Friend or foe? Corporate scandals and foreign attempts to restructure Japan

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Abstract: Ever since the thwarted bid by T. Boone Pickens to obtain seats on the board of Koito Manufacturing, the activities of foreign investors in Japan, and of foreign CEOs of Japanese companies, have generated controversy. Foreign assertions of noble intentions are often distrusted by Japanese, while frustrations voiced by Pickens in 1989 are still keenly felt today.

Keywords: Corporate scandal, restructuring, governance, corporate raider, greenmail, sokaiya, yakuza, shareholder democracy, asset bubble, keiretsu, tobashi, private equity, activist investor, Minamata, Chisso, Koito, Toyota, T Boone Pickens, Watanabe Kitaro, Mazda, Ford, Carlos Ghosn, Nissan, Renault

Scandals are the real alarm bells of Japan. In a nation where one party has held power almost continuously since 1955, they are the most accurate indicators of underlying malaise and unresolved tension. Like political upheaval in Western democracies, scandals may even portend momentous change.

The Minamata-Chisso scandal came to symbolise the dark side of Japan’s post-war devotion to industrial growth. A crippling neurological condition identified in Minamata City in 1956, Minamata disease was traced back to Chisso Corporation’s dumping of mercury in Minamata Bay. The scandal nurtured a nascent Japanese environmental movement and helped force curbs on pollution in the 1970s. It still reverberates in Japanese lawsuits today, and recently received the Hollywood treatment. The 2020 film, Minamata, stars Johnny Depp as the American photographer Eugene Smith, who defied yakuza violence to document the horrific effects of the disease and Chisso’s attempts at a cover-up.

The decade that followed the bursting of the Japanese asset bubble of the late 1980s laid bare a morass of corporate, financial and political corruption. Both the Ministry of Finance and Bank of Japan were tarnished by bribery scandals and coverups. In an image that helped define the era, investigators staggered under the weight of gold bars removed from the home of disgraced political kingpin Kanemaru Shin.

Those scandals blew the lid off systemic failure, and Japanese were aghast at the extent of yakuza criminality that had been exposed. The most conspicuous racketeers preying on corporate Japan were the sokaiya, literally ‘general meeting men,’ who specialised in blackmail. Their most basic modus operandi was to extort money in return for not disrupting the annual general meeting of shareholders or silencing other shareholders. Most AGMs were wrapped up in 20 or 30 minutes. Paying off sokaiya had been illegal since 1982 but the practice remained rife. The general affairs divisions (somu-bu) of companies would often purchase sokaiya directories that detailed their ties to yakuza.

The stock price bubble burst in 1990 and by mid-1992, the Nikkei Stock Average had fallen...
by 60%. Land prices took longer to fall, but then declined inexorably through the 1990s and early 2000s. One of the ‘Big Four’ securities houses, Yamaichi Securities, as well as major bank Hokkaido Takushoku, had to shutter in 1997. Japan’s undercapitalized banking system became effectively insolvent as the collapsing share and land prices slashed the value of loan collateral and eroded bank capital. Spooked by Hokkaido Takushoku’s fate, larger banks were corralled into ‘megabank’ mergers by the Ministry of Finance. Firms that had borrowed heavily to finance bubble-era expansion found themselves saddled with massive debts and excess capacity. As banks cut back on lending, and firms hoarded cash, private-sector investment almost ground to a halt.

In the new millennium, corporate scandals have reflected Japan’s wider struggle to survive and prosper in a global economy of greatly intensified competition. The two biggest scandals, at Olympus Corporation and Nissan Motor Company, both revolved around foreigners hired as chief executives, a change unimaginable before Japan’s post-bubble prostration.

Pickens was a Texas oilman turned corporate raider. As Pauline Reich has noted, he had ‘previously presented himself in the United States as the champion of the rights of small shareholders by challenging America’s “fat-cat management class.”’ His Japanese gambit came at the height of the bubble, amid intensifying trade and economic friction with the US. When Koito refused his request, he lambasted Japanese industry as a closed web of cartels.

In June 1989, Pickens vented his frustration at what he called “abusive, invisible barriers to keep foreigners out” during a raucous three-and-a-quarter-hour meeting of Koito shareholders, punctuated by shouts and heckling from sokaiya.

“You invest freely in my country, the United States, yet I invest in Japan and am excluded ... Japan should not be surprised at the frustration much of the world has with this cloistered system,” he lambasted Koito management. “I’m beginning to wonder if the reason I’m denied this right is because I’m not Japanese.”

Pickens’ crusade was widely and sympathetically reported in the United States, but Japanese media were unpersuaded, and backed Koito’s claims that Pickens’ real aim was ‘greenmail’ — buying up a company’s shares in the hope they will be repurchased at a higher price to maintain management independence. In effect an arm’s-length form of corporate shakedown, greenmail was familiar territory to Japanese corporate raiders and sokaiya.

The Texan and the sokaiya

The rapture that soon enveloped Carlos Ghosn after his arrival at Nissan in 1999 was in stark contrast to the hostility and suspicion that had greeted T. Boone Pickens a decade earlier.

Pickens had become the largest shareholder of Koito Manufacturing Company, a leader in automotive lighting and a member of the Toyota Motor keiretsu. Toyota accounted for 45% of Koito’s revenues, owned 19.2% of Koito stock, had at least three seats on Koito’s 20-member board, and even appointed its own operational managers. Pickens said that with 20.2% of Koito his investment firm was entitled to three board seats, but Koito refused.
Lending credibility to the greenmail allegations was the way in which Pickens had acquired Koito shares from Watanabe Kitaro. “Mr. Watanabe was orphaned by the bombings of Tokyo, but has since become a very successful business executive and entrepreneur. From various sources, including disgruntled members of Koito’s founding family, he accumulated a major share of Koito stock. Despite his wealth, Mr. Watanabe is excluded by Japan’s corporate elite circles and was not accepted onto Koito’s board,” Pickens wrote in 1989. “We decided that buying Mr. Watanabe’s share of Koito represented a good opportunity to make a profit.”

Pickens bought 32.4 million Koito shares from Watanabe’s Azabu Tatemono, a Tokyo property and investment firm.

“It isn't clear if Watanabe offered to sell his stock to Toyota, as it alleged,” Pickens acknowledged in a 1991 column for the Washington Post. “What is clear is that he realized Toyota was too big for him to fight alone. Because Japan’s system offers few avenues for dissent, opposition often comes from abroad. So Watanabe found his way to Texas, and I soon found my way to Tokyo.”

Pickens later bought more Koito shares from Watanabe, increasing his stake to 26%. Koito was adamant that the Texan was in cahoots with Watanabe, who, the company alleged, transferred Koito shares to sokaiya so that they could attend the shareholders’ meeting.

Rebuffed by Koito, Pickens returned to the United States, where he pleaded his case in Washington, remonstrating before Congress against the iniquities of keiretsu.

“As good as it is, Japan’s industry is not necessarily smarter, more agile and more efficient than ours - it is simply based on business practices that the United States spurned almost a century ago when we outlawed trusts, monopolies and cartels,” he wrote in the Post. “In Japan cartels go by the special name of keiretsus - interlocking webs of share ownership and corporate board memberships that give a handful of Japanese corporations virtually feudal control over vast networks of suppliers and workers.”

In June 1991, Koito announced that Watanabe’s Azabu Tatemono had repossessed 42.395 million shares in Koito ‘registered in the name of T. Boone Pickens.’ Two months later, Azabu Tatemono offloaded its entire stake in Koito - 53 million shares, or about one-third of the company’s stock - to an investment firm based in Los Angeles, for $840 million.

That same year, just before Japanese property prices began to slide, Watanabe was listed by Forbes as the sixth-wealthiest man in the world, with an estimated fortune of ‘more than
$7 billion.\textsuperscript{5}

In 2001, Watanabe was arrested by Tokyo police, along with the ‘chairman’ of Japan’s second-largest yakuza syndicate, Sumiyoshi- rengo (aka Sumiyoshi-kai), a sokaiya affiliated with the syndicate, and three others, for allegedly conspiring to obstruct compulsory seizure of assets by creditors. The Japan Times noted that Azabu Tatemono had ‘alleged close ties with the Sumiyoshi-kai.’\textsuperscript{6}

The Pickens-Koito affair reinforced deep-seated stereotypes that have endured to the present day.

Pickens’ campaign, waged largely through foreign media and sympathetic members of US Congress, emphasised the closed, backward, and ‘feudal’ nature of corporate Japan, its hostility to ‘opening up’ and sharing of control with foreigners. Koito’s reaction, echoed by Japanese media, was marked by cynicism and suspicion of Western duplicity. Pickens’ real motivation, according to this perspective, had nothing to do with high-minded moral principle, or the desire to smash cartels and help the little guy. It was driven by greed and a desire for quick profit.

Ultimately, the roots of these conflicting perceptions can be traced back beyond the storied arrival of Commodore Matthew Perry’s squadron in Edo Bay – cited by Pickens - to the original kurofune that brought Portuguese cargo and Jesuit missionaries to Japan in the 16th century.

**Mazda mission**

Less than a decade on from the Pickens-Koito debacle, Tokyo’s corporate landscape presented a radically different picture, one littered with debris from the bubble’s implosion. Keiretsu recently deemed impregnable were close to collapse after incurring massive financial losses. National emergency demanded that ‘Japan Inc.’ lower its drawbridge, at least for a while.

The first foreigner to head a major Japanese company was a tall Scotsman named Henry Wallace, who became president of Mazda Motors in 1996. The Hiroshima-based carmaker was spared bankruptcy thanks to Ford Motor, where Wallace was a vice president. Ford pumped in $480 million to acquire a controlling 33.4% stake. (It already owned 25% of Mazda from a previous bailout during the 1979 Oil Shock.)

Mazda, like many Japanese manufacturers, had first-rate engineers and innovative technology but suffered from weak management. Wallace led a gaijin team parachuted in from Detroit – among them Gary Hexter, the chief financial officer nicknamed ‘Seven-Eleven’ for his work hours - who quickly steadied Mazda with reforms taken from the Ford playbook. Profit became paramount. Costs were chopped. A tangle of marketing and sales channels were straightened and thinned. Cars were designed and developed to appeal to a broad base of customers, rather than a narrow segment of engine afficionados. The seniority ladder was to be replaced with promotion by merit. Mazda’s workforce was squeezed from 30,000 to 25,000 through early retirement and a freeze on recruitment; the vexing issue of redundances was put off to later.

Wallace was popular in Japan and even fronted a Mazda advertising campaign, speaking in halting Japanese. After barely a year he was gone – his wife hated living in Hiroshima - to be succeeded by two other Ford executives, James Miller and Mark Fields.
By the early 2000s, Mazda was out of intensive care and the Ford partnership received much of the credit. Ironically, it was Detroit’s Spartans who were to be humbled next. In 2008, during the global financial crisis, Ford posted a $14.8 billion loss, the biggest in its history. To raise cash, Ford cut its stake in Mazda from 33.4% to 13%, yielding control back to Japanese investors. By 2015, Ford had sold its remaining interest.

Ford’s gaijin paved the way for Carlos Ghosn, who for many years was hailed in Japan as Nissan’s saviour before being vilified as a criminal pariah.

Impeccable credentials

Ghosn had some impeccable credentials for the herculean task of turning around Nissan. A graduate of both the elite École Polytechnique and École des Mines school of engineering in Paris, he was fluent in five languages (though not Japanese). He had joined tyre maker Michelin as a trainee. Rising through the ranks, he was sent to Brazil, where he restored Michelin’s profitability amid runaway inflation. Ghosn moved to Renault in 1996 and was soon in charge of the loss-making South American division. His success there earned him the moniker Le Cost Killer and made him the obvious choice to overhaul Nissan.

The deal sounded like a dream combination. Nissan was strong in North America where Renault was weak, while Renault’s design flair complemented Nissan’s engineering prowess.

The challenge was staunching Nissan’s cash haemorrhage. The company had been losing market share in Japan for 26 years and globally for a decade. For five out of the previous eight years it had lost money, and even after Renault’s cash transfusion, was $11 billion in created, and which included Hitachi. In the late 1930s, Aikawa relocated the head office of his Nissan zaibatsu to Manchukuo at the invitation of top bureaucrat Kishi Nobusuke. Together they helped turn Manchukuo, the puppet state in north-east China that Japan had created in 1932, into a powerhouse of empire. The New York Times in 1938 described Aikawa as “a capitalist whom the government has entrusted with exclusive development of all heavy industry” in Manchukuo. After Japan’s surrender in 1945, Aikawa and Kishi were both arrested by the Allied Occupation on suspicion of being class-A war criminals, although neither were indicted. This entire controversial chapter is missing from Nissan’s corporate history on its website.
debt.

“Soon after I arrived, we started dismantling our keiretsu investments,” Ghosn wrote in an article for the Harvard Business Review. While starved of cash, “Nissan actually had plenty of capital,” but it was “locked up in noncore financial and real-estate investments, particularly in keiretsu partnerships.” Far from destroying relationships he claimed the divestments strengthened them. “Although breaking up the Nissan keiretsu seemed a radical move at the time, many other Japanese companies are now following our lead.”

Other big changes came in employment and management practices. The hallowed Japanese seniority system was ditched for American-style promotion and compensation based on performance. This included company stock options for employees, and for “high performers,” cash incentives that amounted to more than a third of annual pay. Job responsibilities and chains of accountability were defined to put an end to “the organization’s inability to accept responsibility. We had a culture of blame. If the company did poorly, it was always someone else’s fault,” Ghosn wrote.

Nissan’s Japan factories alone could produce one million more cars a year than the company sold. As part of a huge restructuring, some factories were closed and one in seven jobs were cut.

The shakeup brought Nissan back from the brink. After five years, net profit was the highest on record and the debt mountain had been flattened. Results for 2005-2006 were even better.

Ghosn’s performance in Tokyo as Nissan head made such an impression in Paris that in 2005, he was also made CEO and president of Renault. That same year, Emperor Akihito awarded him a medal.

In 2006, Ghosn turned down an offer from Ford to become its CEO. (Ghosn insisted on being both CEO and chairman, and as Bill Ford, Jr. refused to relinquish the chair, the offer had to be withdrawn.) Three years later, the Barack Obama administration tried to tempt Ghosn with becoming CEO of bankrupt General Motors.

Inside Japan, Ghosn was a household name. In a 2011 poll of who the Japanese would like to run their country, Ghosn came seventh, ahead of Obama (ninth).

In 2016, Nissan came to the rescue of scandal-ridden Mitsubishi Motor Corporation, paying ¥237 billion for a one-third stake. MMC had failed to inform authorities about at least 64,000 customer complaints over faulty vehicles and was then found to have falsified fuel economy testing and data.

Ghosn added chairman of MMC to his global belt. He was in charge of a tripartite alliance selling 10.6 million vehicles a year, with 470,000 employees and 122 factories.

The means by which Ghosn was toppled from this pinnacle and became an international fugitive is well known. In November 2018 he was arrested in Tokyo and then charged with serious financial misconduct. After months of solitary confinement, and lengthy interrogations without a lawyer present, Ghosn made a sensational escape from Japan in a private jet, passing undetected through airport security while hidden inside a large black box.

What caused Ghosn’s precipitous fall is still hotly disputed.

The main charges made by Japanese prosecutors against Ghosn and fellow Nissan board member Greg Kelly (now on trial in Tokyo) relate to an alleged conspiracy to hide ¥9.3 billion in retirement compensation for Ghosn.
The US Securities and Exchange Commission also brought civil fraud charges against Nissan for concealing the retirement benefits from investors. In 2019, Nissan agreed to pay a $15 million fine to settle the charges. Ghosn agreed to pay a $1 million penalty, and Kelly a fine of $100,000. Under the terms of the SEC settlement, they neither admitted nor denied wrongdoing.

The retirement pay-outs represented half of Ghosn’s future expected earnings from Nissan had he not accepted a 50% pay cut in 2010. A change in Japanese government policy had caused Ghosn to waive half his pay. The Democratic Party of Japan came to power in 2009 and chose to focus on executive compensation. Previously, only the total amount of compensation paid to a company’s board needed to be disclosed and approved by shareholders, but under a new rule brought in by the DPJ, compensation of over ¥100 million paid to individual executives had to be declared, as well as its components.

While Ghosn was the highest paid executive in Japan, his earnings had drawn little public criticism in Tokyo prior to 2019. This was not the case in Paris, where the left-wing Confédération Générale du Travail was furious at Ghosn’s earnings as CEO of Renault at a time when 7,500 Renault jobs were being cut and wages frozen. ‘Ghosn hits the jackpot, and we get the crumbs,’ the union federation protested in 2015. The following year, the French state joined 54% of voters at Renault’s shareholders’ meeting in refusing to authorise a €7.25 million pay package for Ghosn. The Renault board overruled the vote, but Ghosn later accepted a pay cut after Emmanuel Macron, then an ambitious young minister of economy and industry, threatened a new compensation law.

Japanese prosecutors levelled more charges against Ghosn in 2019, for alleged breach of trust and misappropriation of funds. Public broadcaster NHK and the Nihon Keizai (Nikkei) business daily reported that Nissan had spent billions of yen on buying and renovating luxury homes for Ghosn in Rio de Janeiro, Beirut, Paris, and Amsterdam. The Nikkei added that Nissan also paid several hundred thousand dollars for Ghosn family vacations. The Yomiuri said that Ghosn’s elder sister lived in a luxury Rio de Janeiro apartment funded by a Nissan subsidiary, and had been receiving $100,000 a year from Nissan for a non-existent role as an adviser. (In the Harvard Business Review article, Ghosn had boasted of eliminating advisory posts at Nissan that carried no operating responsibility.)

Ghosn insists that all compensation, perks and privileges he enjoyed at Nissan had been approved by the board.

The case against Ghosn boils down to self-enrichment, untrammelled by appropriate rules and standards.

“The scandal derived ultimately from corporate governance,” Curtis Milhaupt, a professor of law at Stanford University, asserted at a Harvard panel discussion on the Ghosn case. “You had the CEO basically hiding half of his compensation for a number of years. The board, in a kind of egregious derogation of its role, delegated to Ghosn the power to set his own compensation.”

Ghosn, added Milhaupt, “basically ran the firm with the help of a small circle of trusted lieutenants ... and in 2018, Nissan actually disclosed that they were not following best practice in a couple of key areas – succession planning – ‘We don’t really have one’- and Ghosn is nominating each director and deciding their compensation. Again, an egregious breach of standard corporate governance norms.”

High-level intrigue
The alternative explanation for the ousting of Ghosn is that the real aim of the coup was to stymie a French government plot to take over Nissan and make it a subsidiary of Renault.

Nissan and the French state each own 15% of Renault, but Nissan lacks any voting rights, while Renault’s stake in Nissan increased to 44.4%. The imbalance in representation and ownership soon began to rankle in Tokyo, as Nissan under Ghosn’s leadership rose like Lazarus to outgrow its French saviour Renault.

In 2014 a new French law doubled the voting rights for long-term investors in French-listed companies that did not opt-out via a shareholder vote. Economy minister Macron tried to dissuade Ghosn and Nissan from proposing such an opt-out at a Renault shareholder’s meeting to be held on 30 April 2015. With only a 15% stake in Renault, the government would lose such a vote. Having failed at persuasion, Macron, who was a former Rothschild investment banker, took drastic action. The French state bought another 4.73% of Renault for €1.2 billion. In a telephone call to Ghosn, Macron explained that the additional shares would be sold off, and the holding brought back to 15% of Renault, after defeating Ghosn’s opt-out proposal.

The French government duly won the vote, ensuring it had a blocking 30% voting minority at Renault, and therefore could indirectly control Nissan shareholder meetings through its 44.4% stake in the Japanese automaker.

Macron’s extraordinary intervention heightened fears in Tokyo that Nissan would lose autonomy and be swallowed by Renault. Frequent calls from Paris for Renault and Nissan to strengthen cooperation only deepened Japanese suspicion and resentment.

In Le Temps de la Verité: Carlos Ghosn Parle (Time for the Truth: Carlos Ghosn Speaks), a book co-written with French journalist Philippe Riès, Ghosn alludes to an inflammatory proposal in January 2018 from President Macron’s new government to integrate Nissan and Renault managements. This was rejected by Japan’s Ministry of Economy, Trade and Industry (Meti).

Later that year, Ghosn appears to have changed tack. In return for Macron’s support in renewing his Renault CEO contract, Ghosn reportedly agreed to support a closer tie-up with Nissan.

It is a convoluted tale of intrigue, manoeuvring and backstabbing, and many details of the anti-Ghosn cabal within Nissan are still unclear, as are the support they received from the government of then prime minister Abe Shinzo, who is a maternal grandson of Kishi.

From comfortable exile in Lebanon, Ghosn is waging a vigorous fight to prove his innocence. He receives scant support from his imperial rival in the Élysée Palace. The chief concern of Macron is to maintain the status quo between Renault and Nissan.

“Nothing in this situation justifies changing the cross shareholdings, the rules of governance, and the state’s shareholding in Renault, which has nothing to do with Nissan,” Macron told reporters in 2019 after Ghosn’s arrest. “I wish for the group to maintain its stability concentrating on the essential and that synergies between Renault and Nissan continue to be strengthened.”

‘Saving the Sun’

The Ghosn scandal is the most spectacular corporate example of a volte face by the Japanese media, from hero’s welcome to castigation as a corrupt outcast. There are several other post-Bubble examples, however, of self-proclaimed gaijin corporate saviours retreating tail-between-legs amid deepening Japanese disenchantment and distrust.
The collapse of the Bubble brought down both the Long-Term Credit Bank of Japan (LTCB) and the Nippon Credit Bank.

The Japanese government spent ¥336.9 billion on recapitalizing LTCB and almost ¥3 trillion more on cleaning up its balance sheet. A consortium of investors, led by Ripplewood Holdings, was able to buy a majority stake in LTCB’s carcass for ¥121 billion in 2000, and renamed it Shinsei (‘new life’).

Ripplewood lined up a consortium of prominent financial institutions to help finance the bid. Some individuals happily lent their name to show ideological support. David Rockefeller invested “a few millions of dollars” to help promote “free enterprise” in Japan. Paul Volcker, former head of the Federal Reserve Board, said he agreed to become a senior adviser to Shinsei out of a wish to reform the Japanese financial system.

“For me, it was a mission,” one of the founding Ripplewood partners told this writer. “I wanted to fix the Japanese economy, not just make money. I thought the main problem was the way Japanese banks allocate capital to projects and enterprises.”

The notion of Wall Street private equity riding to the aid of a sinking Japan Inc. lay behind Saving the Sun—Shinsei and the Battle for Japan’s Future, a book by journalist Gillian Tett. Published in 2004, the subtitle was ‘A Wall Street Gamble to Rescue Japan from its Trillion-Dollar Meltdown.’

The privatisation deal contained a generous sweetener that allowed bad loans to be sold back to the Japanese government at par. Shinsei took advantage of this offer and made fortunes for its American investors when its shares were sold to the public. Four years after making the acquisition, Ripplewood made around $2 billion by selling 30% of its stake.

Shinsei’s subsequent financial performance under CEO Thierry Porté, a former head of Morgan Stanley in Japan, was dismal and in 2008 Porté was forced to sell Shinsei’s Tokyo headquarters to help cover investment losses in the US mortgage market.

The rescue of the old Nippon Credit Bank, a sister to LTCB, was less high-profile but more lurid. The publicly owned forerunner of NCB, Nippon Fudosan Bank, was created in 1957 out of the Japanese assets of the Bank of Chosen, the central bank of Korea during Japanese colonial rule from 1910 to 1945. Nippon Fudosan was publicly listed in 1964 and changed its name to Nippon Credit Bank in 1977. NCB inherited extensive ties to the large Korean community in Japan and was also a yakuza favourite.

In 1998, NCB collapsed and was nationalised. Homma Tadayo, a former Osaka branch manager of the Bank of Japan, headed NCB in 2000 when it was sold to another consortium and renamed Aozora, meaning ‘blue sky.’ That September, Homma was found dead in an Osaka hotel room. Police said he had hanged himself from a curtain rail, but the hotel manager doubted this was possible. Homma’s body was quickly cremated and there was no further investigation.

American private equity group Cerberus bought an 11.5% stake in Aozora as part of a consortium led by Softbank Corporation.

Dan Quayle, the foot-in-mouth American vice president under George Bush Sr., represented Cerberus on the Aozora board. The bursting of the technology bubble forced Softbank’s president, Son Masayoshi, to sell his 49% stake in 2003, which Cerberus bought for ¥101.1 billion.

Aozora never availed of the controversial ‘put’ option to sell bad debt back to the government at par value, yet the bank still made more money than Shinsei.
“What we did was basic blocking and tackling. We did not engage in wholesale reductions in the workforce,” Mark Neporent, chief operating officer of Cerberus, told this writer. “We simply attacked the inefficiencies in the system.”

By 2013, Cerberus had sold its entire stake in Aozora for a healthy profit without attracting any of the opprobrium of profiteering and business floundering that stuck to Shinsei.10

Yet when Cerberus tried repeating its success on a more famous name in corporate Japan it ran up against the same wall of hostility that Pickens had encountered during the Bubble.

**The Seibu fiasco**

In 2006, Cerberus invested ¥94 billion in Seibu Holdings, successor to a sprawling empire of hotels, resorts and railways brought to its knees by hubris and post-bubble malaise, as well as fraud committed by a man who for several years was ranked by Forbes as the wealthiest person alive, Tsutsumi Yoshiaki. Most of the Seibu empire had been the work of his father Yasujiro.

Seibu’s jewel is the Prince Hotel chain, named after palaces and estates Yasujiro had acquired on the cheap from dispossessed former princes. After Japan’s defeat in 1945, the Allied Occupation decided to drastically shrink the imperial family. The Imperial House Law of 16 January 1947 limited its scope to male lineal descendants of an emperor. Eleven of the 14 imperial households were excluded. Their 51 members became commoners, with no right to public funds, and were subject to tax. On 13 October 1947 all but one of the families was given a final settlement. The sums appeared huge but were dwarfed by crippling tax bills due the next day.

For the first few years, Cerberus and Seibu got along reasonably well. Seibu’s CEO, Goto Takashi, had parachuted into the carnage left behind by Tsutsumi in 2005, together with a few hand-picked staff from Mizuho Corporate Bank, Seibu’s biggest creditor, where Goto was vice-president. As Seibu’s top shareholder, with a stake of 32.4%, Cerberus had the right to be consulted on key decisions, and despatched consultants to Seibu, reporting to Goto and his team. A tangle of about 120 different companies was reduced to 50. Net debt was cut by more than a third. Cash flow improved.

Relations ruptured over a planned share flotation by Seibu Holdings. Seibu claimed that in June 2011, only three months after the Fukushima earthquake and tsunami, Cerberus began to “press strongly” for an early listing on the Tokyo Stock Exchange. Cerberus countered that Seibu started to restrict access to management from April 2012 and unilaterally ended its shareholder agreement with Cerberus that October when it applied for a TSE listing.

In 2013, citing a “rejection of measures for the restoration of Seibu’s corporate governance”, Cerberus raised a tender offer that would have given it 44.67% of voting rights at Seibu. The number of directors Cerberus proposed for the Seibu board was increased to eight, including former US Treasury secretary John Snow, as well as Dan Quayle and Gomi Hirofumi, a former head of Japan’s Financial Services Agency.

Cerberus succeeded in uniting all the main Japanese shareholders against it, including three of Seibu’s creditors: state-owned Development Bank of Japan; Norinchukin, the central bank of agricultural cooperatives; and Mizuho Corporate Bank.

Among a barrage of invective from both camps alleging dishonesty, duplicity, and nefarious hidden agendas, one charge by Seibu that hit home in Japan was the suggested closure of five “redundant railways lines” and the sale of the Seibu Lions, contained in a letter of 12
October 2012 to Goto from Cerberus co-founder Stephen Feinberg.

In a desperate attempt to quench a Japanese media furore, Quayle appeared on Japanese TV to profess allegiance to the baseball team and support for Seibu Railway.

“We're not a vulture,” Quayle assured NHK. “I have a Seibu Lions T-shirt. I have a Seibu Lions baseball cap. I am a very strong supporter of the Seibu Lions. We are not interested, and we are opposed, to selling the Seibu Lions. Furthermore, we are opposed to closing the railroad lines.”

A director of Mizuho International, Takeshita Seijiro, explained what lay behind the Japanese backlash in an interview with this writer.

“Cerberus is a vulture fund. They want to make money, end of story. They don’t care about municipalities served by Seibu railways or sustaining local employment,” Takeshita fumed. “This is a war between American and Japanese corporate governance. You’ve got these people who proclaim the rights of shareholders, that the shareholder is king. But that’s not the way it works in Germany or Japan. There are things called ‘community’ and ‘employee’ and they often require sacrifice, even cutting down on profit for shareholders, because shareholders don’t come first.”

Neporent insisted that Cerberus were “very patient, long-term investors,” not asset-stripping vultures intent on making a quick profit, but such protestations fell on deaf ears. Forced to give up its bid to take control of Seibu’s board, the US private-equity firm later sold off a big chunk of its stake.

Zen of Japanese restructuring

Japanese criticism that Western-style private equity investment and corporate governance reforms prioritise shareholder profit over social and ethical responsibilities begs the question of how a ‘Japanese’ restructuring of a stricken corporate giant might differ.

The turnaround of Japan Airlines offers some fascinating insights but raises as many questions as it answers.

The national flag carrier was notorious for excess, paying $190 million for the Essex House hotel in Manhattan in 1984 and another $100 million on its renovation. Profligacy at JAL continued after privatisation in 1987, secure under the wings of de facto state protection. In 2010, JAL was declared bankrupt with debts of ¥2.32 trillion, the biggest non-financial corporate failure in Japanese history.

The Democratic Party government at the time turned to one of its supporters, Inamori Kazuo, the austere founder of the Kyocera technology group, to become CEO and chairman of JAL. One of Japan’s most revered business leaders, Inamori is also an ordained Zen Buddhist priest, and pledged to restructure JAL through what he called a “consciousness reform.” Without mending their ways, he declared, JAL managers “would be unable to manage a grocery store.”

Surgery on JAL followed standard Western procedure and was lauded in Japan as necessary to save a dying patient. One third of JAL’s payroll was axed, a loss of 16,114 jobs. Salaries were cut by 30%, pension obligations by 45%. (Some JAL retirees had been receiving pensions of ¥500,000 a month while young ground staff were being paid less than ¥200,000 a month.) Forty-five unprofitable routes were suspended, and 103 aircraft retired. Trophy properties like Essex House were sold off.

The government agreed to a final bailout – a ¥600 billion credit line and ¥300 billion cash injection – and creditors waived ¥521.5 billion of debt. By 2012, JAL was back in profit and
able to re-list on the TSE.

There were stark differences to the usual Western approach, however.

Inamori, in what was tantamount to a tacit rebuke of Ghosn and other richly rewarded Western executives, pointedly refused to accept any pay for his work at JAL.

Traditional seniority-based employment was retained, with no dramatic switch to performance-driven compensation.

Inamori tried to instil into JAL his own “amoeba” philosophy that divides leadership and management responsibilities into small, self-supporting work units. Each “amoeba” is infused with a strong ethos of duty and group obligation.

A lecture Inamori gave in 2014 about his experience at JAL can be read as a thinly veiled critique of Western individualism and shareholder capitalism.

“During my involvement in the reconstruction of Japan Airlines, the pure and single-minded desire to show ‘compassion for others’ wielded tremendous power. Not only did it rescue a failed corporation, it transformed that corporation into a high-profit enterprise,” Inamori said.

Staff were told by Inamori that “the corporation known as Japan Airlines exists not for the benefit of shareholders, and certainly not for the self-interest of its managers, but for the growth of all employees who comprise this company.”

With no salary, his selfless aim was “to support the revival of Japan’s economy, to safeguard the employment of the remaining JAL employees, and for the Japanese people.”

Perhaps, Inamori mused, “seeing this ongoing effort, driven solely by altruistic thinking, the Divine or heaven took pity and stretched out a helping hand.“

**Uncovering the Olympus scandal**

While JAL was under the knife, investigative journalists at a niche monthly Japanese magazine called FACTA were delving into murky transactions by Olympus Corporation. Their work would lead to one of Japan’s most sensational corporate scandals and turn its chief protagonist into a global star.

Although Olympus owed its fame and fortune to cameras, medical devices had grown to 80% of its sales, led by a 70% share of the world market for gastrointestinal endoscopes. (In 2020, Olympus sold its unprofitable camera business to private equity group Japan Industrial Partners.)

FACTA was founded in 2005 by Abe Shigeo, a former Nikkei financial journalist disillusioned by what he saw as a reluctance of major Japanese media to report on corporate malfeasance. Nikkei had declined to publish his scoop in 1994 on dummy companies set up by Yamaichi Securities to hide financial losses. Yamaichi collapsed in 1997 and Abe left the Nikkei the following year. FACTA relied on subscriptions and was not beholden to corporate advertisers; it had only four staff and depended on dozens of freelancers.

The August 2011 cover story focused on acquisitions by Olympus of three small, money-losing Japanese companies: Altis, a medical waste disposal firm; News Chef, a maker of microwaveable plastic containers; and cosmetics firm Humalabo. The acquisitions, made between 2006 and 2008, had cost Olympus a total of ¥73 billion and were soon written down in value.

The FACTA article also focused on the £935 million takeover of UK medical technology
maker Gyrus in February 2008, for which Olympus paid the highest mergers & acquisitions fee in history, an eye-watering $687 million.

The article was written by freelance journalist Yamaguchi Yoshimasa, another former Nikkei reporter. FACTA chief editor Abe encouraged him to write the story for other publications as well. “But whenever I pitched the idea, the response was pitiful. Along with my proposals, I made it clear that I had the documents to back up my claims and that the story had the potential to develop into a full-blown corporate scandal. But without exception, my proposals were ignored. In most cases, the magazines did not even bother to return my calls,” Yamaguchi later recalled.12

What changed everything was the dramatic elevation that same year of a U.K. citizen, Michael Woodford, to the top of Olympus Corp. Why Kikukawa Tsuyoshi ceded first the presidency and then the post of chief executive to Woodford is not known. Clearly, Kikukawa, who was later jailed for three years, and other Olympus conspirators, did not expect the gaijin shacho to become their nemesis. On promoting Woodford to CEO, Kikukawa said he was “extremely pleased” by Woodford’s leadership, which had “exceeded my expectations.” One theory is that they assumed Woodford’s ignorance of Japan and the Japanese language would protect them.

Armed with an English translation of the FACTA article from an Olympus dissident, Woodford persisted in asking awkward questions about the acquisitions. In a letter to Kikukawa dated 11th October, he described “a catalogue of calamitous errors and exceptionally poor judgment which … has resulted in the destruction of shareholder value of $1.3 billion.”

On 14th October, just eight weeks after he was named president and barely a fortnight after becoming CEO, Woodford was fired. He already had spilled out his suspicions to the Tokyo bureau chief of the Financial Times. The
resulting FT scoop alerted the rest of the international media, and Woodford began to be inundated with interview requests. A UK broadcaster despatched a team to Tokyo, and with The New York Times reporting that the FBI had launched an investigation, the dam finally burst on what had been an effective embargo by mainstream Japanese media.

Gaiatsu and the Japanese media

This pattern of sudden reversal under foreign pressure has a long and inglorious pedigree in Japanese journalism.

When prime minister Tanaka Kakuei addressed a press luncheon at the Foreign Correspondents’ Club of Japan on 22 October 1974, foreign journalists were eager to question him about a devastating 61-page exposé in Bungei Shunju magazine of corruption that the mainstream Japanese media had been studiously ignoring for almost a fortnight since its publication.

In his bestselling ‘Plan for Remodelling the Japanese Archipelago’ (日本列島改造論, Nihon Retto Kaizo-ron) Tanaka promised to redress Japan’s widening urban-rural disparity by relocating industries and building shinkansen lines and expressways. The blueprint led to a fever of land speculation which financially benefited Tanaka through insider investments and kickbacks. The Bungei Shunju report had been produced by a team of 20 journalists led by freelancer Tachibana Takashi. Time magazine called it ‘a devastating chronicle of Tanaka’s financial dealings through dummy corporations, secret bank accounts, incomplete tax statements and the use of vast amounts of money to buy support within the ruling Liberal Democratic Party.’

At the FCCJ luncheon, Tanaka was besieged with questions from foreign correspondents about the article. Five minutes before the scheduled end, he rose from his seat and swept out of the FCCJ, accompanied by his entourage.

The wall of silence by major Japanese media suddenly crumbled. Nearly all the major newspapers covered the event, and Tanaka’s financial wheeling-and-dealing swiftly assumed political importance. On November 26, he announced his resignation.

What FACTA and Woodford had begun to untangle at Olympus was not corrupt enrichment but an elaborate scheme to conceal ¥117.7 billion in investment losses dating back almost 20 years, and ¥17.1 billion that Olympus paid in ‘expenses’ to brokers and bankers who were expert in engineering tobashi (飛ばし, ‘make fly away’) schemes of concealment.

The scandal was one of many blowbacks from the bursting of the late 1980s bubble economy.

The Yen’s sharp rise (endaka) in the wake of the 1985 Plaza Accord to devalue the US dollar had hammered business income. Operating profit at Olympus halved in fiscal 1986 and then president Shimoyama Toshiro made the fateful decision to use zaitech or ‘financial engineering’ to boost profits. “Somehow we have to make up for this yen strength through non-operating income or our numbers will only worsen. We can no longer dismiss zaitech as an evil thing,” he said in November 1986.

The Nikkei Average peaked in December 1989 and lost nearly 40% the following year. Unrealised investment losses began to pile up, and by the second half of 1990 had almost reached ¥100 billion at Olympus.

Fly-away accounting

Tobashi was endemic for hiding huge losses from speculative property and financial investments. It provided a highly lucrative
business for foreign investment banks, who were able to charge as much as 20% to 30% commission on the losses shuffled off the balance sheet.

“Schemes were simple and temporary at first, since many assumed the market would bounce back,” the Financial Times explained. “Bad assets were passed among allied groups with different reporting dates, parked in off-balance-sheet subsidiaries or sold at book value to brokers to hold until prices recovered. As the market worsened, more permanent solutions were sought: companies would compensate holders of their bad investments over time by, say, buying specially issued bonds or paying for non-existent services.”

Tobashi became increasingly difficult and expensive as Japanese regulation tightened. In 1997 the clampdown toppled Yamaichi Securities when it was shown to have concealed ¥260 billion of its own losses. New mark-to-market accounting rules, which required securities to be accounted at market value instead of their purchase price, was another factor that pushed Olympus to adopt more elaborate means of tobashi. One loophole that Olympus was keen to exploit involved intangible assets. Companies could book mergers & acquisition (M&A) fees as 'goodwill' and then write off that goodwill over 20 years.

The report of an investigation commissioned by Olympus later found that Olympus used three European banks to manage a highly complex tobashi operation.

The company would deposit money, or buy Japanese government bonds, or invest into the funds of Liechtenstein’s LGT Bank and the Singapore branches of Commerzbank and Société Générale (SocGen). These banks then lent money to secret funds and shell companies set up by Olympus to buy its own depressed assets.

Years later, Olympus inflated prices and advisory fees for acquisitions to funnel money back to the funds and dummy companies it had set up. Between 1998 and 2005, ¥125 billion flowed through the European and Singapore routes, according to the report.

For example, in the ‘Singapore route,’ Olympus made substantial deposits at the Singapore branches of Commerzbank and SocGen as collateral for loans to shell companies and funds registered in the Caymans. Olympus then used these Cayman conduits to buy Altis, News Chef and Humalabo at vastly inflated prices. The excess was then channelled back to help settle the original losses from speculative investment.

‘Anti-social forces’

One of the Cayman-registered funds was called Dynamic Dragon II. In his FACTA article, Yamaguchi said it was a special purpose vehicle of J Bridge Corp., an investment firm listed on the Second Section of the TSE.

“This company is suspected of having a relationship with anti-social forces and is shunned by the capital market,” Yamaguchi warned. ‘Anti-social forces’ is a Japanese euphemism for the yakuza.

“Authorities are still watching the movements of the former president, Masuzawa Toru, who ‘fled’ to Singapore,” he added.

An investigation by this writer for Asiamoney magazine did not uncover any yakuza ties to J Bridge, although some executives of J Bridge and the companies into which it invested had committed crimes.

Former J Bridge chairman Noda Hidetaka was convicted in 2009 of cross-border insider trading in J Bridge shares in 2006, using an account in Singapore.
The former CEO of News Chef, Nishimura Kenichi, was convicted of fraud in 2007. Goto Yukihide, the president of TransDigital, a failed computer systems developer, was convicted of transferring company assets to a creditor before filing for bankruptcy in 2008. J Bridge had sold its stake in TransDigital in 2006.

I did find evidence to back Yamaguchi’s claim that J Bridge had “preyed on a group of companies that were driven into a difficult situation.” It was also unclear how J Bridge, renamed Asia Alliance Holdings in 2011, had been able fund its investments and stay in business. The CEO told me how since joining J Bridge in 2007, “the company had bever made a profit. We only had impairment loss and realised loss.”

Around 1998, semi-retired Japanese banker Nakagawa Akio, who was helping Olympus disguise its losses and later received a suspended prison sentence, introduced Olympus executives Mori Hisashi and Yamada Hideo - both later sent to jail - to Commerzbank International Trust in Singapore. There they met an employee identified in the investigation report only as ‘Chan,’ who provided invaluable help.

When ‘Chan’ left Commerzbank in 2000 and moved to SocGen, Olympus shifted its time deposits from the German to the French bank in Singapore. In 2004, ‘Chan’ branched out on his own, and managed a Cayman-registered fund, set up in 2005, in which Olympus invested ¥60 billion.

‘Chan’ was Chan Ming Fong of Taiwanese extraction. He had graduated from a Japanese university and worked at Wako Securities before joining Commerzbank.

One of Chan’s colleagues at Wako Securities in Japan was Masuzawa, who later joined Chan at Commerzbank International Trust in Singapore.

According to Masuzawa’s online resumé, he graduated from St. Andrew’s University in Scotland, and worked for HSBC and Barclays, as well as Commerzbank and Wako Securities, before joining J Bridge in 2003, becoming its President/CEO in 2004.

J Bridge emerged from the merger of a spinning company and a warehousing business in Tokyo’s Nihonbashi

Nihonbashi means ‘Japan bridge,’ which Noda and Masuzawa took for the new name of the company. J Bridge embarked on a blizzard of acquisitions, divestments, and capital raisings. A 2005 company filing said its objective was to “invest in, manage, rehabilitate and restructure undervalued or underperforming companies and businesses in order to enhance and maximise their values.”

Targets varied from operators of bicycle racetracks and multi-storey car parks to makers of soybean foods and heavy construction plants. In several cases, J Bridge’s targets weakened considerably after its participation. Kosugi Sangyo, a maker of golfing wear, filed for bankruptcy in 2009, two years after J Bridge sold its stake. Restaurant operator Tasco System was delisted from the Jasdaq and ceased operation after J Bridge sold out in 2007. Osaka property firm Reicof filed for bankruptcy in 2008. In 2011, J Bridge acquired a Japanese hospital only to sell it for a loss of about ¥1 billion soon afterwards, saying it was withdrawing from the medical and healthcare business.

Another flop was J Bridge’s 2005 takeover of Singapore building materials maker Rotol. Masuzawa was installed as chairman and executive director of the company in 2007, but J Bridge sold most of its stake in Rotol in 2008 to Mulpha International, and reported a ¥430 million loss on the investment.

While Rotol was bleeding money, Masuzawa was building an award-winning house in Singapore’s exclusive marina resort, Sentosa.
Cove, which has since been sold. Neighbouring villas are on the market for much as S$48 million (US$36 million, ¥3.9 billion).

Masuzawa is currently president of Tamagawa Holding, a Tokyo-based company engaged in renewable energy, electronics, and communications.

The Olympus-appointed panel that investigated the scandal was headed by a former judge of Japan’s Supreme Court and its report, published in December 2011, pulled no punches.

It concluded that Olympus lacked a system to check corrupt top managers. Presidents were arbitrarily selected. Free speech was repressed; those who voiced objections “had to be prepared to be kicked out”.

There was little sense of shareholder responsibility. “Trouble” was avoided at all costs, even if it involved “the transfer of enormous amounts of funds, as well as enormous losses”.

The board of directors included rubber-stamping “yes men”. Elected outside directors were “inappropriate and ineffective”. The board of auditors was equally useless. Due diligence was often dispensed with in corporate acquisitions. Disclosure was lacking. Human resources were mismanaged.

The report stated that outsiders should have been brought in to “clean up the financial scum”. Instead, “those who shared secrets and were involved in the concealment were treated favourably”. It added that when Woodford raised suspect transactions, “the board meeting responded by dismissing him without any investigation”.

It found three former employees of Nomura Securities helped Olympus with accounting tricks and questioned the way two large European accounting firms treated the 2008 Gyrus acquisition. In 2009 Olympus replaced its independent auditor KPMG with Ernst & Young after the former questioned payments connected to Gyrus.

“It’s pretty evident to me that there was a very, very significant fraud and that a number of parties had been complicit,” KPMG global chairman Michael Andrew said in Hong Kong on November 25, 2011, in relation to Gyrus.

KPMG qualified its approval of Gyrus accounts, but its Japanese affiliate chose not to reflect its concerns in Olympus’ consolidated audit, and shareholders were not informed.

Ernst & Young ShinNihon later booked as goodwill more than $600 million in advisory fees for the Gyrus acquisition.

**Woodford gets rich**

The results of the independent probe represented a complete vindication for Woodford, who in no time at all became a garlanded global celebrity. Three UK newspapers made him their ‘Business Person of the Year 2011’. He also won a ‘Financial Times ArcelorMittal award for Boldness in Business’, and in 2013 the UK’s inaugural ‘Contrarian Prize’. The cover of Exposure, Woodford’s bestseller about the scandal, features a man in a business suit running along a Tokyo street. The strapline reads Silenced. Threatened. Time to fight back.

In 2001, Woodford launched legal proceedings in London against Olympus, claiming unfair dismissal on grounds of racial discrimination and whistleblowing. Racial discrimination sounds farfetched, given his rapid promotion to becoming Olympus’s first foreign chief executive. In 2012, the Olympus board approved a compromise settlement that reportedly netted Woodford £10 million.
Woodford had come a long way from an impoverished childhood. He grew up with his mother in a Liverpool house with an outside toilet, took a weekly shower at the municipal baths, had free school meals, and wore a second-hand school blazer. Woodford’s higher education was at the local Millbank College of Commerce.

Olympus’s employment settlement was dwarfed by Woodford’s gargantuan pension entitlement of £65.5 million. The sum eclipses even Ghosn’s controversial ¥9.3 billion – or £61 million – retirement compensation from Nissan, despite Woodford’s tenure as Olympus CEO lasting only a fortnight.

Woodford’s pension bonanza dates from his time at KeyMed, a U.K. subsidiary of Olympus that he joined in 1981 as a 20-year-old salesman. In 2014, after he had left Olympus, he requested that his KeyMed pension be transferred to a private plan.

The pension was at the centre of a court case that KeyMed and Olympus brought against Woodford and his right-hand man Paul Hillman, who had joined KeyMed as an accountant in 1978.

“The extraordinary value of the pension (in excess of £64m) raised questions within KeyMed” and led to a 15-month “forensic investigation” by “independent lawyers” that “uncovered evidence of wrongdoing” by Woodford and Hillman, Olympus head office said in written answers to questions from this writer.

“The Olympus Board gave authority to KeyMed to take legal action, which had been recommended by its legal counsel,” Olympus said. “We had a responsibility to our stakeholders to take action. Any business in KeyMed’s position would have taken this decision which was about good corporate governance and righting an apparent wrong.”

The trial in a London high court was held over 14 days during March and May of 2018. Woodford and Hillman were accused of having dishonestly conspired to improve the value of their pensions at the expense of their employer. Woodford and Hillman won the court battle. On 11 March 2019, the judge found that “the defendants acted honestly and did not breach the duties ... dishonestly, or at all.”

The trial and the verdict were reported without comment by Reuters and the Financial Times but not, it appears, by other media.

‘Simply enormous sums’

During the trial, the lawyer for KeyMed said the company had spent “simply enormous sums” amounting to “hundreds of thousands of pounds” on a road safety campaign of which Woodford was a trustee. According to the Financial Times, the lawyer also alleged that Woodford had supported the writing of “threatening letters” to organisations that failed to act on road safety and had tried to pass himself off as an expert in trauma medicine. In reply, Woodford “said he had spent considerable time in operating theatres and with doctors while setting up a new medical equipment division at Olympus and stood by the description of himself.”

In his ruling, judge Marcus Smith conceded that road safety “was something of an obsession” with Woodford, and that both he and Hillman “were caught out in exaggerations and untruth” in advancing their campaign. Both “exaggerated their medical qualification, relying upon their training as salesmen of medical equipment to this end.” Hillman had given himself the title “Dr” Hillman, and at a meeting, even masqueraded as Woodford.

“None of these matters adds lustre to the reputation or character” of Woodford and Hillman, the judge added, but sprang “from the
same obsession regarding road safety.” The pair were “advocates – passionate advocates, Mr Woodford to the fore – of road safety and – as advocates – they wrongly allowed themselves to exaggerate and misrepresent.”

A report of 13 July 2011 in the local newspaper for Southend, where KeyMed is based, noted that KeyMed “doesn’t like to boast about the contributions it has made to the local community, but over the years it has ploughed millions of pounds into road safety schemes in and around Southend.”

This writer asked Olympus about the “enormous” road safety donations. “Certain thresholds and a governance principle apply for such approvals. They were in place back then as well as today” the company replied but declined to elaborate.

**Fujitsu boardroom vendetta**

One of the strangest corporate scandals of the last decade involved a boardroom coup against the president of Fujitsu Ltd. for allegedly keeping company with “antisocial forces.” In September 2009, Nozoe Kuniaki was called to a windowless room in the Tokyo headquarters of the information technology giant, where several board members told him to resign.

After initially announcing that Nozoe was leaving because of illness, Fujitsu claimed in April 2010 that he had been dismissed for associating with Japanese financier Fusa Koji, a former head of M&A in Tokyo for UBS and Credit Suisse First Boston. Fusa had started his own London-based hedge fund, Sandringham Capital, and Tokyo-based private equity firm, Sandringham Private Value. Nozoe had worked with Sandringham to find a buyer for Nifty Corp., Fujitsu’s internet service subsidiary.

Fusa denied any links to yakuza and together with Sandringham Private Value and a colleague filed a lawsuit for defamation against three Fujitsu directors.

In court papers filed in response to a petition from Nozoe for reinstatement, Fujitsu cited Fusa’s relationship with the founder of Takefuji Corporation, Japan’s largest consumer lender, as a reason for suspicion. Takei Yasuo began lending money to individuals in 1966 after hawking vegetables on the street. When he died of liver failure in 2006, he was listed by Forbes as Japan’s second-richest man, with assets of $5.6 billion.

Like other former sarakin loan sharks, Takei had an unsavoury reputation for charging high interest and for heavy-handed debt collection. In 2004, he was convicted of illegally wire-tapping journalists.

As an investment banker at UBS, Fusa arranged underwriting of a ¥88 billion Takefuji share offering and told the Wall Street Journal that afterwards he had grown close to Takei.

Takefuji later fell victim to a government clampdown on consumer lenders and in 2010 filed for bankruptcy.

Fusa subsequently has been involved in numerous UK-based business ventures, including as a director of Speedloan Finance, a short-term lender and pawnbroker.

Both Fusa and Nozoe have insisted that they were innocent victims of top management feuding inside Fujitsu. Nozoe said that his attempts to streamline the company had made enemies. “I was restructuring the company at fever pitch,” Mr. Nozoe told The New York Times. “That means downsizing, getting people to leave. I’m afraid I may have caused resentment in some circles.”

‘Wrecked lives and livelihoods’
While its Tokyo head office seethed with vendettas, Fujitsu’s UK business was embroiled in a scandal described as one of the worst injustices in British legal history, but of which today few Japanese have any knowledge.

In 1990, Fujitsu acquired 80% of International Computers Ltd., a one-time UK ‘national champion’ that gave Fujitsu access to important and lucrative UK public-sector contracts. In 1998, ICL became a fully owned subsidiary of Fujitsu, and in the following year, the UK Post Office installed Fujitsu’s Horizon accounting system in its nearly 20,000 branches.

What Fujitsu called the “largest non-military IT system in Europe” was riddled with bugs which led to false reporting of large cash shortfalls in the balances of post office branches. The Post Office ignored mounting evidence of IT errors, and between 2000 and 2014, prosecuted 736 sub-postmasters, an average of one a week.

Innocent former staff were imprisoned following convictions for false accounting, theft, and fraud. Some were financially ruined and ostracised by the communities where they lived and worked. One committed suicide.

Seema Misra served four months of a 15-month jail sentence in 2011 while pregnant. An audit had found a discrepancy of £74,000 in her accounts at her post office. After release, “People stopped talking to us,” she said. “I was beaten up and called a ‘f***ing P*ki, coming to this country and stealing old people’s money.”

She developed depression and felt too ashamed to show up at her children’s school. Her criminal conviction made it difficult to find new work.

Martin Griffiths was suspended after auditors found a £23,000 hole in the balance at his post office. He was reinstated, but losses continued to escalate. More than £57,000 was “missing” from January 2012 to October 2013, and to make up the shortfall, his parents had to lend him their life savings. There was also an armed robbery, and a large sum of cash was taken. The Post Office cancelled his contract. Soon after, he took his own life by stepping in front of a bus.

Nicki Arch was tried for fraud, theft, and false accounting, but was acquitted by a jury. The ordeal led to a nervous breakdown, for which she was hospitalised. According to Private Eye magazine, she was “penniless for years and spent a decade on antidepressants.” Her marriage was also ruined.

Phil and Fiona Cowan faced similar accusations of money missing from their post office. Fiona was charged with false accounting and was “spat at in the street and called a thief.” In 2009, she overdosed on antidepressants and died aged 47.

Most of the anger generated by the scandal in the UK has been directed against the Post Office, but Fujitsu has also been the object of caustic criticism, including from a UK judge.

In December 2019, the Post Office agreed to a £58 million settlement of civil cases with 555 claimants. Some £46 million was immediately swallowed up by victims’ legal fees.

In a ruling on the Horizon system, Mr. Justice Fraser said that “assertions and denials” by the Post Office “ignore what has actually occurred,” and were “the 21st century equivalent of maintaining that the earth is flat.”

He was scathing of a Post Office description of Fujitsu as “an organisation which was thorough, professional and conscientious and which took considerable care to ensure that matters were properly investigated and dealt with.”

Judge Fraser said: “I do not see how a thorough, professional and conscientious
organisation can have produced for disclosure in this litigation so many thousands of KELs [known error logs] during 2019 itself, both during and even after the trial. I reject that description; it is an inaccurate description of Fujitsu and/or its investigative motivation." A technical annex to his ruling lists 29 different “bugs, errors and defects” present in Horizon.\textsuperscript{17}

Computer Weekly cited a former senior developer at Fujitsu UK as saying that Horizon’s problems were well-known within Fujitsu even before the launch, and that its electronic point-of-sale system was built with “no design documents, no test documents, no peer reviews, no code reviews, no coding standards.”

In April 2021, the UK Court of Appeal quashed the convictions of 39 former sub-postmasters, declaring them “an affront to the public conscience.” This opens the way for legal action over malicious prosecution, with potential for significant damages.

The UK government has agreed to a judge-led inquiry into the scandal, with statutory power to compel witnesses to give evidence and hand over documents. A report is expected in autumn 2022.

“The Horizon saga has wrecked lives and livelihoods – we can’t undo the damage that has been done but we can establish what went wrong at the Post Office and ensure something like this is never allowed to happen again,” said UK business minister Paul Scully.

In contrast to extensive coverage in the UK, the Fujitsu-Post Office scandal is almost unknown in Japan. A report on Yahoo News by London-based Japanese freelancer Kimura Masato is an honourable exception to what amounts to a Japanese media boycott, offering uncanny echoes of the Olympus affair before Woodford blew hard on the FACTA whistle. Fujitsu has purged all mention of Horizon and the UK Post Office from its corporate website.

**Toshiba on the menu**

In response to the Covid-19 pandemic, central banks and governments have flooded economies with money. Germany, France, Italy and the UK have joined Japan in cutting interest rates close to zero, while US and Canadian rates hover around 1.5%. To fund massive public spending without raising taxes, central banks have devoured government bonds and other securities. From January 2020 to July 2021, the US Federal Reserve balance sheet almost doubled, to more than $8 trillion.

Inevitably, this stimulus and cheap money have pushed up asset prices and triggered a global frenzy of deal-making. Since the start of 2021, there have been a record 6,300 private equity transactions, and in each of the last four quarters the value of mergers and acquisitions has exceeded $1 trillion.

In the UK, there is anxious talk of a private equity “raid” on listed companies. Japan, too, is seen as a tempting feast for investors, with troubled Toshiba Corporation at the top of the menu.

“With the world’s leading private equity players ever more focused on Japan as the ultimate opportunity, in terms of cheap valuations, excess cash on balance sheets and general restructuring potential, the positive base case would be that the Toshiba debacle will turn out to be a catalyst for change,” Christopher Wood, global head of equity strategy at American investment bank Jefferies, wrote recently.\textsuperscript{18}

Toshiba was an industrial colossus of Japan’s post-war economy, making everything from industrial power systems to semiconductors, consumer electronics and the world’s first laptop computer. In the 2020-2021 financial year, it still made ¥114 billion in net profit on global sales of ¥3 trillion, but after six years scarred by scandals and business failure is now
under unprecedented pressure from activist investors.

The 2007-2008 global financial crisis was a body blow to its business, so Toshiba began falsifying accounts, booking profits early and pushing back losses and charges. In all, profits were inflated by around ¥200 billion. An investigation blamed weaknesses in corporate governance and internal controls, and a culture of strict obedience to superiors. Profit targets, called ‘Challenges,’ were handed down to each business unit, sometimes just before the close of quarterly accounts.

The 2017 bankruptcy of Toshiba’s US nuclear plant maker Westinghouse Electric threatened the very survival of the Japanese conglomerate. Toshiba was forced to quickly issue $5.4 billion worth of shares, before selling not just what was left of Westinghouse but also its prized memory-chip and laptop units.

Toshiba chose Goldman Sachs to sell the new equity in 2017, reportedly against the advice of the Meti. This opened the door to hedge funds and foreign activists that now comprise about one quarter of Toshiba’s shareholders.

Behind-the-scenes arm-twisting of investors prior to a July 2020 shareholders meeting ensured that Toshiba’s then chief executive, Kurumatani Nobuaki, narrowly survived a vote on his reappointment. Mizuno Hiro, former chief investment officer of the Government Pension Fund and a Tesla board member, was enlisted to persuade Narv Narvekar, chief executive of the Harvard Management Company, not to oppose Kurumatani’s reappointment.

“Mr. Mizuno referred during the meeting to Toshiba’s deep connections within the Japanese government and the possibility that a “no” vote by HMC could affect its reputation,” the Financial Times was told by a person familiar with the conversation. Harvard then decided to abstain from the crucial vote.

In March of this year, Effissimo, a Singapore-based activist fund that is Toshiba’s largest shareholder with a stake of 9.9%, successfully pushed at an extraordinary general meeting of Toshiba for the commissioning of an independent report into suspicions that the 2020 shareholders’ meeting had been rigged.

One month later, CVC Capital Partners, a UK-based private equity group, tabled a $20 billion offer to buy Toshiba and take it private. The bid made the already tenuous position of Kurumatani, who had been re-elected CEO with less than 60% of the vote, impossible. In 2017 he had joined CVC as its Japan head before moving to Toshiba in 2018, and there were immediate accusations of conflicted interest. (Prior to CVC, Kurumatani had been a senior banker at Sumitomo Mitsui Financial Group.) Toshiba’s board rejected the CVC bid, which would have been Japan’s biggest-ever leveraged buyout.

The 147-page investigation report by a team of lawyers, released in June, has unleashed a wave of controversy. It found that Toshiba management had “worked closely” with the Meti to exert “undue pressure on some shareholders,” including Effissimo which had nominated three candidates, including its co-founder, as Toshiba directors. None of Effissimo’s picks were elected. Toshiba’s second-largest shareholder, 3D Investment Partners, was contacted by the ministry and warned against “barbecuing next to your neighbour when there is a big fire.”

In July 2020, Suga Yoshihide, who was then chief cabinet secretary and is now prime minister, held a breakfast meeting with a senior Toshiba official and allegedly encouraged the pressuring of Toshiba investors. The lever was to be expanded national security provisions in Japan’s recently revised Foreign Exchange and Foreign Trade Act. “If we are aggressive, we can get them,” Suga allegedly told the Toshiba executive.
(Suga has denied making any such remark.)

The Financial Times excoriated both Toshiba and the government. In the “villain-rich document,” wrote the paper’s Asia business editor Leo Lewis, “dishonesty, subterfuge and hypocrisy emerge as the culprit where normally incompetence, groupthink and unquestioning hierarchical structures are blamed.”

Had “the past six years of sloganeering and apparent reform, during which Japan has sought to convince the world of its commitment to governance and stewardship” merely been a “sham”, Lewis wondered.

Economy, Trade and Industry Minister Kajiyama Hiroshi defended his ministry’s interference on grounds of national security. Toshiba is no ordinary Japanese company, his bureaucrats explained, but has sensitive technologies in semiconductors and quantum computing, and is playing a critical role in decommissioning the Fukushima nuclear reactor hit by the 2011 earthquake and tsunami. Foreign investors in Toshiba, therefore, are subject to special screening under the ‘Forex Act.’

Cause célèbre

The struggles at Toshiba, nevertheless, have become a cause célèbre and rallying ground in a widening and intensifying contest for the future of corporate Japan. For many proponents of radical change, the issue is not just about ‘shareholder democracy’ but reforming Japanese capitalism, so that the economy can unlock its trapped potential. This can be done either through agitating for change, or by taking control of the company.

According to brokerage boutique CLSA, activists now hold a record ¥5.6 trillion of declared investments across 416 listed Japanese companies. CVC’s failed bid for Toshiba is also drawing interest from other predators.

Defenders of the Japanese model can appeal not only to nationalist sentiment, but to the growing influence of social and environmental concerns in the decision-making of global corporations. These concerns, led by global warming and rising inequalities, may transcend or even contradict free-market orthodoxy on maximizing profit and shareholder returns. How, then, do these new corporate values differ, in essence, from traditional Japanese prioritizing of employment and community?

Japanese may also point to heated debate in the US and UK over the role of private equity. For every example of a company turned around there is another that has emerged worse off from a PE ‘workout.’ One notorious UK example is that of the AA, founded in 1905 as the Automobile Association. The roadside recovery business was bought out by Toshiba suitor CVC and Permira in 2004. Ten years later, the private equity partners sold the business to investors at 250p a share. Just before the flotation, ‘they loaded the group up with £3 billion in new debt and almost immediately took a payment of £2.6 billion in cash,’ the Financial Times noted.

The AA is still heavily in debt and in March 2021, when it was sold again to another private equity firm, the shares were trading at just 35p.

“If an acquirer makes strong returns this should come from making the company a better business. It should not come from buying its property portfolio too cheaply, levering the company up with debt, and potentially reducing the tax paid,” Andrew Koch of Legal & General Investment Management, the UK’s largest asset manager, said recently in a widely reported statement.

Undoubtedly, that is a view most Japanese would share.
Peter McGill was North-East Asia correspondent of The Observer and was based as a journalist in Japan for 19 years. He was president of the Foreign Correspondents’ Club of Japan from 1990 to 1991. He was first employed as a civil servant in Hong Kong. In recent years he has written mainly for financial magazines.

Notes

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7 Japan Offers US Manchukuo Share,’ New York Times, 13 March 1938
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15 KeyMed v Hillman & Woodford judgment, 11 March 2019; [2019] EWHC 485 (Ch)
18 Greed & Fear, Christopher Wood, 17 June 2021
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