SYMPOSIUM / CONFERENCE

„ DÔSHISHA CONFERENCE ON CORPORATE GOVERNANCE “

On the occasion of the launching of the *Dôshisha University Center for Japanese Corporate Law,* an international symposium on corporate governance was held at the University's premises on November 7, 2003. The conference was organized by *Professor Masaru Hayakawa* in cooperation with Center Director *Professor Dr. Akira Morita.* The four Japanese contributions to the conference are reprinted in this issue while the four European contributions by *Professors Klaus J. Hopt, Brian R. Cheffins, Jean Nicolas Druey and Peter Doralt* are published in the *Dôshisha Law Review* and the *Worldwide Business Review*.

The Editor

Fundamental Issues of Corporate Governance in Japan

Misao Tatsuta

I. Introduction
II. Goals of Corporate Governance
  1. Eliminating Wrongs
  2. Enhancing Efficiency
  3. Respecting Shareholders' Role
III. Governance Reforms in Japan
  1. Gist of Reforms after World War II
  2. The Reforms of 2001 and 2002
  3. Reforms Triggered by Enron
IV. Some Reflections
  1. Independent Directors
  2. Governance in a Group
  3 Competing Legislation
V. Conclusion

I. INTRODUCTION

Corporate governance, in short, addresses the mechanism whereby corporations operate in a fair and efficient way. The corporate regime, as a whole, aims at building up such a mechanism. Thus the issue itself will always confront us as long as corporations exist. Nevertheless, a wide range of people enthusiastically discuss the governance of big businesses, taking into account the enormous influence wielded by big businesses over society. As in the case of human health, people pay a great deal of attention to governance when something goes wrong. In Japan as well as in other countries, business

scandals have often triggered legal reforms. The *Enron* disaster in 2001 gave rise to great shock worldwide, as well as the influential ensuing legal responses by the U.S. Congress, SEC, and other authorities.

One of the reasons why *Enron* gave us such a shock is that the United States failed to prevent the earthshaking scandal, disappointing many people who believed that American governance was the most advanced in terms of external checking by an efficient capital market as well as a management monitoring structure of corporations.

Even if we focus on corporate governance of big businesses, a variety of issues confront us. The way of coping with them may vary from country to country. To attain a common understanding of fundamental corporate governance issues against this backdrop, each panelist in Session I of this symposium will compare the governance regime in his home jurisdiction with that of the U.S., making use of the *Enron* case as a common tool.

II. Goals of Corporate Governance

1. Eliminating Wrongs

The most fundamental requirement for business operation is, needless to say, to avoid delinquency. Wrongs involving big business inevitably hurt a large number of people as well as society as a whole, resulting in a loss of confidence toward business. One type of wrongdoing relates to selfish conduct by management or employees to the detriment of the corporation: embezzlement is the most conspicuous example. It is likely to be exposed to colleagues unless skillfully concealed.

Another type concerns delinquent practices committed for the benefit of the corporation itself. We have had a number of such scandals: *e.g.,* bribery such as in the *Lockheed* case; deception of consumers by distributing latently defective products; and window dressing of financial statements or manipulating stock prices to the detriment of public investors. The principal offenders are often devoid of the perception that they are doing something wrong, satisfying themselves by regarding the measure as inevitable in order to save the workplace for employees and business for subcontractors. When afraid of being detected, not only those who may be liable for the maneuver but also most people associated with the corporation tend to devote themselves to covering up the fact, motivated by the organization's instinct for self-protection. An honest and brave informer may be blamed for his lack of loyalty to the corporation. This type is harder to reveal and prone to result in calamity.

Enron seems to represent a mixture of these two types. The senior executive officers merely received payments and stock options lawfully fixed by the compensation committee. However, in order for them not to lose the source of enormous revenue and to realize the huge capital gains from stock options, continuation and growth of the corporation were indispensable. When they recognized there were difficulties, they endeav-

ored to keep the appearance that the corporation was doing well by making use of whatever means they deemed necessary.

2. *Enhancing Efficiency*

It goes without saying that the more efficiently a corporation is operated, the happier all the constituencies are. There are higher dividends to the shareholders and a larger amount of remuneration for officers and employees. As a corporation grows bigger and more complicated, the giant may be vulnerable to difficulties in responding in a timely manner to quick changes in circumstances. How to overcome such hurdles and build up an efficient structure is dependent upon the degree of efforts by each corporation. Corporate law and other entities should provide society with a framework flexible enough for business activities that will not stand in the way of attempted reforms on the part of each corporation.

Within such a framework, the management of a corporation is expected to enhance efficiency in terms of delegating powers, setting forth management policies, making decisions without delay, keeping communication among relevant personnel, reflecting their own performance for feedback on future improvements, and so on. Where a senior executive officer's treatment – such as his reappointment and the amount of his remuneration – is based upon an assessment of qualities affecting these functions in light of corporate performance, the capital market may well regard the corporation as being efficiency oriented. The assessment makes sense only when those who assess are free from influence by those to be assessed.

Few people would deny that enhancement of efficiency is an important goal for corporate governance. We had better examine, though, how we evaluate efficiency. It is true that we may find objective figures of various indices such as return on equity (ROE) and return on assets (ROA), but the pursuit of increasing these figures through unlawful means is, of course, not acceptable, nor is such efficiency enduring if gains have been unreasonably attained by neglecting equilibrium among interests of relevant constituencies.

3. *Respecting Shareholders' Role*

Efficiency in terms of speedy decision-making is likely to improve when management is granted broad discretion. Utmost efficiency could be attained if senior executive officers were empowered to decide everything without any interference. Prominent officers would argue that it is their job to take into account the interests of all their constituencies.

About a generation ago when social responsibility of corporations was a hot issue, more than a few academics opined that a corporation was composed of managers, employees, customers, consumers, and community members as well as shareholders, de-

nouncing the traditional concept which regarded only shareholders as owners of a corporation.[1]

Advocates of "Law and Economics" provide us with a notion of stakeholders which embraces these interest groups, and theorizes that a corporation is a nexus of contracts among such stakeholders.[2]

Leading professors of economics in Japan put the emphasis on employees, arguing that an employee has invested his time and talent in order to learn skills of limited use confined to the specific workplace only, and therefore such an employee deserves to be among the owners of the corporation.[3] With the German model in mind, some professors proposed that employees have voting rights in selecting the directors.[4]

Lifetime employment and the seniority system, in addition to a company union based upon those aspects as well, characterized the traditional labor market in Japan. In recent years the first two features have been fading away. As a result, Japanese corporations ought to have transformed themselves from the employee-managing type into a shareholder-governing one. Nevertheless, according to *Katsuhito Iwai*, professor of economics at the University of Tokyo, in the era of post-industrial capitalism the main source of profits has shifted from tangible assets like production facilities to intellectual property, resulting in the rapid decrease in importance of money and its supplier, *i.e.,* shareholders. Shareholder supremacy is no longer justified. His reference is not confined to Japanese corporations. In his view, a corporation is now a community-like aggregation of organization-specific human resources supplied by expert managers and a skillful technocrat.[5] Alas, are shareholders homeless in the arena of corporate governance?

As far as a venture business in ultra-modern industries such as information and technology is concerned, this view might be warranted. Indeed we now have stock corporations whose amount of stated capital is only one yen, less than a penny. Even if this phenomenon spreads itself over all industries, however, a corporation of any substantial size cannot outlive difficulties and grow without the proper amount of risk capital. Such capital is suitable to be raised through the market. Society may well feel at home only

---

1 *E.g.*, Report of the Committee of Inquiry on Industrial Democracy (Bullock Report) 54-56 (1977); A. CONARD, Corporations in Perspective (1976) 366.

2 *E.g.*, F.H. EASTERBROOK / D.R. FISCHEL, The Economic Structure of Corporate Law (1991) 8-12.

3 T. ITAMI, *Nippon kigyô no "jinpon-shugi" shisutemu* [The humanistic system of Japanese corporations], in: K. IMAI / R. KOMIYA (eds.), *Nippon no kigyô* [Japanese corporations] (1989) 53.

4 E. HATTORI, *Kabushiki no honshitsu to kaisha no nôryoku* [The nature of stocks and corporate power] (1964) 59, 61. T. KAGONO, *Kigyô no gabanansu saikô* [Reflections on corporate governance], in: Zeikei Tsûshin, vol. 48 no. 7 (1993) 8, pointed out the importance of granting voices to middle class employees.

5 K. IWAI, *Kaisha wa kore kara dô naru no ka* [How are corporations going to transform in the future?] (2003) 275.

when a large corporation is subject to market control and internally governed in accordance with the collective intention of risk capital suppliers, *i.e.,* shareholders.

Shareholder supremacy may appear to be a mere fiction, but it is an ingenious tool for injecting social factors into a large corporation without depriving it of its private character; as a corporation grows larger and larger, it relies of necessity on a supply of risk capital by a wider scope of investors. Therefore, I do not regard it as anachronistic that legislatures in most jurisdictions have stuck to the notion of shareholders' rights; instead, I hope that these rights will not be curtailed any further.

III. GOVERNANCE REFORMS IN JAPAN

1. Gist of Reforms after World War II

Most of the amendments to the Commercial Code relate to improving corporate governance. Let me point out major ones. The 1950 reform introduced for the first time the board of directors as one of the corporate organs after the American model, but it had one or more representative directors appointed from among the board members engaged in daily business instead of executive officers. At the same time, the board was empowered to issue additional shares up to the limit authorized by the corporate charter.[6] It also opened the way for a shareholder to bring a derivative suit against the directors and corporate auditors.

The 1974 reform classified stock corporations into three categories by size. It mandated that a large corporation have its financial statements audited by a certified public accountant, in addition to a corporate auditor whose function was enlarged on this occasion.[7] It allowed small corporations to enjoy autonomy to a substantial extent.

Revisions in 1981, among others, mandated a large corporation to appoint at least two corporate auditors, and, in the case of one with 1,000 or more common shareholders, to accept voting by mail.[8] Without regard to corporate size, the power of the board of directors was clearly defined. The statute expressly provided for shareholders to have rights to make proposals and to ask questions at the general meeting, and for more stringent restrictions on corporate expenditure that benefited gangster-like professional

---

6 Prior to the 1950 reform, since the amount of stated capital was fixed by the charter, shares were issued only by means of charter amendment, thus always through a special resolution of the general meeting of shareholders.

7 Quite a number of large listed corporations underwent insolvency procedure in the mid-1960s, which revealed the fact that they had indulged in consecutive window-dressing with regard to their financial statements. Certified public accountants did audit these documents pursuant to the Securities and Exchange Law, but only after these documents had been fixed by the annual meeting of shareholders. The 1974 revision mandated *ex-ante* audit by CPAs so far as large corporations are concerned.

8 Unlike voting by means of proxy cards, voting by mail takes effect upon its reaching the corporation without the need of representation by anyone at the meeting.

shareholders, a practice that had distorted the function of the general meeting. Disclosure requirements were also considerably strengthened at that time.

Apart from the Commercial Code, we have another set of corporate law provisions contained in the Securities and Exchange Law, promulgated in 1948 after the U.S. model. This statute, with its subsequent amendments, regulates public offerings of securities and disclosure by publicly held corporations, tender offers, insider trading, and other unfair practices. The Securities and Exchange Surveillance Commission (SESC), established in 1992, acts as a watchdog over the market.[9]

Both of these sets of statutes have undergone a number of revisions, with shorter and shorter intervals. While shareholders now have stronger rights than before in some respects – such as a less expensive resort to a derivative suit – they have lost power in other aspects. For example, as the parent-subsidiary layer has multiplied within a group, matters beyond the shareholders' reach have increased notwithstanding such matters' financial relevance to them. The Anti-Monopoly Law lifted the ban on holding companies in 1999, and ensuing amendments to the Commercial Code made it easier for a corporation to restructure its organization by means of a merger, splitting, exchange of shares, and so forth.

A remarkable feature relates to incessant changes in the provisions for corporate auditors. Whenever we faced a governance problem, the legislature repaired the provisions: *e.g.,* extending the term of office, expanding their power, and in the case of a large corporation, mandating to form a board of corporate auditors composed of three or more members, with at least one outsider. Revision in this respect continues further, but I had better leave this to the speakers in later sessions.

2. *The Reforms of 2001 and 2002*

During the first two years of this century, we were continually flooded with important revisions. This period coincides with the time when the *Enron* scandal and ensuing U.S. reforms made frequent headlines. Some of our reforms took shape with American models in mind, but many of them had been drafted before the revelation of the scandal.

One of these reforms gave rise to a new type of stock corporation equipped with executive officers and audit, nominating, and compensation committees. A large corporation or a quasi-large one complying with high-level auditing is eligible to opt for this new governance structure. Here the board of directors confines itself to a monitoring function, as opposed to the board in the traditional type which manages as well as monitors along with the board of corporate auditors. Outside directors are expected to play a

---

9 At the outset, the Securities and Exchange Law was administered by an independent agency similar to the U.S. Securities Exchange Commission. Upon termination of the occupation, however, the Ministry of Finance took over the function. The SESC enjoys a certain degree of independence, although it belonged to the MOF and now belongs to the Financial Services Agency.

significant role in each committee, but they do not have to constitute a majority in the entire board. This is explained in greater detail in *Professor Egashira*'s contribution.[10]

Sony Corporation appointed executive officers, reducing the size of the board of directors, and a considerable number of others followed suit, even prior to the enactment of the said reform. This may help the board make speedy decisions, but insofar as the corporation remains in the traditional type, the board itself has to decide upon the same wide range of agendas as before. A concurrent reform provided for an executive committee so that the traditional type of board may delegate a substantial part of its function to it. *Sony* and some others have transformed themselves into the new type. *Toyota* and *Matsushita* remain in the traditional type, but they have created a newly devised structure to bring themselves close to the new type.

Many other reforms of late have deregulated or streamlined certain aspects of statutory requirements, *e.g.,* introducing ceilings for the amount of damages that liable officers, directors, and corporate auditors are to pay. *Professor Kanda'*s contribution to the conference deals with these issues.[11] The corporate charter may provide for a lower quorum requirement for a super majority resolution of the general meeting of shareholders. A corporation now enjoys broad freedom in forming its financial policy, such as repurchase of its own shares, issuance of various classes of shares with different voting rights, and so on.

3. *Reforms Triggered by* Enron

The disclosure requirement has extended to more and more items. Some of them are derived from post-*Enron* revisions in the United States. A publicly held corporation now has to disclose in its annual report information on its governance, and the same information is required in the registration statement for a public offering. The instructions from the Financial Services Agency (FSA) give examples to be stated for this item: how the corporate organs are structured and composed; how the systems for internal control and risk management are built and maintained; how the officers and the board members are compensated; the determination of inside and outside directors; how the account auditor is compensated; and distinguishing non-audit services from audit certification.[12]

The second item of post-*Enron* disclosure relates to risk information. In its annual report or registration statement, an issuer must state in the block such matters as may materially affect investors' decisions, *e.g.,* an extraordinary change in financial conditions; business performance or cash flows; dependence on a specified customer, product,

---

10 See p. 17 in this issue.
11 See p. 29 in this issue.
12 *Kisai-jô no chûi* [Instruction] (31-2) to Form 3 [Annual Report]; *Kisai-jô no chui* [Instruction] (52-2) to Form 2 [Registration Statement]. The latter states the substance of instruction, and the former just refers to the latter. Both forms are for the use by domestic issuers, but foreign issuers are required to disclose fundamentally the same information.

technology, and the like; peculiar regulations, business practices or business policies, if any; emergence of a material lawsuit; and noteworthy matters with respect to the officers, directors, corporate auditors, major shareholders, affiliated companies, or the like.[13] Similar risk information had been required before *Enron* only for a venture business. As for this item, it seems to me quite difficult to decide whether there is any material omission rendering the document unlawful.

The third item is the management's discussion and analysis (MD&A) with respect to financial conditions and business performance. Here the CEO is requested to analyze such factors as may materially affect financial conditions and business performance, to express his opinion about it, and to furnish information on the source of capital and liquidity of funds so that investors may properly assess the business conditions and accounts stated in the document.[14] This is soft information, so to speak, but it has been regarded as more and more important worldwide.

The U.S. SEC promulgated a rule requesting an issuer to contain in its quarterly and annual reports a certification statement signed by the chief officers in charge regarding the fair presentation of financial statements and other financial information. A Japanese counterpart takes the form of an exhibit to the annual and semi-annual reports and the registration statement.[15] It is not mandatory to file this exhibit, probably because untrue disclosure renders relevant individuals liable, no matter whether it has been filed or not. I wonder if the filing adds nothing but a psychological effect.

Enron and its aftermath took place when the amendments to the Certified Public Accountant Law were in process. It may have affected the drafting to some extent, but the reform project itself was motivated by the need to adjust our practice to international standards. Time does not allow me to go into detail.

IV. Some Reflections

1. *Independent Directors*

The concept of monitoring by outside and independent elements within the core organ of a corporation was not familiar to us until quite recently. We did know that an account auditor must be an outsider and independent from the management. We did prohibit directors and employees from concurrently serving as corporate auditors.[16] Now we do

13 *Kisai-jô no chûi* [Instruction] (11-2) to Form 3 [Annual Report]; *Kisai-jô no chûi* [Instruction] (32-2) to Form 2 [Registration Statement].

14 *Kisai-jô no chûi* [Instruction) (13-2) to Form 3 [Annual Report]; *Kisai-jô no chûi* [Instruction] (34-2) to Form 2 [Registration Statement].

15 *Kigyô naiyô-tô no kaiji ni kansuru naikakufu-rei* [Cabinet Office Ordinance Concerning Corporate Disclosure], Ministry of Finance Ordinance No. 5/1973, as amended by Cabinet Office Ordinance No. 59/2003, Art. 17 para.1 item 1 (he) and Art. 18 para. 2.

16 *Shôhô* [Commercial Code] Law No. 48/1899, as amended by Law No. 88/2004, Art. 276.

have outsiders on the board of corporate auditors of large corporations[17], and on the board of directors of the new type of corporation[18], but they remain in the minority in most cases.

Many business people are of the opinion that an insider is better suited than an outsider for any board – *i.e.,* irrespective of directors or corporate auditors – because an insider is far more equipped with corporate information. Others argue that each corporation should devise a means to provide outsiders with relevant information. Unless the management realizes that it is actually beneficial to have outsiders monitor the management job, they would not furnish necessary information at will. A coercive means may be necessary, such as a compulsory weekly report to outsiders. Mere "outsider-ness" makes little sense without real independence; besides, minorities are powerless.

2. Governance in a Group

Japanese corporations have been notable for their reciprocal share ownership. To the extent that the shares in two corporations are reciprocally held, the shareholders in both corporations have less voice *vis-à-vis* the management in terms of governance. After the economic bubble collapsed, and now that banks' financial ability no longer allows them to hold as many shares in industrial corporations as before, the ratio of shares reciprocally held has been steadily lowering. This vicissitude is gratifying when we consider the role of the market in terms of corporate governance. We have not yet reached the point when potential tender offers may exert substantial constraint over the management, since the released shares are divided into smaller blocks and find larger numbers of friendly hands.

Recent reforms have facilitated the restructuring of the corporate organization via mergers, splitting, exchange of shares, and so forth, as I mentioned earlier. This has led to an increase in corporate groups spreading to smaller ones, and to more complication of group structure composed of a larger number of member corporations. The problem is that governance in a group of corporations is the least developed area in our corporate law. Those who make full use of business combination may claim on one occasion that all the constituent corporations form an integrated entity, while on another occasion they argue that each member company has a separate corporate entity. Let me give you an example.

---

17 *Kabushiki kaisha no kansa-tô ni kansuru shôhô no tokurei ni kansuru hôritsu* [Law stipulating special provisions on auditing of stock corporations] Law No. 22/1974, as amended by Law No. 87/2004 – hereinafter referred to as „Special Audit Law" –, Art. 18 para. 1. As of May 1, 2005, half of the corporate auditors will be required to be outsiders; until then one outsider acting as corporate auditor will be sufficient.

18 Special Audit Law, Art. 21-8 para. 4. This provision does not fix the minimum number of outside directors, but only requires that a majority of the members of each committee be outside directors. Each committee should be composed of at least three directors, and the same member may sit on two or more committees.

A shareholder of a bank brought a derivative action against its directors. While the suit was pending, the bank formed a wholly owned parent company based on a super majority resolution of the bank's general meeting with all shareholders of the bank making themselves shareholders of the parent company. This is a legal technique created by the recent amendment. The district court dismissed the case on the grounds that the plaintiff no longer had standing to sue.[19] This decision was a surprise in academic circles. Despite a great deal of criticism, other lower courts followed suit.

3 Competing Legislation

In the orthodox process of legislating corporate law, the Ministry of Justice (MOJ) drafts a bill based upon the proposal by the Legislative Council – taking public comments into consideration – and the Cabinet submits the bill to the Diet. A decade ago, a second method came into use: Some members of the Diet, petitioned by the business circle, submitted their bill, skipping the said process. Some of the amendments reinforcing corporate auditors were sort of tie-in products when the members' bill contained deregulation in some other aspect.

The third method is a special statute drafted and administered by the Ministry of Economy, Trade, and Industry (METI). Earlier I referred to a stock corporation with a stated capital of only one yen. This is an statutory exception to the Commercial Code's requirement of 10 million yen for the minimum stated capital. It is the Cabinet that submits the bill of this sort, too, but METI statutes seem to incline toward business demand.

The fourth player is the Financial Services Agency, which has jurisdiction over securities regulation. I do not have time to deal with this.

The coexistence of competing legislative routes may have both merits and demerits. They will enhance management efficiency by removing obstacles. But obstacles for what, or for whom? That is the question. Not all, but certainly some obstacles for management are necessary tools for proper governance, like the requirement of shareholder approval. I hope the competing drafters will not indulge themselves in a "race to the bottom."

V. CONCLUSION

Recently, newspapers reported that the U.S. Attorney General has brought in the first indictment against executives of *HealthSouth Corporation* for violating the *Sarbanes-Oxley Act* of 2002. Their financial statement contained false earnings amounting to $3 billion.

---

19 Tokyo District Court, March 29, 2001, in: Hanrei Jihô No. 1748 (2001) 171 (Litigation against the directors of *Nippon Kôgyô Ginkô* [Industrial Bank of Japan]).

I'll conclude my speech with familiar words. Human beings can operate a car, an airplane, or a space shuttle, but no matter how elaborately they may design and manufacture these vehicles, a disaster can always happen. So it is with corporate governance.

ZUSAMMENFASSUNG

Seit vielen Jahren wird in Japan eine lebhafte Diskussion über geeignete Formen der Unternehmensorganisation und -leitung (corporate governance) *und den passenden rechtlichen Rahmen geführt. Vor allem nach dem Skandal um das amerikanische Energieunternehmen* Enron *sind Zweifel an dem amerikanischen Modell der* corporate governance *aufgekommen, das nach wie vor von vielen Japanern als das fortschrittlichste Modell angesehen wird und daher bei vielen Reformen des japanischen Handels-, Gesellschafts- und Wertpapierrechts in der jüngeren Zeit als Vorbild diente. Der Autor diskutiert in seinem Beitrag die grundlegenden Ziele der* corporate governance, *erläutert die Inhalte der jüngsten diesbezüglichen Reformen in Japan und erörtert einige aus seiner Sicht zentrale Voraussetzungen für eine effiziente Unternehmensorganisation.*

An eine gute corporate governance *seien im wesentlichen drei Anforderungen zu stellen: Erstens müsse sie Gewähr dafür bieten, daß es Organpersonen und Angestellten erschwert wird, Straftaten und andere Handlungen zum Schaden des Unternehmens zu begehen. Gerade der Fall* Enron *habe gezeigt, daß eine mangelhafte Kontrollstruktur in Großunternehmen zudem zu Problemen führen könne, die weit über den Rahmen des Unternehmens selbst hinausgingen. Zweitens müsse die* corporate governance *eine möglichst hohe Effizienz und Wettbewerbsfähigkeit der Unternehmen garantieren, wobei es jedoch schwierig sei, diese zu messen und Modelle von Unternehmensstrukturen zu bewerten. Drittens seien in angemessener Weise die Interessen der Anteilseigner zu berücksichtigen, was eine wesentliche Voraussetzung sowohl für eine effektive Unternehmenskontrolle als auch für das Wachstum von Unternehmen sei.*

Zahlreiche Reformen des japanischen Gesellschafts- und Kapitalmarktrechts in der Nachkriegszeit brachten weitreichende Veränderungen für japanische Unternehmen. Zu diesen gehören vor allem die Reformen zunächst in der unmittelbaren Nachkriegszeit, dann in den Jahren 1974, 1981 und 1999, und schließlich die jüngsten Gesetzesänderungen in den Jahren 2001 und 2002. In vielen Fällen wurden Elemente des amerikanischen Rechts rezipiert. Mit der Reform des Jahres 1999 wurden die Holdinggesellschaften verboten und neue Regelungen zur Umstrukturierung von Unternehmen und Unternehmensgruppen eingeführt. Die Reformen der Jahre 2001 und 2002 schufen die rechtlichen Grundlagen zur Gründung eines neuen Typs einer Aktiengesellschaft, der ähnlich wie eine typische amerikanische Aktiengesellschaft strukturiert ist. Er sieht Geschäftsführer vor, die nicht zugleich Mitglieder des Verwaltungsrats sein müssen. Zudem sind in dem Verwaltungsrat mindestens drei Ausschüsse zu bilden, ein Nominie-

rungsausschuss, ein Vergütungsausschuss und ein Prüfungsausschuss. Jedem Ausschuss müssen auch gesellschaftsexterne Verwaltungsratsmitglieder angehören. Nach dem Enron-*Skandal werden weitere Reformvorschläge diskutiert, so insbesondere die Schaffung strengerer und weiterreichender Publizitätspflichten für Publikumsgesellschaften.*

Aus Sicht des Autors stellt vor allem die Einführung von externen Verwaltungsratsmitgliedern in Japan ein großes Problem dar. Externe Verwaltungsratsmitglieder seien in japanischen Firmen bisher völlig unüblich gewesen, und es gebe ihnen gegenüber viele Vorbehalte. Was die neuen rechtlichen Möglichkeiten zur Umstrukturierung von Unternehmen angehe, werde von diesen rege Gebrauch gemacht. Im allgemeinen gebe es in Japan Probleme bei der Abstimmung und Umsetzung neuer Reformvorhaben, vor allem zwischen den beteiligten Ministerien. Gleich aber, was für neue Regelungen geschaffen würden, um die corporate governance *in Unternehmen zu verbessern, individuelles Fehlverhalten und Unternehmensskandale ließen sich dadurch nie ganz ausschließen.*

(Die Redaktion)