tax Agency issued a brochure titled "Q&A Concerning CFC Rules as Amended by the 2017 Tax Reform," which provides questions and typical examples regarding various CFC-related issues, such as the thresholds used to determine "shell company" treatment. Japanese companies that have CFCs should take into account the new guidelines in considering how to manage the CFCs going forward.

## Corporate

### Commencement of Fast-Track Registrations of Incorporation

From March 12, 2018, the Legal Affairs Bureau began the expedited processing of applications for registrations of incorporation of stock companies and limited liability companies. Except during periods in which there is a high volume of applications, the Legal Affairs Bureau will make an effort to complete the registration process within three business days of receiving an application. While it had previously taken one to two weeks to complete the registration process, it will now be possible to quickly complete post-establishment procedures requiring certificates of commercial registration.

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