

Company's Organ Layout (Stock Company)

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According to Corporate Law proclaimed in 2005 and enforced May 1, 2006, the organ layout in Stock Company has been liberalized as enterprises positioned to utilize the Stock Company system have expanded along with the abolishment of both the minimum capital system and Yugen Gaisha Law (the law governing Limited Liability Corporation). Specifically, companies other than Public Companies/Large-sized Companies can now conduct more simplified organ layouts.

Public Company and Large-sized Company stated here require care as they constitute the concepts in Corporate Law. For example, Public Company is normally referred to as one enlisted in a stock market, and the scale of a company is often categorized based on its employee size. But Corporate Law defines them differently as follows:

(1) Public Company: Stock Company whose articles of incorporation have no stipulation regarding a requirement of the same company's approval with respect to an acquisition through disposition of all or part of stocks issued by the same company (No.5 of Article 2 of Corporate Law).

(2) Large-sized Company: Stock Company which falls under either of the following requirements on its balance sheet pertinent to the last accounting year (No. 6 of Article of Corporate Law):

(a) Capital fund accounted at 500 million Yen or more

(b) Total amount in liability section accounted at 20 billion Yen or more

In Corporate Law only two alternatives for the organ layout are allowed to Large-sized Company that is also Public Company. One is a company which organizes a board of auditors (No. 10 of Article 2 of Corporate Law) that is basically the same with one used to be generally adopted in Stock Company as in the past. Another is a company which institutes a committee (No. 12 of Article 2 of Corporate Law) that is relatively new. As for the former, a company instituted with a board of auditors, in accordance with "Law for Special Provisions for the Commercial Law Concerning Audits of Stock Companies, etc." (hereinafter referred to as Special Provisions Commercial Law), all of the auditors have organized board of auditors in Large-sized Company all along (21st paragraph of Article 18 of Special Provisions Commercial Law).

The latter, a company with a committee organized, is in essence the same system with

“a company which institutes committee” that was introduced upon the revision of Special Provisions Commercial Law enforced in 2003 modeling after an American system. Each of the nomination committee, the audit committee and the benefit committee requires to be organized by three or more committee members selected among directors through a resolution of board of directors, and also necessitates a majority of committee members to be outside board members (Article 400 of Corporate Law). More precisely, the organs of Stock Company are, in addition to shareholders’ meeting, director, board of directors, accounting senior counselor, auditor, board of auditors, accounting auditor, and committee (Article 326 of Corporate Law), but not executive officer. However, executive officer can hold a concurrent post of director (6th paragraph of Article 402 of Corporate Law), and its tenure is one year (7th paragraph of Article 402 of Corporate Law). And a company with a committee instituted has an audit committee, and is not allowed to have an auditor (4th paragraph of Article 327 of Corporate Law). Whereas in a company which organizes auditors, they require to be three or more in number and the majority of them has to be outside auditors (3rd paragraph of Article 335 of Corporate Law).

Companies except Public or Large-sized ones could be full-featured to become instituted with boards of auditors or committees. But a more simplified organ layout is possible. While Stock Company is required to have at least one or two directors (first paragraph of Article 326 of Corporate Law) --- in actuality, the choice is given to a company which is neither Public, nor Large-sized simultaneously ---, a diverse and uncontrolled organ layout is allowed depending on conditions. On the basis of a company with a board of auditors instituted that is common among Public/Large-sized companies, Corporate Law stipulates possible simplifications according to conditions in Chart 1.

Diagram 1: Organs Required for Company with Board of Auditors Insituted

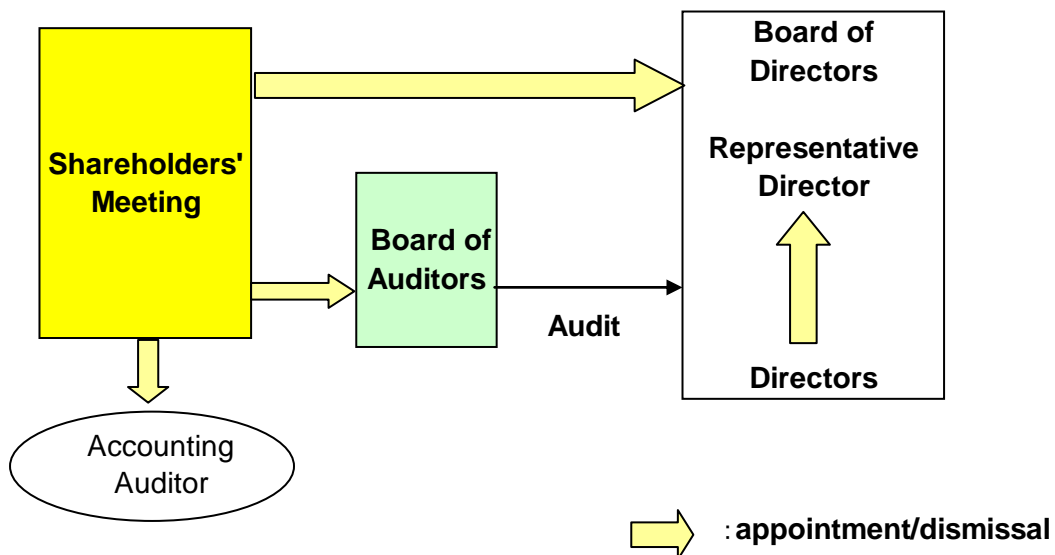


Diagram 2: Organs Required for Company with Committee Instituted

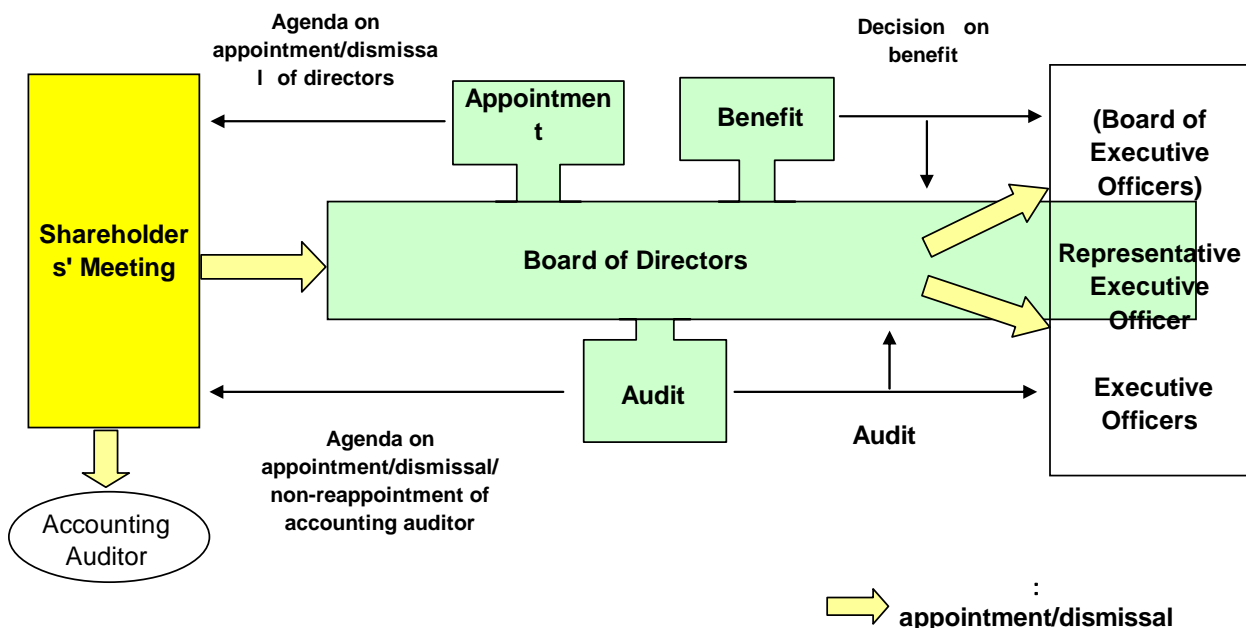


Chart 1: Deregulation of Stock Company's Organ Layout

| | Large-sized Company | Companies except for Large-sized |
|-----------------------------|---|---|
| Public Company | | <ul style="list-style-type: none"> •Board of directors: compulsory institution (1st paragraph of Article 327 of Corporate Law) •Auditor: compulsory institution (2nd prg., Art. 327, Corp. Law) •Accounting auditor: optional institution (1st prag., Art. 328, Corp. Law) |
| Companies except for Public | <ul style="list-style-type: none"> •Board of directors: optional institution (1st paragraph of Article 327 of Corp. Law) •Auditor: compulsory institution (3rd prg., Art. 327, Corp. Law) •Accounting auditor: compulsory institution (2nd prg., Art. 328, Corp. Law) | <p>In case accounting auditor is instituted:</p> <ul style="list-style-type: none"> •Board of directors: optional institution (1st prg., Art. 327, Corp. Law) •Auditor: compulsory institution (3rd prg., Art. 327, Corp. Law) <p>In case accounting auditor is not instituted (2nd prg., Art. 327, Corp. Law):</p> <p>(1)When no board of directors instituted: optional with auditor/accounting auditor</p> <p>(2)When board of directors instituted: compulsory with auditor or accounting auditor</p> |