

**Disclaimer:** the negotiations between EU and Japan on Economic Partnership Agreement are not concluded yet, therefore the published texts should be considered provisional and not final. In particular, the provisions which appear in brackets are still under negotiations. However, in view of the growing public interest in the negotiations, the texts are published at this stage of the negotiations. The texts are published for information purposes only and are without prejudice to the final outcome of the agreement between the EU and Japan. Any such texts become binding upon the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement, and after the final texts are submitted and approved by the legislators.

## **Corporate Governance**

*Text within brackets is subject to further agreement by the Parties.*

### **Article 1 Scope, objectives and definitions**

1. The Parties acknowledge the importance of an effective corporate governance framework to achieve economic growth, through well-functioning markets and sound financial systems based on transparency, efficiency, trust, and integrity.
2. Each Party shall take appropriate measures to develop effective corporate governance framework within its [EU: territory, JP:...], recognising that such measures will attract and encourage investment by enhancing investor confidence and improving competitiveness, thus enabling their investors to take best advantage of the opportunities granted by their respective market access commitments.
3. Without limiting the ability of each Party to develop its own legal, institutional and regulatory framework in relation to the corporate governance of publicly listed companies, the Parties commit themselves to respect the principles and adhere to the Articles set out in this Section.
4. The Parties shall co-operate on matters relating to the development of an effective corporate governance framework, with a view to facilitating the access of investors to each other's markets.

5. For the purposes of this Section:

- (a) "Publicly listed company" means a juridical person whose shares are listed or quoted for public trading on a stock market or regulated market of a Party as defined in the legislation of that Party.
- (b) "Board" means the governing body of a publicly listed company having decision-making authority on the oversight of the operations of the company, whose members (directors) are elected, normally by the shareholders of the company, to govern the company;
- (c) "Corporate governance" means the set of relationships between a company's management, its board, its shareholders, and other stakeholders which provide the structure through which a company is managed and controlled, notably determining how the objectives of the company are set and the means of attaining those objectives, as well as monitoring performance.
- (d) "Corporate governance framework" of a [Party] means the principles and rules of a binding or non-binding nature regarding the corporate governance of publicly listed companies, as applicable according to its respective competences and legislation.

## **Article 2 General principles**

1. The Parties recognise the importance of the corporate governance framework providing timely and accurate disclosure on all material matters regarding publicly listed companies within their respective jurisdictions, including their financial situation, performance, ownership, and governance.
2. The Parties recognise the importance of the corporate governance framework fostering appropriate accountability of the management and the board towards the shareholders, responsible board decision making based on an independent and objective standpoint, and equal treatment of shareholders of the same class.
3. For greater certainty, the provisions of the corporate governance framework of a Party referred to in Articles 3 and 4 may be implemented either through legally

binding mechanisms or through non-binding means such as on a “comply or explain” basis.

4. For greater certainty, some corporate governance principles or rules may not be applicable to certain companies<sup>1</sup> in cases justified by objective/non-discriminatory criteria such as early phase of development or size.

### **Article 3 Rights of Shareholders and Ownership Functions**

1. The corporate governance framework of each Party shall include provisions aiming at protecting and facilitating the effective exercise of shareholders’ rights in publicly listed companies. Such rights include, where applicable, participation and vote in the general meeting and election and removal of members of the board in accordance with the corporate governance structure of the company with a view to allow shareholders to oversee board behaviour<sup>2</sup> and participate in important decision making of the company.
2. The corporate governance framework of each Party shall include provisions aiming at encouraging disclosure of information regarding the control of company which can be valuable and useful to investors. Such information includes, for instance, (i) capital structure, and where appropriate indication of different classes of shares, (ii) direct and indirect shareholding which is considered to be significant, and (iii) special control rights.

### **Article 4 Roles of the Board**

The corporate governance framework of each Party shall include provisions aiming at: (i) the effective monitoring of management by the board from an independent and objective standpoint, which can be achieved for instance through the effective use of a sufficient number of independent directors<sup>3</sup>; (ii) ensuring board accountability to the shareholders; and (iii) ensuring sufficient disclosure of information relevant to

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<sup>1</sup> For instance, in the case of the EU, [companies listed outside regulated markets].

<sup>2</sup> For greater certainty, “to oversee board behaviour” does not require the daily oversight of the board’s operation by the shareholders.

<sup>3</sup> Each Party may determine what constitutes a “sufficient number of independent directors” in either qualitative or quantitative terms in its jurisdiction.

investors, for instance with respect to board composition, board committees and independence of the directors, so that such framework will promote responsible board decision making.

#### **Article 5 Takeovers**

The Parties shall provide rules and procedures governing takeovers in publicly listed companies. Such rules and procedures shall aim at enabling those transactions to occur at transparent prices and under fair conditions.

#### **Article 6 Dispute Settlement**

The state to state, investor-state or any other dispute settlement procedure under this Agreement shall not apply to matters arising under this section.