

(Japanese)

55 億円をだまし取られた「地面師事件」が発端 積水ハウスで勃発した“ガバナンス巡る
激突”の深層

<https://www.itmedia.co.jp/business/articles/2003/11/news022.html>

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(English)

Land Fraud was a trigger – Clash over governance at Sekisui House

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ESG is becoming more important as a measure for investors in choosing companies to invest in. ESG is an acronym for Environmental, Social, and Governance. The concept began with overseas investors and now Japanese institutional investors have been putting a growing emphasis on it. Above all in Japan, corporate governance has not been good enough, and its improvement is needed.

Activist investors have started their move in preparation for this year's general meetings of shareholders. Franchise Partners, a UK investment company who appears to own more than 2% of Kirin Holdings, made a shareholder proposal to elect an outside director and for the company to repurchase shares. Kirin Holdings has refused to do so, and is preparing to fight against the investment company at the general meeting of shareholders in March.

For the April meeting of shareholders, Mr. Isami Wada, former Chairman and CEO of Sekisui House, presented a shareholder proposal to

the Company to replace all the current directors. The Company has refused to accept the proposal, and there is going to be a proxy fight.

Former Chairman “Improper transaction that resulted from repeated incredible misjudgments”

In all the cases, corporate governance is a topic. In the case of Sekisui House in particular, both sides are opposed to each other over corporate governance.

Mr. Wada was forced by the current management team at Sekisui House to resign in 2018. He presented a motion to dismiss the then President Abe (current Chairman) for his responsibilities for the land fraud incident unveiled in 2017, and was instead forced to resign. Mr. Wada argues that Mr. Abe and other current management are hindering the elucidation of the incident, and calls for replacement of all the incumbent directors.

In 2017 Sekisui House entered into a land purchase agreement with a fake landowner in regards to a piece of land in Nishi-Gotanda, Tokyo and lost 5.5 billion yen. Before the transaction closing they had received multiple warnings from the real landowner by content certified mail, but ignored all of them. Also they moved the original closing date of end-July early by two months, and settled the transaction by deposit checks rather than by bank wire. Mr. Wada says “it is a result of a series of unbelievable misjudgments.”

Wada criticizes the current management team saying that it is not mere fraud but an "improper transaction that resulted from repeated incredible misjudgments as a manager."

In response, Sekisui House held a Board of Directors meeting on March 5, 2020, and made a decision to oppose the Shareholder Proposal. The

Company denied the Proposal's argument saying "there were no improper transactions." Also as regards the cover-up of material information including the non-disclosure of the full-text of the Investigation Report, the Company denied and said:

"The Company has disclosed the "Report of Summary of Development of the Problems with the Purchase of the Land for Condominiums" on March 6, 2018 as a timely disclosure document, and has comprehensively disclosed information on the background of the "land fraud incident", the cause of the incident, the location of responsibility, measures to prevent a recurrence and the content of the disposition."

It refers to the conclusion of the Investigation Report, which is "the President owes a substantial ethical responsibility as the chief management of the Company's business for his failure to appropriately recognize the overview of the transaction and the material risk relating thereto." However little is mentioned about the incident details. The Company says that it is "because of concerns about counterfeiting of the "land fraud incident", the confidentiality of criminal investigations and the protection of personal privacy." They're just not on the same wavelength.

What will be the outcome of the general meeting of shareholders in April?

Who will overseas & institutional investors vote for?

The shareholder proposal included appointment of Motohiko Fujiwara, managing officer until June last year, Koji Yamada, CEO of its US entity until last year, and Fumiyasu Suguro, current director and senior managing officer, in addition to Wada. As slate outside directors, they chose a total of seven including Mr. Christopher Douglas Brady from the U.S. So four internal and seven outside.

The Company has announced on March 5, 2020 eight internal directors and four external directors. The four representative directors including Chairman Abe and President Yoshihiro Nakai are all to stay. The other four internal directors have been reappointed, except for one. It is Mr. Suguro who is one of the slate directors in the shareholder proposal.

The Company has emphasized that they had been promoting governance reforms since Wada left the Company. The initiatives include the following four: (1) Introduction of a mandatory retirement age of 70 for Representative Directors, (2) Clarification of departments under the control of Directors, (3) Establishment of the Management Meeting for the vitalizations of discussions, and (4) Evaluation of the efficacy of the Board of Directors. The Company plans to submit a proposal at the general meeting of shareholders in April to increase the number of Outside Directors adding another Outside Director to raise the proportion of Outside Directors up to one-third of the Board of Directors.

The Company embraces its own governance reform saying “Thorough Governance reforms have strengthened governance since 2018.” As regards slate directors proposed by the Shareholder Proposal, the Company says “there is no candidate who possesses knowledge and experience in the housing and real estate businesses.”

Who will be chosen at the general meeting of shareholders? It will largely depend on who overseas and institutional investors will vote for.

The total number of outstanding shares of Sekisui House is 690.68 million shares as of the end of January, 2019. The top of the list of major shareholders is the trust account of The Master Trust Bank of Japan. But the Government Pension Investment Fund (GPIF) announced that it has 58,729,500 shares as of the end of March 2019, representing 8.5% of the outstanding shares. Therefore GPIF is essentially the largest shareholder of Sekisui House. The second largest is Sekisui Chemical, the original

parent, which holds 6.1%. The US investment company BlackRock Group owns 6.16% in total.

As of the end of January 2019, foreign investors, including BlackRock, accounted for 22.7% of the total. Overseas investors are sensitive to ESG and tough on company leaders who have committed scandals, such as the land fraud incident. If a voting and governance advisory company, such as the Institutional Shareholder Services (ISS), recommends that shareholders vote against Abe and other incumbent directors, foreign shareholders will oppose re-election of the incumbents.

Fight for company leadership may increase

GPIF does not exercise its voting rights directly, but does do so through its funds the management of which it outsources. At the general meeting of shareholders held between April 2018 and March 2019, a total of 14,731 company proposals, or 10.31% of all the company proposals, were voted against by GPIF, and 12 shareholder proposals or 4.3% of all the shareholder proposals, were voted for by GPIF.

Among major shareholders are SMBC Nikko Securities (2.33%), Bank of Mitsubishi UFJ (1.97%) and Dai-ichi Life Insurance (1.76%). It would be interesting to see whether these financial institutions in Japan will vote for the company proposal or the shareholder proposal.

For the general meeting of shareholders in April, both Sekisui House and Mr. Wada will work with media companies and others to appeal "the legitimacy of the governance they are proposing."

In June, there are a lot of shareholders' meetings of the companies whose fiscal year-end is March-end. From late March to April, a lot of "shareholder proposals" will likely be made to those companies.

At the LIXIL Group's general meeting of shareholders last June, Kinya Seto, who was dismissed as President and CEO by Yoichiro Ushioda, the Chairman of the board of directors then, made a shareholder proposal with the support of overseas funds and many others, and returned to the board.

We will see a larger number of fights for the management between companies and shareholders. If a scandal occurs, shareholders will question the governance of the company, and president and chairman, who have been regarded as absolute powers, can no longer sit idle.