

Fundamental Issues in Japanese Corporate Governance Reform: A Comparative Perspective

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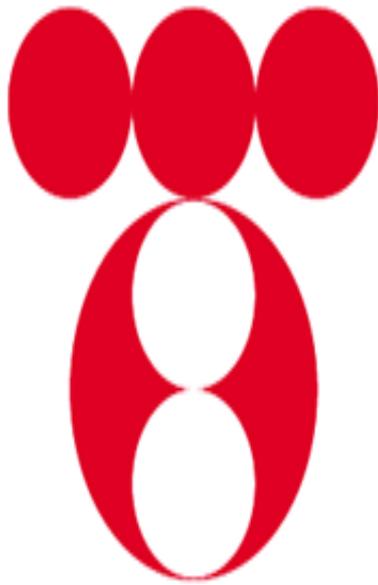
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Corporate Governance on our Minds: Olympus and Woodford



Tepco's Corporate Governance under Attack: The Tsunami Approaches Fukushima No. 1

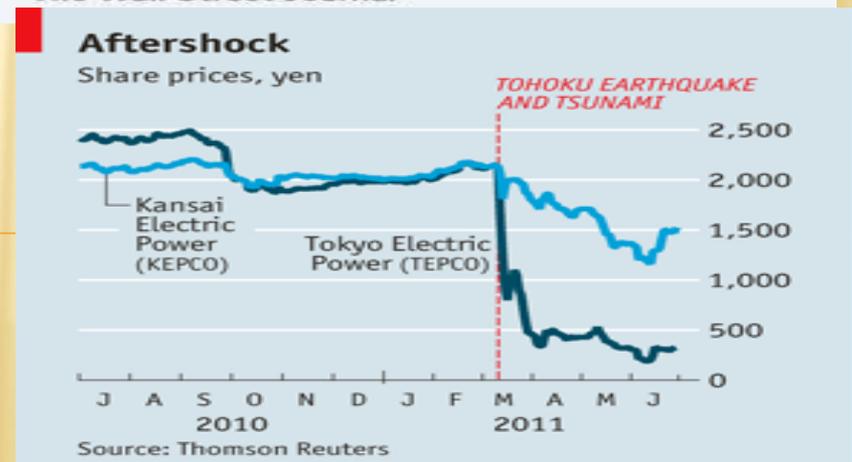
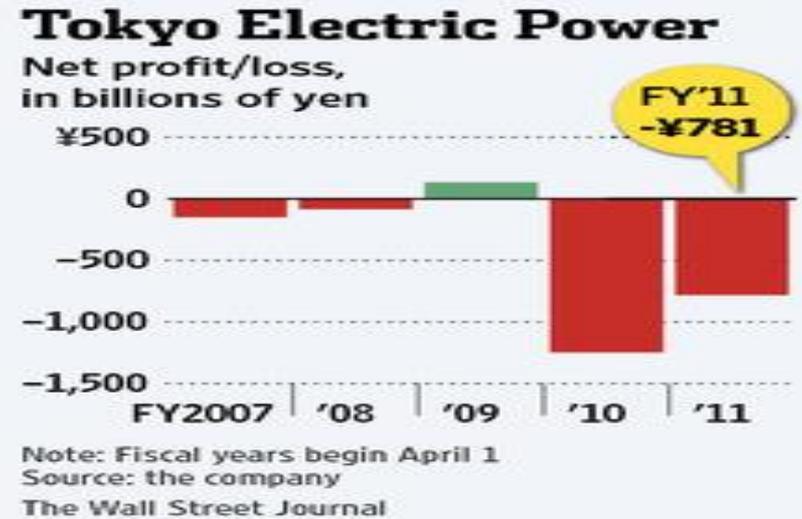


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Japan's Strongest Company Is Bankrupt



Formalistic Debate over whether to Require Outside Directors for the Past 15 Years

- ✘ Institutional Investors: Insider-dominated systems do not protect the interests of shareholders and depresses Japan's stock market
 - ✘ Business Groups: Each company should develop a corporate governance system that suits its needs; there should be no uniform, mandatory rule
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U.S.-Japan Comparison: The Goal of Corporate Governance Reform

- ✘ U.S.--Hostile M&A cases highlight conflicts of interest and the rise of activist institutional investors → gradual change in the board's role from an adviser to management to a supervisor of management
 - ✘ Japan—Collapse of the economic bubble-->>
 1. greater financial authority and discretion to management to improve business competitiveness,
 - and 2. Some attention to shareholder interests
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Is there any Relationship between Corporate Governance and Business Performance?

- ✘ Empirical (statistical) studies in U.S.: No correlation between supermajority of independent directors and business performance
- ✘ Result: Business groups in Japan do not accept this as a goal of corporate governance
- ✘ Businessmen emphasize goals of (1) increase in “corporate value” and (2) more “efficient” decisionmaking and preventing wrongdoing

Are Japanese Corporations Responsive to Shareholders?

- ✘ Diverse ownership structure in Japan...but
- ✘ Cross-shareholding system still functions
- ✘ Other Japanese domestic shareholders are complacent
- ✘ Are core employees at Japanese companies still regarded as the “real” long-term stakeholders?
- ✘ Why is influence of foreign investors weak?

Fundamental Questions on Monitoring for Japanese Corporations

- ✘ Is it necessary to strengthen monitoring? How?
- ✘ Does the existing kansayaku system provide sufficient monitoring?
- ✘ Is there a need for additional outside monitoring?
- ✘ Does the stakeholder system give too much authority to the company president (particularly power to appoint successor president and board members)?

What is a “Truly Effective” Corporate Governance System? Strengthening the Monitoring Environment

- ✘ The “secret” of the U.S. corporate governance system is...not independent directors per se
- ✘ Providing the means (“tools”) for ANY potential supervisor of management to be effective
 - ✘ 1. Information (internal and public disclosure)
 - ✘ 2. Enforcement (particularly private litigation)
 - ✘ 3. Role of external gatekeepers

Recent Developments (2012)

- ✘ MOJ subcommittee introduces “comply or explain” approach for listed companies with no outside directors
- ✘ MOJ subcommittee recommends that TSE promulgate a requirement for one outside director in listing rules
- ✘ MOJ subcommittee proposes another structural option: Company with an Audit and Supervisory Committee

Recent Corporate Trends: Hybrid Systems

Companies experimenting with “hybrids” that combine insider information and outsider independence

1. Company with Auditors adds a nomination committee
2. Company with Committees includes two “outside directors” who are former top executives

How important are structural differences in practice?

Recent Corporate Trends: Where to?

- ✘ Many sophisticated Japanese companies now see the trend of adding outside directors as “inevitable”
 - ✘ Will current innovative practices at individual companies result in a code of best practices that can be applied more widely to improve corporate governance?
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Conclusion

- ✘ Biggest challenge for Japan: How to improve monitoring within its existing corporate governance system?
 - ✘ What will be the effect on Japanese businesses of increasing globalization of their operations?
 - ✘ How will Japan react to these pressures? Can it become a leader in Asia?
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