
In Landmark Decision U&P Obtains Appointment of Inspector of Execution of Operations

May 2, 2022

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On March 11, 2022, the Tokyo District Court ordered the appointment of an inspector of execution of operations upon the petition of our client a minority shareholder of the corporation.

Under the Companies Act (Law No. 86 of 2005, art. 358) only if there are “sufficient grounds” to suspect misconduct or a significant violation of law, regulation, and/or the articles of incorporation, three percent or greater shareholders may petition the court to appoint an inspector to investigate the “status of operations and the financial status” of such corporation. This provision gives the inspector sweeping powers, and the courts have rarely found sufficient grounds to appoint an inspector.

The courts have been reluctant to find the necessary “sufficient grounds” requiring strict proof, whereas petitioners typically only have suspicions of misconduct. However, such decision demonstrates that where the petitioner can adequately prove sufficient grounds the court will not hesitate to appoint an inspector and signals a new wave in shareholder litigation in Japan.

The appointment of an inspector provides shareholders with a powerful tool to obtain information from corporations above and beyond the many other rights that exist under the Companies Act to inspect and/or copy internal company information and potentially uncover wrongdoing, such as: the articles of incorporation (Art. 31(2)); minutes of shareholders’ meetings (Arts. 81(3), 82(3), 318(4), 319(3)); minutes of board of directors’ meetings (Art. 371(2)); proxies and voting forms (Arts. 310(7) and 311(4)); financial statements, audit reports, and provisional financial statements (Art. 442(3)); and information concerning an equity conversion plan, etc. (Arts. 775(3), 782(3), 791(3), 794(3), 801(4), 803(3), 811(3), 815(4), and (5)). It should be noted that these tools are available to shareholders of listed as well as private companies.

Our firm has significant experience with shareholder litigation and using each of these provisions to obtain the necessary information from recalcitrant corporations, both listed and private, to get the most value for the shareholders. The appointment of an inspector of execution of operations gives shareholders one additional, powerful “bite of the apple” to obtain information from a corporation that can help the shareholders ultimately prevail in litigation.

(End)

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