

# Seikitokyu Kogyo under fire over appointment of controversial chairman as advisor

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- Strategic Capital proposes abolishment of “opaque” advisory position
- Chairman’s influence must be cut for corporate value to improve, activist says
- Seikitokyu says Chairman Sato was not aware of law violations
- Meti has expressed concern about unfair influence of advisors, former CEOs

**Seikitokyu Kogyo** [TYO:1898], a civil engineering company that is part of the **Tokyu Group**, is under fire from its leading activist shareholder over the proposed appointment of its controversial outgoing chairman as an advisor – a role that a Japanese regulator has described as unclear and problematic.

Tokyo-based activist **Strategic Capital** on 26 April submitted a set of proposals for Seikitokyu’s June AGM, asking the board, among other things, to amend the company’s bylaws to abolish the “opaque” position of advisor. The aim is to prevent the company’s chairman from assuming that role in June.

As previously reported, the Tokyo District Court on 28 March ruled in favor of Strategic Capital’s claim that Seikitokyu’s chairman, Toshiaki Sato, violated the Antimonopoly Act by establishing cartels to raise the sales price of asphalt mixtures from March 2011 to January 2015.

The court said Chairman Sato was aware that he was violating the law and ordered him and three other defendants to pay about JPY 1.8bn (USD 13.8m) in damages to the company, as demanded by the activist.

“The court made it clear Chairman Sato had breached his director’s duty of care. But the company has decided to appoint him as an advisor at the upcoming AGM. How dare the company do that? Mr. Sato should feel responsible for violating the law a number of times while in office,” Strategic Capital’s CEO, Tsuyoshi Maruki, told this news service.

In a statement outlining its AGM proposals, the activist said it believes eliminating Mr. Sato’s influence is necessary to improve shareholder value over the medium- to long-term, and therefore proposes the abolition of the advisory position.

In case the abolition of the advisor position is not approved at the AGM, Strategic Capital is also proposing that the company disclose Sato’s annual remuneration if he is appointed as an advisor.

Chairman Sato and the three other defendants – former directors Masahiro Sasaki, Kimio Hiramoto and Kazuhiko Saito - have filed an appeal with the Tokyo High Court, hoping to overturn the lower court’s decision, Seikitokyu said in a statement on 14 April.

While Seikitokyu has violated the Antimonopoly Act a number of times in the past, the most recent case dates back to 30 July 2019, when the Japan Fair Trade Commission (JFTC) issued **cease and desist orders** (<https://contents.xj-storage.jp/xcontents/AS03190/a153c1ee/39a0/45a9/8be7/613c4091bd45/140120160921498356.pdf>) and surcharge payment orders of JPY 2.8978bn against Seikitokyu Kogyo for violating the Antimonopoly Act related to the determination of the sales price of asphalt mixtures in Japan.

According to a JFTC statement at the time, Seikitokyu Kogyo exchanged information and fixed the sales price of asphalt mixtures sold in Japan in coordination with **Maeda Road, Taisei Rotec, Kajimaroad, Obayashi Road, GAEART, Toa Road, Nippon Road** [TYO:1884] and **NIPPO** from March 2011 to March 2015, at least.

Strategic Capital, a leading shareholder with a 7.2% stake as per its latest filing in June 2021, **filed a lawsuit** (<http://www.dealreporter.com/intelligence/view/intelcms-xcknts>) at the Tokyo District Court on 18 December 2020, arguing that the four defendants, including Chairman Sato, had violated their duty of care as directors and asked them to pay damages to the company.

Maruki has previously told this news service that Chairman Sato had taken no measures to prevent this from happening, even though he was in a position to do so and was aware.

In its 26 April statement, Strategic Capital said the company's Board of Directors has not pursued Mr. Sato's responsibility on its own and has not rescinded its proposal to appoint him an advisor, even after the Tokyo District Court found that Mr. Sato had breached his duty of care.

"There is strong concern that an unhealthy familiar relationship has developed between the Board of Directors and Mr. Sato," said Strategic Capital in its statement.

### **Advisory roles used to pay salaries in arrears**

The opaque nature of the advisory position and the unjustified involvement of former CEOs at Japanese companies have also been highlighted in the Ministry of Economy, Trade and Industry's (Meti) **Practical Guidelines for Corporate Governance System** ([https://www.meti.go.jp/english/press/2017/0331\\_005.html](https://www.meti.go.jp/english/press/2017/0331_005.html)), which was formulated in March 2017 and revised in **September 2018** ([https://www.meti.go.jp/english/policy/economy/corporate\\_governance/index.html](https://www.meti.go.jp/english/policy/economy/corporate_governance/index.html)).

According to the guidelines, when retired CEOs take office as advisors and consultants, their roles and treatments should be clarified, and information regarding the current treatment of former CEOs should be actively disclosed.

Another notable point made by Meti in the guidelines is that advisory positions are often used as a scheme to pay salaries in arrears to former CEOs in Japan where executive salaries are much lower than in other countries.

A Seikitokyu spokesperson said Chairman Sato gave up 30% of his monthly salaries from October 2016 to December 2016, following the JFTC's cease and desist orders in September that year in relation to the company's coordinated price fixing for pavement restoration in the aftermath of the Great East Japan Earthquake.

Strategic Capital's Maruki argues, however, that if Chairman Sato will receive compensation for his advisory role as part of salaries to be paid arrears, then, the return of 30% of his monthly salaries in 2016 as a sanction for violating the Antimonopoly Act would lose its meaning as the sanction. And it would not serve as a deterrent against the recurrence of unlawful conduct in the future, he said.

The Seikitokyu spokesperson said the company believes there is a huge difference between the court ruling and what we know as facts. Chairman Sato and the three former directors were not aware of the violation of the law until they were told by the JFTC, the spokesperson said.

In response to Strategic Capital's AGM proposals, Seikitokyu said it is against the shareholder proposal to abolish the advisory position because advisors, who give advice at the request of the board, contribute to the company's smooth business operations through their external activities. Therefore, they contribute to the enhancement of corporate value, it added.

In line with the Meti's guidelines, the company said it plans to disclose the names of its advisors, their job details and the existence or non-existence of salaries in the corporate governance reports it files with the Tokyo Stock Exchange. The company added, however, that the disclosure of their actual salaries is not appropriate from a protection of privacy point of view.

The spokesperson said that thanks to the chairman's knowledge about compliance, Seikitokyu filed an application for antitrust criminal leniency shortly before the JFTC's onsite inspection in January 2015, ahead of its rivals. The inspection related to the possible coordinated price fixing for pavement restoration in the aftermath of the Great East Japan Earthquake.

Seikitokyu's shares were trading 1.34% higher at JPY 758 in Tokyo on Friday morning (13 May). The benchmark Nikkei average index, meanwhile, was quoted at 2,6,426.48, up 2.63%.

by Norie Hata in Tokyo

Grade: Confirmed

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## TARGETS

Seikitokyu Kogyo

## OTHERS

Strategic Capital Inc

Japan

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Construction

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Topics: Antitrust/Regulatory , Shareholder Activism

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Intelligence ID: intelcms-b2vhp

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