The Regulation of Corporate Groups in Japan

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I. Introduction

Corporate groups consisting of a parent and its subsidiaries are the most essential elements in the Japanese economy. Among the 3507 listed companies on the Tokyo Stock Exchange, 64.7% have less than 10 subsidiaries, 27.5% 10–49 subsidiaries, 4.4% 50–99 subsidiaries, 2.6% 100–299 subsidiaries, and 0.8% more than 300 subsidiaries.[1] The largest corporate groups have more than 1000 subsidiaries.[2] The subsidiaries have different attributes. Some are wholly owned, and others are not. Some are listed, and others are not. Some are domestic corporations, and others foreign.

Given the prevalence of corporate groups in business activities, Japanese legislations often refer to "corporate group," "controlled companies," or similar concepts, although the definition is often different depending on the purpose of each statute. For example, the **Companies Act**,[3] as is explained in detail below, contains provisions based on the concepts: "parent company," "subsidiary," and "corporate group." The **Financial Instruments and Exchange Act**,[4] the basic regulation on capital markets, defines "a corporate group" as a "group consisting of the relevant company and persons …… satisfying the requirements that Cabinet Office Ordinance specifies, as other companies in which the relevant company holds majority voting rights or as persons that are otherwise closely related to the relevant company." (Art. 5(1)(ii)) It also has many provisions that refer to a "parent" or "subsidiaries." The **Bankruptcy Act**[5] provides that a bankruptcy trustee, when necessary to perform his/her duties, may request a subsidiary company. (Art.83(2)) The **Act on Prohibition of Private Monopolization and Maintenance of Fair Trade Law ("Antimonopoly Act")**[6] uses the concept of "the group of combined companies," which means "a group consisting of the relevant company, its subsidiary companies, its parent company which is not a subsidiary company of another company, and subsidiary companies of the relevant parent company." (Art. 10(2)) The **Corporation Tax Act**[7] adopts a consolidated tax system when a domestic corporation has a full controlling interest in other companies. (Art. 4(2)) The **Banking Act**[8] and **Insurance Business Act**[9] takes into account corporate groups or controlled companies to implement effective financial regulations.

Although there are a few exceptions, legislations for administrative regulations are more likely to introduce the rules applicable on a corporate group basis than legislations in the private law area. For example, the **Consumer Contract Act**,[10] which regulates the unfair contractual terms, does not refer to

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1 Tokyo Stock Exchange, Corporate Governance White Paper 2017
2 At the end of 2016, *Sony* Corporation has 1297 subsidiaries and Hitachi, Ltd. 1056.
3 Act No. 86 of 2005. Corporate law was a part of the Commercial Code (Act No. 48 of 1899) until 2005. The 2005 revision of the Commercial Code compiled the provisions on corporate law into an independent legislation "the Companies Act".
The translation of Japanese legislation in this article is mostly based on "Japanese Law Translation Database System" on the Ministry of Justice website although sometimes slightly modified. See, http://www.japaneselawtranslation.go.jp/
4 Act No. 25 of 1948
5 Act No. 75 of 2004
6 Act No. 54 of 1947
7 Act No. 34 of 1965
8 Act No. 59 of 1981
9 Act No. 105 of 1995
10 Act No. 61 of 2000

corporate groups, subsidiaries, or similar concepts. Neither does the **Product Liability Act**.[11] The **Act on Sales, etc. of Financial Instruments**,[12] which provides the civil liability of financial instrument providers, unlike the Financial Instruments and Exchange Act, has no reference to corporate groups or subsidiaries.

The remainder of this article mainly focuses on the corporate law rules regarding corporate groups and the relationship between parents and subsidiaries. There is no statute that specifically applies to corporate groups or parent–subsidiary relationships in Japan. The interests of relevant parties are, in principle, governed by the Companies Act and case laws interpreting the Act.

II. A Corporate Group as a Legal Entity

Japanese law does not recognize a corporate group as a unified business organization or a legal entity. It is a well-established principle that parents and subsidiaries (even wholly owned ones) have a different legal personality and a creditor of a parent, for example, cannot automatically claim against its subsidiaries and *vice versa*.

However, there is an exception to this principle. Although there is no specific provision in the Companies Act, **the doctrine of piercing the corporate veil** has been developed in case law. In the *Supreme Court Decision Feb. 27, 1969*,[13] the doctrine was formalized as follows: the corporate veil can be pierced when "a legal personality has no substance at all or is misused to avoid an application of law." Therefore, in theory, it is possible that a parent and subsidiaries are treated as one legal entity based on this doctrine under the circumstances of the case.

One should also note that sometimes courts extend the regulation on a company to its parent or subsidiaries even without relying on veil piercing. For example, *Supreme Court Decision Sept. 9, 1993*[14] prohibited a wholly-owned subsidiary to purchase its parent shares despite the fact that the Commercial Code[15] applicable to the case only regulated the company's repurchase of its own stock. In this case, the Court regarded the action of a wholly-owned subsidiary as that of the company itself.

III. Basic Concepts under the Companies Act

1. "Parent Company" and "Subsidiary"

The concepts of a "parent company" and a "subsidiary" appear throughout the Companies Act. These terms are defined as follows.

> "'Subsidiary' means any entity which is prescribed by the applicable Ordinance of the Ministry of Justice as the juridical person the management of which is controlled by a Company, including, but not limited to, a Stock Company a majority of all votes in which are owned by the Company." (Art.2(iii))

> "'Parent Company' means any entity which is prescribed by the applicable Ordinance of the Ministry of Justice as a juridical person who controls the management of a Stock Company, including, but not limited to, a Company which has a Stock Company as its Subsidiary." (Art.2(iv))

[11] Act No. 85 of 1994
[12] Act No. 101 of 2000
[13] SAIKO SAIBANSHO MINJI HANREISHŪ (MINSHŪ) [SUPREME COURT REPORTER], V. 23, P. 511.
[14] SAIKO SAIBANSHO MINJI HANREISHŪ (MINSHŪ) [SUPREME COURT REPORTER], V. 47, P. 4814.
[15] Prior to the enactment of Companies Act in 2005, corporate law constituted a part of the Commercial Code in Japan.

Under the above definition, the control over the management of another company is the essential element for the parent–subsidiary relationship. First, if a company owns the majority of voting shares,[16] it has "control over the management." Second, it is possible to have "control over the management" even without the majority of the voting shares. Ordinance for Enforcement of the Companies Act[17] provides the detailed conditions for the "control over the management" being established when a company has 40% or more voting rights of other companies. The conditions are highly complicated in which various elements that would affect a company's decisions on the financial and business policies, including the members of the board, contracts for controlling the management, and the amount of equity and debt provided are taken into account.[18] One should also note that when a parent and its subsidiary jointly have "control over the management" of another company, such company is also a subsidiary of the parent company. For example, let us assume Company A has 51% of the voting share of Company B, and Company A has 30% and Company B has 21% of Company C. In this case, Company C is a subsidiary of Company A.

In short, the parent–subsidiary relationship under the Companies Act can be established either (1) by the holding the majority voting rights or (ii) combining 40% or more voting rights and other *de facto* influences over company's decisions on the financial and business policies through various elements such as the overlap of the directors or the amount lending. Although the parent–subsidiary relationship under the Companies Act is not completely formalistic (i.e., one which is based on the percentage of the total voting rights), the *de facto* power over the management alone, however strong, is not sufficient to establish the relationship.

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[16] More precisely, the majority of shares which has the voting right regarding the decision to choose directors at the shareholders meeting.

[17] Ordinance of the Ministry of Justice No. 12 of 2006

[18] Article 3(3)(ii) provides that the "control over the management" exists

"where the voting rights in a second Company, etc., of the number of that a first Company, etc. holds on its own account is 40 percent or greater of the total number of voting rights in the second Company, etc. (excluding the cases listed in the preceding item), and where any one of the following requirements is satisfied:

(a) the rate of the first Company's Own and Equivalent Voting Rights (meaning the total number of the following voting rights; the same applies in the following item) in the second Company, etc. exceed 50 percent of the total number of voting rights in the second Company, etc.:

1. voting rights held on the first Company's own account;
2. voting rights held by persons who are found to exercise their voting rights in accordance with the wishes of the first Company, etc. due to a close relationship therewith in terms of investment, personnel, funds, technology, transactions, or other matters; and
3. voting rights held by persons who have agreed to exercise their voting rights in accordance with the wishes of the first Company, etc.;

(b) that the rate of the number of the following persons of the first Company, etc. (limited to those capable of exercising influence in connection with decisions on the financial and business policies of the second Company, etc.) exceeds 50 percent of the total number of members on the board of directors or other equivalent body of the second Company, etc. of:

1. Officers of the first Company, etc.;
2. members who execute business at the first Company, etc.;
3. employees of the first Company, etc.; and
4. a person who was a person listed in 1. through 3;

(c) that an agreement, etc. exists under which the first Company controls decisions on the important financial and business policies of the second Company, etc.;

(d) that the amount of financing (including the amount of financing carried out by a party that has a close relationship with the first Company, etc. in terms of investment, personnel, funds, technology, transactions, etc.) (including guarantees on obligations and provision of collateral; the same applies in (d)) that the first Company, etc. carries out in the second Company, etc. exceeds 50 percent of the total amount of procured funds of the second Company, etc. (limited to funds recorded in the section on liabilities in the balance sheet);

(e) that other facts exist suggesting that the first Company, etc. controls decisions on the financial and business policies of the second Company, etc."

The parent-subsidiary relationship leads to several legal consequences under the Companies Act, which are explained in Par IV-VII.

2. "Corporate Group"

Some provisions[19] in the Companies Act use the concept of a "corporate group," which means a group consisting of a parent and its subsidiaries. The concept is used in the context of financial statements and the business report (see IV) and the internal control systems (see VI.2). It should be noted, however, this does not mean that the Act treats a corporate group as one entity or recognizes the "interest of corporate group" as justifying a certain act or behavior of the management of a parent or subsidiaries.

IV. Accounting and Disclosure

The Companies Act requires a company to provide relevant information on a corporate group to which it belongs to as well as the information on the company itself. The Financial Instruments and Exchange Act also require a similar disclosure to the investors.

1. Consolidated Financial Statements

A listed company of a certain size[20] is required to produce consolidated financial statements. (Art. 444(3)) A company with financial auditor(s) that does not meet the requirement under Art. 444(3) may also voluntarily produce consolidated financial statements. (Art. 444(1))

Consolidated financial statements are defined as "statements which are necessary and appropriate to indicate the status of the assets and profits and losses of a group of enterprises comprised of a company and its subsidiaries."[21] (Art. 444(1)) In short, they are statements that report the accounting data as if all companies belonging to a certain corporate group (a parent and its "consolidated subsidiaries") is one entity.

The consolidated financial statements were introduced in the 2002 revision of the Commercial Code, although they had been required under the Securities Exchange Act.[22]

Consolidated financial statements are prepared primarily for the purpose of disclosure to a company's shareholders and creditors. The financial restriction for dividends and other distribution to shareholders of a company is based on each company's own financial statements rather than consolidated financial statements. However, a company may reduce the limitation of distribution based on consolidated financial statements if the distributable amount of each company is larger than the distributable amount calculated on a consolidated basis. Consolidated financial statements affect the substantive law only to this extent under the current law.

2. Business Report

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[19] Art. 345(3)(iv), 362(4)(vi), 399-13(1)(i)(c), 416(1)(i)(e), and 444(1)

[20] The more formal requirement under Art. 444(3) is a "large Company as at the last day of a business year which should submit a securities report to the Prime Minister pursuant to the provisions of Article 24(1) of the Financial Instruments and Exchange Act."
A "Large Company" means any Stock Company that satisfies either of the following conditions: (a)that the amount of the stated capital in the balance sheet as of the end of its Most Recent Business Year is 500,000,000 yen or more; or (b)that the total sum of the amounts in the liabilities section of the balance sheet as of the end of its Most Recent Business Year is 20,000,000,000 yen or more. (Art. 2(vi))
Companies that should submit a securities report to the Prime Minister under the Financial Instruments and Exchange Act are primarily listed companies.

[21] Details of the statements are prescribed in Art. 61 of the Ordinance for Enforcement of the Companies Act.

[22] The title of the Securities Exchange Act was changed to Financial Instruments and Exchange Act in in 2006.

(1) Information on Related Party Transactions

A company should produce a business report for each financial year. A business report should include information on related party transactions. Art. 118(v) of the Ordinance for Enforcement of the Companies Act, which was added to implement the 2014 revision of the Companies Act, requires that the business report of a subsidiary should include the information on relevant transactions with its parent or other related parties. Specifically, the report should include (1) if the subsidiary took any measures to prevent the harm to its interest (if there is none, the subsidiary should state the fact) and (2) the director's judgment as to whether the transaction does not harm the interest of the subsidiary and the reason for the judgment, and (3) the opinion of the outside director(s), if any, when his/her (their) opinion is different from director's judgment in (2).

Although it failed to introduce a substantive regulation on related party transactions (see Part IV below), the 2014 revision of the Companies Act strengthened the disclosure on the related party transactions to protect the interest of minority shareholders and creditors of the subsidiaries.

(2) Information on the Corporate Group in a Public Company's Business Report

A business report of a public company[23] should contain "matters related to the current status" of the company. (Art.119 of the Ordinance for Enforcement of the Companies Act) "Matters related to the current status" include "the status of the parent company and significant subsidiaries." (Art. 120(1)(vii)) When a company prepares consolidated financial statements, "matters related to the current status" may be replaced by "matters related to the current status of the group of enterprises comprised of the company and subsidiaries," and information contained in the consolidated financial statements can be omitted in the business report. Most public companies choose to report "matters related to the current status of the group of enterprises" in their business report and leave relevant financial information of the group to their consolidated financial statements.

V. Protection of the Shareholders and Creditors of Subsidiaries

Corporate law scholarship has recognized that the protection of minority shareholders and creditors of subsidiaries as one of the most important issues in corporate law for many years. Despite the academic attention given to the problem, the Japanese legislator has been very reluctant to address the issue, and courts seldom have provided a remedy to minority shareholders and creditors. See (2) below.

1. Protection of Minority Shareholders

Apart from the disclosure explained in Part III, there is no systematic statutory regulation on the protection of minority shareholders in controlled companies in Japan. Although there are fragmentary regulations applicable to the transactions between related companies, the issues are mostly left to the general duty of a company's directors.

(1) Liability of a Subsidiary's Directors

(a)General Duty of Care and Duty of Loyalty

The directors of a company owe fiduciary duty to a company.[24] The directors of a subsidiary are

[23] "Public Company" means any Stock Company the articles of incorporation of which do not require, as a feature of all or part of its shares, the approval of the Stock Company for the acquisition of such shares by transfer. (Art. 2(v) of the Companies Act)

[24] Art. 355 provides "Article 355 Directors shall perform their duties for the Stock Company in a loyal manner in compliance with laws and regulations, the articles of incorporation, and resolutions

no exception, and if they cause damage to the subsidiary, they may be held liable to the subsidiary. The directors of a subsidiary cannot make an excuse, as they followed the instruction of the parent company (the controlling shareholder) or they maximized the interest of the corporate group. A recent Tokyo High Court case[25] clearly states, "The interest of minority may be unreasonably damaged for the benefit of its parent in the transaction between a parent and its subsidiary and the protection of such interest is highly required when the subsidiary is a listed company with a large number of shareholders. If directors of a subsidiary cause the damage to the subsidiary for the benefit of its parent and the interest of minority shareholders in the subsidiary is harmed, they may be liable for breaching their duty of care and duty of loyalty."

If the directors of a subsidiary breach their duty, they are held liable to the subsidiary for the damage caused to the subsidiary. (Art. 423(1))[26] The liability can be enforced by a derivative action by a shareholder if the company (subsidiary) does not enforce it. (Art. 847)[27]

Of course, the mere fact that a transaction between a parent and a subsidiary caused the loss to the subsidiary is not sufficient for holding the subsidiary's directors liable. The above case denied the liability of a subsidiary's directors in connection with a "cash management system" within a corporate group.[28] When courts will examine the damage (disadvantage) to the subsidiary on over all basis as opposed to the transaction by transaction basis and general benefit which the subsidiaries enjoy for being a member of the group may be taken into account. For example, if there is a continuing relationship among the members of a corporate group and a member company is better off during certain period of time, court will unlikely find that such member company incurred the loss even if a specific transaction is disadvantageous for it.

(b)Special Regulation on Self-dealing

The regulation on directors' self-dealing may be applicable to the transaction between a parent company and its subsidiary. Art. 356(1)(ii) and 361(1) requires the board's approval[29] when a director of a company enters into a transaction with the company for himself/herself or on behalf of a third party. The provision applies not only to a simple self-dealing between a director and a company, but also to a transaction between a parent and its subsidiary or between subsidiaries when interlocking directorship exists.

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of shareholders meetings." Despite its wordings ("a loyal manner"), director's duty under Art.355 is interpreted as including the duty of care and duty of loyalty. *Supreme Court Decision Jun. 24, 1970*, SAIKO SAIBANSHO MINJI HANREISHŪ (MINSHŪ) [SUPREME COURT REPORTER], V.24, P. 625. It is also noteworthy that a director owes his/her duty to the company and not to shareholders under Japanese law.

[25] *Tokyo High Court Decision Feb. 13, 2013* [unreported]

[26] Article 423(1) of the Companies Act provides "If a director, accounting advisor, company auditor, executive officer or financial auditor (hereinafter in this Section referred to as "Officers, Etc.") neglects his/her duties, he/she shall be liable to such Stock Company for damages arising as a result thereof."

[27] A shareholder with one share of a company can bring a derivative action to sue the directors on behalf of a company under Japanese law.

[28] Nissan Group introduced the following "cash management system" for the finance inside the Nissan Group. Nissan Finance, 100% subsidiary of Nissan accepts deposits from companies within Nissan Group and lends its money to other group companies. If a company within Nissan Group participated in the scheme, it can deposit to and borrow from Nissan Finance. The rate for deposit and borrowing is the same and relatively low. Nissan Body, a member of Nissan Group and a subsidiary of Nissan, made a deposit of substantial amount. Nissan Body's shareholder brought an injunction action against its directors to make a deposit to Nissan Finance. They argued that the deposit rate was too low and Nissan Body would suffer a loss. Tokyo High Court dismissed the claim, stating that the decision to participate in the "cash management system" is within the reasonable discretion of Nissan Body's directors and does not constitute the breach of their duty to the company.

[29] If a company does not have a board, the transaction should be approved by the shareholder's meeting.

Example

Let us assume that a Parent Company A enters into a transaction with its subsidiary Company B. Company A's President X serves as the director of Company B. Company A and Company B entered into a transaction that caused damage to Company B. A minority shareholder of Company B brings a derivative action against X.

In this situation, Art. 356(1)(ii) applies because X as Company B's director is considered to act on behalf of a third party [Company A]. When a director engages in a transaction to which Art. 356(1) applies and the transaction caused damage to a company, the breach of his/her duty is presumed. (Art. 423(3)) Therefore, X in the above example is liable for the damage caused to Company B unless she proves that she has not breached her duty or is not negligent in breaching her duty.[30]

(2) Liability of a Parent Company

Is there any possibility that the shareholder of the subsidiary can sue the parent company if the subsidiary suffered damage by the action of its parent or by the transaction between parent and the subsidiary? The current Japanese law has no specific provision giving the basis for the claim. The subsidiary may claim for the damage against its parent based on torts. (Art.709 of the Civil Code[31])

Although there have been legislative proposals[32] for the possible claim against the parent company, the legislators have been reluctant to adopt them. During the discussion in Legislative Council of Ministry of Justice that resulted in the 2014 revision of Companies Act, the issue was intensively discussed. There was a proposal to introduce a provision that regulates the transaction between a parent and its subsidiaries. It imposes liability on a parent if the interest of subsidiary is damaged compared with the case when the parent and the subsidiary had not entered into the transaction.[33] Under the proposed provision, the parent company is not liable simply because the contract terms are not unfair. It is liable if and only if the economic interest of the subsidiary is worse off before the transaction. This is a much more modest standard than the "arm's length test," which academics have proposed for years. Nevertheless, the proposal was not finally adopted by the Legislative Council of Ministry of Justice.

There was another proposal to allow the subsidiary's shareholders to enforce the subsidiary's tort claims against its parents through a derivative action.[34] The proposal was also rejected during the discussion in the Legislative Council of Ministry of Justice.

(3) Decision by the Shareholders Meeting of the Subsidiary

The interest of the minority shareholders of a subsidiary may be harmed by the decision by the shareholders meeting controlled by its parent when a corporate fundamental change, such as a merger or a corporate split, is involved.

Example

Let us assume that a Parent Company A enters into a merger contract with its subsidiary Company

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[30] Although the wording of Art.423 is not explicit, both negligence and breach of duty are required for the directors being liable under Art. 423. The director bears the burden of proving the lack of negligence.

[31] Article 709 of the Civil Code provides: "A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence."

[32] The most famous proposal is contained in KENJIRO EGASHIRA, KETSUGO KIGYO-HO NO RIPPO TO KAISHAKU [THE LEGISLATION AND INTERPRETATION OF CONSOLIDATED COMPANIES LAW], 1995.

[33] Ministry of Justice Civil Affairs Bureau Counselor, The Interim Draft Guidelines for the Revision (2011)

[34] Ministry of Justice Civil Affairs Bureau Counselor, The Interim Draft Guidelines for the Revision (2011)

B in which Company A absorbs Company B and Company B dissolves. Under the terms of the merger contract, Company A issues shares to Company B's shareholders. The merger ratio (the ratio of the shares allotted to Company B) is unfairly advantageous to Company A. The merger contract was approved[35] by the shareholders meeting of Company A and Company B.

In this example, the interest of the minority shareholder of Company B (subsidiary) is harmed by the approval of the merger contract by its shareholders meeting controlled by Company A (parent). Shareholders of Company B may seek the remedy in the following way.

(a) Making the Resolution at the Shareholders Meeting Void

A resolution of a shareholders' meeting is voidable if a shareholder with a special interest with the resolution exercised his/her voting right and the substance of resolution is extremely unfair. (Art. 831(1)(iii)[36]) In the above example, Company A is a "shareholder with a special interest" because it has an incentive to approve the merger contract that is advantageous to Company A and has a conflicting interest with Company B. The resolution to approve the merger contract at Company B's shareholders meeting is, therefore, voidable if the merger ratio is considered "extremely unfair." It should be noted, however, that courts are very cautious to find that the resolution is "extremely unfair" and thereby making the shareholders meeting and consequently the merger void because it would affect the interest of many parties who are involved in the transactions with both companies.

(b) Appraisal Remedy

Company B's shareholders may also rely on their right for appraisal remedy. Shareholders who dissented to approve the merger contract at the shareholders meeting can ask the company to purchase their shares at a fair price.[37] The "fair price" means either (i) the price the share would have if the shareholders meeting had not approved the merger contract or (ii) the price the share would have if the substance of the merger contract had been fair.[38]

(c) Liability of the Subsidiary's Directors

It is possible for the shareholders of Company B to sue its directors for damage caused by the merger in the above example. The directors of Company B have a duty to negotiate with Company A with respect to the terms of the merger contract for the benefit of Company B, and failing to do so would constitute the breach of their duty.

One should note that the minority shareholders in the above example cannot rely on derivative action.[39] Company B's former shareholder would claim for the reduction of their shares caused by the

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[35] Companies Act requires that a merger contract should be approved by the shareholders' meeting of both companies. (Arts. 783(1) and 795(1))

[36] Art. 831(1)(iii) provides that a resolution of shareholders meeting is voidable "when an extremely unfair resolution is made as a result of a person with a special interest in the resolution of the Shareholders Meeting, etc. exercising a voting right."

[37] Arts. 785(1) and 797(1)

[38] *Supreme Court Decision Apr. 19, 2011*, SAIKO SAIBANSHO MINJI HANREISHŪ (MINSHŪ) [SUPREME COURT REPORTER], V.65, P. 1311, *Supreme Court Decision Feb. 29, 2012*, SAIKO SAIBANSHO MINJI HANREISHŪ (MINSHŪ) [SUPREME COURT REPORTER], V.66, P. 1784.

[39] Even if Company B had a claim against its directors, the claim disappears when Company B merged into Company A. The damage suffered by Company B is offset by the benefit of Company A and Company A as the surviving company has no longer a claim against Company B's former directors. Osaka District Court May 31, 2000, HANREI-JIHO vol. 1742, p. 141.

merger to the Company B's former directors based on Art. 429(1).[40]

(4) Summary

In sum, the protection of minority shareholders is left to the application of general rules of the director's duty and liability and other remedies, such as appraisal rights. The subsidiary's minority shareholder may successfully claim against the directors of the subsidiary if the subsidiary is damaged by its parent through a transaction between the parent and the subsidiary or for any other reason. The subsidiary's minority shareholders are less likely to make claims against the parent company. When the interest of a subsidiary is damaged by the merger or other corporate fundamental changes approved by the subsidiary's shareholders meeting, the minority shareholders can rely on the appraisal remedy, while other claims are less promising.

Despite the continuing claim from academics for the legislation for the protection of minority shareholders in subsidiaries, Japanese legislators are reluctant to introduce new regulations. Although one reason is a strong and consistent opposition from the industries, it is not completely convincing because new regulations are often introduced in the area of corporate governance in the recent revision of the Companies Act despite the opposition of the industry. The more fundamental reason might be that there has been little convincing evidence proving that the interest of minority shareholders is really harmed by the parent companies in Japan, and there is no consensus as to the compelling needs for introducing a new regulation.

2. Protection of Creditors

The interest of creditors of the subsidiary can be adversely affected by the instruction or the influence of the parent company. Under limited liability, a parent company has an incentive to allow its subsidiaries to accept excessive risk to enjoy a high return.

Example

Company A, a parent company, engaged in a high-risk business through its wholly owned subsidiary Company B. Although Company B achieved high performance for years, Company B caused a serious incident involving a large number of victims and went bankrupt. The creditors of Company B including the victims with their claims in torts are not fully paid during the bankruptcy process.

There is no specific provision in the Companies Act or Bankruptcy Act that addresses the issue of protecting the subsidiary's creditors. Although there are several possible remedies for the creditors, they are, as is explained below, not sufficiently effective.

(1) Liability of the Subsidiary's Director

The creditors of Company B in the above example can sue its directors based on Art. 429(1).[41]

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[40] Art. 429(1) provides that "If Officers, Etc. are in bad faith or with gross negligence in performing their duties, such Officers, Etc. shall be liable to a third party for damages arising as a result thereof." Tokyo District Court Sept.29, 2011, HANREI-JIHO vol. 2138, p. 134 [Company A and Company B agreed the "share transfer," in which all shareholders of both companies become shareholder of a new company (Company C) while Company A and Company B remain as Company C's wholly owned subsidiary. A shareholder of Company A sued its director on Art. 429(1) alleging that the share transfer ratio is unfairly disadvantageous for Company A. The court dismissed the claim finding that the directors did not breach their fiduciary duty in deciding the share transfer ratio.]
A director is "Officers, Etc." in Art. 429. See *spura* note 26. The "third party" includes shareholders if they suffer damage directly through the officer's action.

[41] See *supra* note 40.

There are numerous litigations by the aggrieved creditors of the insolvent company based on the provision. If the directors of the subsidiary acted in bad faith or with gross negligence and blindly took excessive risk for Company B blindly following the instruction of Company A, they may be held liable against the creditors.

(2) Liability of the Parent's Director

The creditors of Company B in the above example may also claim against Company A's directors based on Art. 429(1) or Article 709 of the Civil Code (torts).[42] However, it is not likely that Company A's directors are held liable unless they have given specific instructions to or exercised control over Company B. To the best of the author's knowledge, there has been no case in which the parent's director was held liable to the subsidiary's creditors.

(3) Liability of the Parent Company

As noted earlier, the doctrine of veil piercing is recognized in Japanese courts. (See Part II.) Therefore, in theory, one cannot completely preclude the possibility that a parent may be held liable for a subsidiary's debt based on this doctrine. In the above example, the creditors of Company B might sue Company A, arguing that Company B's corporate veil is pierced under the specific circumstances of the case. In reality, however, there have been few cases in which Japanese courts have denied the shareholder's limited liability based on the doctrine.[43]

The creditors of Company B may also sue Company A based on Article 709 of the Civil Code (torts).[44] However, it is not likely that Company A's directors are held liable unless it has given specific instructions to or exercised control over Company B. To the best of the author's knowledge, there has been no case in which the parent's director was held liable to the subsidiary's creditors.

(4) Summary

To sum up, the subsidiary's creditors may successfully make claims against the directors of the subsidiary if their management is sufficiently unreasonable. Claims to other parties such as a parent company or its directors are much less promising.

VI. Protection of the Shareholders in a Parent Company

Japanese lawyers have not paid much attention to the protection of the parent company's shareholders. However, the 1997 revision of the Antimonopoly Act, which allowed the establishment of a holding company, changed the situation. A holding company, by definition, has no business other than controlling its subsidiaries. Therefore, the shareholders of a holding company have legitimate interest in how its subsidiaries are properly managed. It is also recognized that shareholders would substantially lose control over the business when a company conducts the same business through its subsidiaries. The commentators called the phenomenon the "reduction of shareholder's rights" in holding companies.[45]

With the rapid development of corporate groups that are governed by a holding company, the protection of the parent company's shareholders became one of the most important agendas for the recent corporate law. Japanese courts have gradually been recognizing that the parent's director owes a duty to

[42] See *supra* note 31.
[43] Although there have been a number of cases in which the court "pierced the corporate veil," most of them have very little to do with a shareholder's limited liability.
[44] See *supra* note 31.
[45] The term derives from the academic discussion in Germany.

properly manage the subsidiary's business. (See Section 1 below.) While the Companies Act provided relatively small rights to the parent's shareholders, the 2014 revision of the Companies Act added substantial changes to protect the interests of a parent company's shareholders. (See Section 2-4 below.)

1. Obligation of a Parent Company's Directors to Monitor the Operation of Subsidiaries

For many years, Japanese courts have adopted the principle that a parent and its subsidiaries have a different legal personality and the directors of parent company has, in principle, no obligation to monitor the management of subsidiaries. *Tokyo District Court Decision Jan. 25, 2001*[46] is a typical example. The court decided that the directors of a parent company are not liable to the parent company for the improper management of its subsidiary unless when they actually controlled the decision-making of the subsidiary by, for example, giving instructions.

However, the recent courts seem to be changing. *Fukuoka High Court Decision Apr. 13, 2012*[47] decided that a director of a parent company breached the duty to monitor the proper management of the subsidiary in connection with the improper transactions and inventory control occurring in a subsidiary.[48] The recent amendment to the Companies Act (see 2. below) is considered to be based on the assumption that directors of a parent company have a duty to manage the subsidiary to the extent it is possible and desirable.

2. Internal Control System to Govern Corporate Groups

The Companies Act refers to the internal control system in several places. Art. 362(4) (vi) demands the board decision if a company wishes to introduce an internal control system,[49] and Art. 362(5) requires that a large company[50] shall decide on the internal control system. The provision refers to the internal control system as "the systems necessary to ensure that the execution of duties by directors complies with laws and regulations and the articles of incorporation, and other systems prescribed by the applicable Ordinance of the Ministry of Justice as systems necessary to ensure the properness of operations of a Stock Company and *the corporate group which consists of the stock company and its subsidiaries*"(emphasis added).[51]

One should note that these provisions cannot be the basis of the obligation to establish an internal control system that covers the whole corporate group.[52] Nevertheless, given the increasing role of an internal control system in modern corporate governance, a company of a certain size, in effect, should establish an effective internal control system which covers the proper management of the corporate group as a whole.

3. Rights of the Parent's Shareholders

(1) Rights to Acquire the Information on the Subsidiaries

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46 HANREI-JIHO vol. 1760, p. 144
47 KINYU-SHOJI-HANREIJIHO vol. 1399, p. 24
48 The court of the first instance of the case (Fukuoka District Court Jan. 26, 2011, KINYU-SHOJI-HANREIJIHO vol. 1367, p. 41) also found that the director is in breach of his obligation.
49 This means that the decision on the internal control system cannot be left to executive directors.
50 See supra note 20.
51 Although the reference provision to the corporate group is added in 2016 revision of the Companies Act, the similar reference had already existed in Art.100 of the Ordinance for Enforcement of the Companies Act. However, it may be possible that it would constitute the breach obligation of the directors to agree to such a decision.
52 Although Art. 362(5) provides that a large company should "decide" on an internal control system, it does not require a large company to establish such a system. The provision allows a large company's decision not to introduce an internal control system.

A shareholder of a parent company can, with the permission of the court, inspect or copy (i) the register of shareholders (Art. 124(4)), (ii) the minutes of the board meeting (Art. 371(5)), and (iii) account books of the subsidiaries (Art. 433(3)[53]). These rights are exceptional in that they are exercised against a subsidiary, a company of a different legal personality. They were introduced by the 1999 revision of the Commercial Code[54] to meet the concern of a "reduction of shareholder's rights."

(2) Multiple Derivative Action

Japanese corporate law introduced "derivative action" under the influence of the U.S. law in the 1950 revision of the Commercial Code. A shareholder of a company can bring an action to enforce liability of directors on its behalf when a company does not enforce it. When the directors of a subsidiary have breached their obligation and caused damage to the subsidiary, a parent, as a shareholder of the subsidiary, can rely on the derivative action when the subsidiary does not enforce their liability. However, the shareholders of a parent company are not entitled to bring a derivative action to enforce the liability of the subsidiary's directors.[55] However, it is not plausible that the board of a parent company sufficiently enforce the liability of its subsidiary's liability, which was regarded as a typical "reduction of shareholder's rights" in holding companies.[56]

To meet the concern of the 2014 revisions of the Companies Act, although in a substantially limited manner, a "multiple derivative action" was introduced, which allows the shareholders of a parent who has shares equal to or more than one percent (1%) of its voting rights can bring a derivative action to enforce the liability of its significant wholly-owned subsidiaries when either a parent company or its subsidiary does not enforce it. (Article 847-3[57]) The application of a "multiple derivative action" is limited to the following cases: (a) the subsidiaries are a wholly owned[58] and (b) the value of the

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[53] Article 433(3) provides as follows:
"If it is necessary for the purpose of exercising the rights of a Member of the Parent Company of a Stock Company, he/she may, with the permission of the court, make the request listed in each item of paragraph (1) with respect to the account books or materials relating thereto. In such cases, the reasons for such request shall be disclosed."

[54] Arts. 260-4(6), 263(7) and 282(3) of the Commercial Code prior to the 2005 amendment. The 1999 revision of the Commercial Code introduced "share transfer" and "share exchange," which are used to establish a wholly-owning parent company. Since the 1997 revision of the Antimonopoly Act allowed holding companies, it was thought necessary to facilitate to create wholly owning parent company. At the same time, the concern of a "reduction of shareholder's rights" was discussed in the revision process.

[55] Although there were academic arguments to support such an action, Japanese courts have not accepted such an action.

[56] See, *supra* note 45.

[57] Article 847-3(1) provides as follows:
"A shareholder who holds votes of one-hundredths (1/100) (or, in cases where a lesser proportion is prescribed in the articles of incorporation, said proportion) or more of the votes of all shareholders (excluding shareholders who cannot exercise voting rights for all of matters that can be voted in the shareholders meeting) of the Ultimate, Wholly Owning Parent Company, etc. of a Stock Company (meaning the Wholly Owning Parent Company, etc. of the Stock Company which itself has no Wholly Owning Parent Company, etc.; the same shall apply hereinafter in this Part) continuously over six months (or, in cases where a shorter period is prescribed in the articles of incorporation, said period or more) or a shareholder who holds shares at or more than one-hundredths (1/100) (or, in cases where a shorter period is prescribed in the articles of incorporation, said period or more) of Issued Shares (excluding treasury shares) of said Ultimate, Wholly Owning Parent Company, etc. may demand said Stock Company to file an Action to Enforce Specific Liability (hereinafter referred to as "Action to Enforce Specific Liability" hereinafter in this Part); provided, however, that this shall not apply to cases corresponding to any of the following:
(i) In cases where the Action to Enforce Specific Liability is to seek unlawful benefits of said shareholder or a third party or to inflict damages on said Stock Company or said Ultimate, Wholly Owning Parent Company, etc.; and
(ii) In cases where said Ultimate, Wholly Owning Parent Company, etc. does not suffer damages by the fact of causing said Specific Liability."

[58] It should be noted that "wholly-owned" relationship extends to the multiple ownership structure. If Company A is a wholly-owned subsidiary of Company B and Company B is a wholly-owned subsidiary of Company C,

subsidiary's shares exceeds one-fifth (1/5) of the parent's the total asset value.[59] It should also be noted that the parent's shareholder should have more than 1% of its shares to rely on the multiple derivative action while any shareholder can bring an ordinary derivative action.

(3) Transfer of the Subsidiary's Shares

Japanese law requires the approval of a shareholders meeting when a company assigns all or a significant part[60] of its business to another. (Art. 467) Although a transfer of the shares of wholly-owned subsidiaries has economically similar effects on the assignment of a part of the business, the approval of a shareholders meeting had not been required for the former. This was also regarded as a typical "reduction of shareholder's rights" in holding companies.[61]

Article 467(1)(ii-2), which was added by the 2014 revision of the Companies Act, requires approval of the parent's shareholders meeting when it transfers all or part of the shares of its subsidiaries if (i) the book value of the transferred shares exceeds one-fifth (1/5) of the parent's the total asset value, and (ii) the parent company loses its control of the subsidiary as the result of such transfer.

4. A Company Auditor's Right to Acquire the Information on the Subsidiaries

Ar5. 381(3) of the Companies Act provides that a company auditor of a parent company, in necessary, can obtain relevant information of the subsidiaries.[62] Unlike the right of a parent's shareholders to acquire information on the subsidiaries, a company auditor can exercise this right without the permission of the court.

VII Other Legal Consequences Attached to Parent-Subsidiary Relationships or Corporate Groups

1. The Prohibition of Acquiring Parent Company's Share by its Subsidiaries

Art. 135(1) of the Companies Act prohibits subsidiaries to acquire their parent's shares except for the limited cases specified in Art. 135(2).[63] The subsidiary's acquisition of parent's shares has

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Company A is treated as a wholly-owned subsidiary of Company C. The same applies to Company C when Company B has all voting shares of Company A; A is treated as a wholly-owned subsidiary of Company C.

[59] Article 847-3(4) provides as follows:
"Specific Liability" as prescribed in paragraph (1) means the liability of the Incorporator, etc. of a Stock Company, in cases where the book value of the Stock Company's shares at the Ultimate, Wholly Owning Parent Company, etc. and its Wholly Owned Subsidiary Companies, etc. (including anything deemed to be the Wholly Owned Subsidiary Company, etc. thereof pursuant to the provisions of the preceding paragraph; the same shall apply in the following paragraph and Article 849(3)) exceeds one-fifth (1/5) (or, in cases where a lesser proportion is prescribed in the articles of incorporation, such proportion) of the value calculated by the method prescribed by the applicable Ordinance of the Ministry of Justice as the total assets of said Ultimate, Wholly Owning Parent Company, etc. on the day when the fact giving rise to the liability of said Incorporator, etc. occurred (the same shall apply in paragraph (10) and paragraph (7) of said Article).

[60] Art. 467(1)(ii) excludes the assignment in which the book value of the assets to be assigned to others by such assignment does not exceed one fifth (1/5) from the scope of the regulation.

[61] See, *supra* note 45.

[62] Art. 381(3) and (4) provide as follows:
"(3) Company auditors may, if it is necessary for the purpose of performing duties of the company auditors, request reports on the business from a Subsidiary of the Company with Company Auditor(s), or investigate the status of the operations and financial status of its Subsidiary.
(4) The Subsidiary under the preceding paragraph may refuse the report or investigation under that paragraph if there are justifiable grounds."

[63] Article 135 (1) A Subsidiary may not acquire the shares of a Stock Company that is its Parent Company (hereinafter in this Article referred to as "Parent Company's Shares").
(2) The provisions of the preceding paragraph shall not apply to the following cases:

economically a similar effect of the acquisition by the parent itself. It is partly explained as the protection of the parent's creditors (regulation of the distribution of the company's assets to its shareholders) and partly as the protection of the parent's shareholders (equal treatment of the parent's shareholders).

The regulation of Art. 135 might seem excessive in that the subsidiary's acquisition of parent's shares is more restricted than repurchases of the shares by the company itself. Under the Companies Act, a company's share repurchase is not completely prohibited if (i) a company has "distributable amount" which can be distributed to the shareholders and (ii) it observes the procedure to guarantee the equal treatment of its shareholders while Art. 135 prohibits the subsidiary's acquisition of parent's shares with very limited exceptions. The reason for this anomaly is explained that it is very difficult to provide a sensible regulation of the "distributable amount" when the parent-subsidiary is complex.[64]

2. The Restriction of the Subsidiary's Voting Rights at its Parent's Shareholders Meeting

A subsidiary has no voting right at the parent company's shareholders meeting. Strictly speaking, this is not a consequence of the parent-subsidiary relationship. If it is "substantially controlled" by other company, a company does not have the voting rights at the controlling company. (Art. 308(1)) "Substantial control" for the purpose of Art. 308(1) is much lower than the control required for parent-subsidiary relationship.[65] If a company owns one-fourth (1/4) of the voting share of another company, such company is regarded as having a "substantial control." (Art.308(1))[66]

The purpose of the regulation is to prevent the board or its executive members of a "substantially controlling" company (including a parent) controls its shareholders meeting.

3. Qualification of "Outside Directors" and "Company Auditors"

Outside directors and company auditors who monitor the management are expected to be independent of the executive members (executive directors and officers) of the company. Since the directors and the employees of a subsidiary are controlled by the parent and its executive members, they cannot be an outside director or a company auditor of the parent. (Arts. 2(15) and 335(2)) The directors and the employees of a parent has a special interest with the parent and its executive members, they be an outside director or a company outside auditor[67] of the parent. (Arts. 2(15) and 2(16))

(i) Cases where the Subsidiary accepts the transfer of the Parent Company's Shares held by another Company in cases where the Subsidiary accepts the transfer of the entire business of such other Company (including Foreign Companies);
(ii) Cases where the Subsidiary succeeds to the Parent Company's Shares from a Company disappearing due to merger;
(iii) Cases where the Subsidiary succeeds to the Parent Company's Shares from another Company by Absorption-type Company Split;
(iv) Cases where the Subsidiary succeeds to the Parent Company's Shares from another Company by Incorporation-type Company Split; or
(v) In addition to the cases provided for in the preceding items, cases prescribed by the applicable Ordinance of the Ministry of Justice.

(3) The Subsidiary shall dispose of the Parent Company's Shares held by the same at an appropriate time.

[64] For example, if Company A owns 51% of Company B's share and Company B has 51% of Company C's share. When Company A, Company B and Company C jointly owns 51% of Company D, Company D is a Company A's subsidiary. It would be a very complex to calculate the "distributable amount" of Company A which applies to the case when Company D purchases Company A's share.

[65] For "the control over the management" required for parent-subsidiary relationship, see, III.1 above.

[66] Art. 67 of the Ordinance for Enforcement of the Companies Act provides the details on how to calculate the voting rights in this context.

[67] One should note director and the employees of a parent company can serve as a statutory auditor of its subsidiaries although it cannot be "outside" auditors. Only the independence from the executive members is required for being a company auditor and a parent's directors and employees satisfy this requirement.

VIII Squeeze Out of the Minority Shareholders

1. Methods for the Squeeze Out

Squeeze out transaction became possible since 2005 when the Companies Act was enacted. The Act allowed to "cash out" the minority shareholders in several methods including a "cash-out merger". A squeeze out of the minority shareholders is possible if it is approved by super majority (two-third (2/3)) at the shareholders meeting.

The ordinary method currently used for squeeze out is as follows.

(a) When the majority shareholders acquires equal to or more than two-third (2/3) of the voting shares, they can consolidate the company's shares by the resolution of at the shareholders meeting. (Art. 180 and 309(2)(iv)) The majority shareholders consolidate the shares substantially large ration so that all minority shareholders own less than one share. These fractions of shares can be purchased by a company.
(b) When the majority shareholders acquires more than ninety percent (90%) of the voting shares (a "special controlling shareholders"), they can rely on a simplified procedure. A "a special controlling shareholders" may demand the minority shareholder to sell their shares at the price they specify. (Art. 179(1)) Although the purchase of minority's shares in this procedure requires the board's consent (Art.179-3(3)), the shareholders meeting is not necessary.

Although a different method had been used in the past, all squeeze out are conducted either of these method depending on the portion of shares which the majority could obtain.

2. Protection of the Minority Shareholders

(1) Appraisal Remedy for the Shareholders

Whichever method is used for a squeeze out, minority shareholders who are not satisfied with the amount for they receive can demand the court to decide the "fair value" of their shares.[68] There have been a number of recent disputes regarding "fair value" for squeeze out, *Supreme Court Decision Jul. 1, 2016*[69]decided that the price offered at the preceding TOB was "fair value" (i) if a proper procedure, such as the hearing of the opinion of an independent committee or experts, is taken in order to avoid the decision making being distorted by the conflict of interests between majority and minority shareholders and (ii) the sufficient number of shareholders sold their shares in the TOB procedure in which it is explicitly announced that the bidder would purchase the remaining shares at the same price offered at the TOB even if shareholders did not accept the offer at the TOB. The latter requirement ((ii)) intends to avoid the pressure to tender and exclude the "coerciveness" of the TOB.

(2) The Liability of the Directors

Recent lower court cases have recognized the liability of the directors of the company who themselves squeeze out its shareholders (such as in the case of "management buyout") or who approved the price offered by the majority shareholders. Tokyo High Court Apr. 17, 2013[70] stated that the directors of a company owed an obligation to its shareholders to ensure the reasonable price when a squeeze out is conducted and the breach of the obligation would trigger their liability under Article

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[68] Art. 182-4 provides the shareholder's appraisal remedy for the share consolidation.
[69] SAIKO SAIBANSHO MINJI HANREISHŪ (MINSHŪ) [SUPREME COURT REPORTER], V. 70, P. 1445.
[70] HANREI-JIHO vol. 2190, p. 96

429(1)[71] although the court did not find the price offered at the squeeze out in question was not unreasonable.

(3) Sell Out Rights of the Shareholders

Unlike some countries, the right of minority shareholders' "sell out" of their share

IX Mandatory TOB for Obtaining Controlling Shares

1. Mandatory TOB for Acquiring the Controlling Shares

The Financial Instruments and Exchange Act requires, except for several exempted cases, the acquirer of the controlling shares, i.e., the shares with the two third (2/3) of the voting rights of a company, to launch a TOB ("mandatory TOB"). (Article 27-2 (1)) The requirement was introduced by the 1990 revisiont of Securities Exchange Act[72]. Therefore, if an acquirer wishes to obtain more than one third of the issuer's voting shares outside of the market, a TOB is required for such purchase since the 1990 Revision ("mandatory offer rule").

It should be noted that the "mandatory TOB" under Japanese law is completely different nature from the European regulations[73]. While the essence of the European regulation is to guarantee the shareholders of a target company an opportunity to "exit" instead of remaining as minority shareholders. In contrast, the purpose of Japanese mandatory TOB, according to the legislator of the 1990 revision, is to make a corporate control transactions transparent and prohibit a private purchase of a controlling block.

The purpose of Japanese regulation which is different from European one reflects in the differences.

(1) The mandatory TOB is required for the acquisition of the controlling shares.[74] If an acquirer obtains, as a result of a certain purchase, more than one third of company's total voting shares, *such purchase* is subject to mandatory offer regulation while a TOB is required *after* the acquirer's shareholding reaches the threshold (e.g., 30%[75]) under European regulations.[76]

(2) Under European regulation, when a mandatory offer applies, the acquirer, in principle, must purchase all shares that are tendered[77] while the acquirer does not necessarily have to purchase all shares in Japan. Japanese regulation does not intend to guarantee the shareholder of the target company to exit unless the acquirer obtains two-thirds (2/3) of the voting rights.

(3) European regulation requires the mandatory TOB when the acquirer obtains controlling shares, no matter the form of the acquisition of controlling shares. Japanese regulation does not apply when the acquirer purchases a target's share from the stock market. It also does not apply when the acquirer obtains the controlling shares from the primary market such as the issuance of new stocks.[78] The legislator thought the acquisition of control through the purchase in the stock market or the issuance of the shares are "transparent" and it is not necessary to replace them by a TOB.

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[71] See, supra footnote 40.

[72] The Law Amending a Part of Securities Exchange Act (Law No.43, 1990). The new rule came into force since December 12, 1990.

[73] TOB regulations in EU states are based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids ["Directive"].

[74] For instance, if the acquirer has 25% of the target's shares and wish to acquire 10% more, such a purchase must be achieved through a TOB (or other exempted method)

[75] The threshold differs among EU member states.

[76] EU Directive Art.5(1).

[77] EU Directive Art.5(1).

[78] When a company issues new stocks to a certain person and it acquires more than one third (1/3) of the total voting shares, no mandatory offer is required.

2. Obligation to Acquire All Shares

The 2006 revision[79] of the Securities Exchange Act added the acquirer's obligation to purchase all shares of the target company. Until the 2006 Revision, the acquirer was free to place the limitation of shares that it wished to purchase regardless of whether the offer was mandatory or voluntary. The revision imposed the acquirer to purchase all shares that are tendered if it obtain more than two thirds (2/3) of the total voting shares of the target company[80].

X Conclusion

This article described how Japanese law, especially the Companies Act, treats parent–subsidiary relationships and corporate groups.

A parent company and its subsidiaries have different legal personalities and are not automatically treated as a unified entity unless otherwise provided by a specific legislation. Although the concept of a "corporate group" appears in the Companies Act, the interest of corporate groups plays a minor role in regulating the act or behavior of the directors.

The accounting and disclosure under the Companies Act has taken into account the corporate groups. The financial statements and the business report of a parent company should prove relevant information on the corporate group and its member companies. In contrast, the substantive regulation of the parent–subsidiary relationships and corporate groups is less developed. There are no systematic provisions for the protection of shareholders and creditors in the Companies Act, and the issue is left to the possible application of general rules on directors' duty and liability or other rules, such as appraisal remedy. Given the lack of consensus as to the extent of the actual problems in the real economy and of the need for law reform, one cannot expect the situation to dramatically change in the near future. On the other hand, Japanese legislators and courts have recently begun pay more attention to the protection of the parent's shareholders and the case law and the business practice is developing.

Although it is a relatively new phenomenon in Japan, the number of a "squeeze out" is increasing and there are number of disputes regarding the "fair price" that needs to be paid to the minority shareholders. Courts are likely to respect the price set by the controlling shareholders if a proper procedure is taken in deciding the amount.

Finally, Japanese law has a "mandatory TOB" for obtaining controlling shares although the purpose and the nature of the regulation is quite different from that of European regulation.

[79] The Law Amending a Part of Securities Exchange Act (Law No.65, 2006). The title of the Act was changed to "Financial Instruments and Exchange Act" since the 2006 Revision. The revision of TOB rules came into force since December 13, 2006 prior to other part of new Financial Instruments and Exchange Act.

[80] Act Art.27-14(4), Order Art. 14-2(2)