

New Japanese Government is planning new companies regulations

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Atsumi & Partners

Speedread

The Democratic Party has come to power in Japan for the first time in 50 years, bringing with it some new ideas on corporate governance. These are enshrined in a set of draft regulations applicable to listed companies, the main aims of which are set out here.

With the historic victory of the Democratic Party that ended more than 50 years of unbroken rule by the governing Liberal Democratic Party, Japan has a new government with new ideas regarding corporate regulation. These new ideas are enshrined in a set of draft regulations applicable to listed companies and prepared by a project group established by the Democratic Party (Group).

Under Japanese law, listed companies are generally subject to regulation by the Companies Act and the Financial Instruments and Exchange Act. The Group has proposed special legislation applicable to listed companies (Listed Companies Act) that would apply in addition to the current regulations.

Two main aims of this special legislation are:

The adoption of an employee representation system. The Group's proposal is based on the co-determination system that exists in Germany, whereby the audit committee comprises an equal number of shareholders and employees. However, unlike the German system, the Group is planning to have one or more statutory auditor(s) appointed from the labour unions or from the pool of employees. By proposing this system, the Group has demonstrated that it is keen on protecting the interests of various stakeholders in the company; not just shareholders.

Tightening of the requirements regarding the appointment of independent directors.

The Group will amend the current ability to appoint independent directors from affiliates, parent companies, lending banks or business partners to much stricter requirements.

According to an anonymous source, this plan has not been formally authorised by the Democratic Party. However, the Group seeks to implement its proposals in 2011 and is revising them so that they can be submitted to the Diet in the near future. The Group will have to juggle the interests of various interest groups, such as labour unions and the relevant ministries (which include the Ministry of Justice, the Financial Services Agency, the Ministry of Economy, Trade and Industry and the Ministry of Health, Labour and Welfare).

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